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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): January 31, 2012**

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**Medical Properties Trust, Inc.**

(Exact Name of Registrant as Specified in its Charter)

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**Maryland**  
(State or other jurisdiction  
of incorporation)

**001-32559**  
(Commission  
File Number)

**20-0191742**  
(IRS Employer  
Identification Number)

**1000 Urban Center Drive, Suite 501, Birmingham, AL 35242**  
(Address of principal executive offices) (Zip code)

**(205) 969-3755**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01. Entry into a Material Definitive Agreement.**

On January 31, 2012, Medical Properties Trust, Inc. (the “Company”) announced that affiliates of its operating partnership, MPT Operating Partnership, L.P. (the “Operating Partnership”), entered into definitive agreements to make loans to and acquire assets from Ernest Health, Inc. (“Ernest”) and to make an equity contribution to the parent of Ernest for a combined investment of approximately \$396.5 million consisting of \$200.0 million to purchase price and real estate assets, a first mortgage loan of \$100.0 million, an acquisition loan for \$93.2 million and a capital contribution of \$3.3 million as described below.

### *Real estate acquisition*

Pursuant to a definitive real property asset purchase agreement (the “Purchase Agreement”), certain wholly owned subsidiaries of the Operating Partnership will acquire from Ernest and certain of its subsidiaries (i) a portfolio of five rehabilitation facilities (including a ground lease interest relating to a community-based acute rehabilitation facility in Wyoming), (ii) seven long-term acute care facilities located in seven states and (iii) undeveloped land in Provo, Utah (collectively, the “Acquired Facilities”) for an aggregate purchase price of \$200.0 million, subject to certain adjustments. The acquisition of these assets is herein referred to as the “Ernest Asset Acquisition.”

The Acquired Facilities will be leased to limited liability companies wholly-owned by the Company’s taxable REIT subsidiary, MPT Development Services, Inc. (“MPT TRS”), which will sublease the facilities to subsidiaries of Ernest pursuant to a master sublease agreement. The master sublease agreement (the “Master Sublease Agreement”) will have a 20-year term with three five-year extension options and provide for an average annualized cash rent of \$18 million, plus consumer price-indexed increases, limited to a 2% floor and 5% ceiling annually.

### *Mortgage loan financing*

Pursuant to the Purchase Agreement, MPT TRS will make Ernest a \$100.0 million mortgage loan secured by a first mortgage interest in four subsidiaries of Ernest (the “Mortgage Loan Financing”). The Mortgage Loan Financing will have a 20-year term with three five-year extension options and bear interest at 9% per year plus consumer price-indexed increases, limited to a 2% floor and 5% ceiling annually.

### *Acquisition loan and equity contribution*

In addition, MPT Aztec Opco, LLC, a wholly-owned subsidiary of MPT TRS, will enter into a joint venture limited liability company, Ernest Health Holdings, LLC (“Ernest Holdings”), with an entity formed by the present key management personnel of Ernest (“ManageCo”). MPT Aztec Opco, LLC will make capital contributions of approximately \$3.3 million to Ernest Holdings in exchange for a membership interest representing a 49% aggregate initial equity interest. The remaining 51% initial equity interest in Ernest Holdings will be owned by ManageCo, which will make contributions valued at \$3.5 million in exchange for a membership interest in Ernest Holdings. Pursuant to the terms of an Agreement and Plan of Merger dated January 31, 2012, a merger subsidiary of Ernest Holdings will be merged with and into Ernest, with Ernest surviving the merger as a wholly-owned subsidiary of Ernest Holdings. In addition, MPT Aztec Opco, LLC will make an acquisition loan of approximately \$93.2 million to the merger subsidiary. The acquisition loan will bear interest at a rate of 15.0%, with a 6% coupon payable in cash in the first year, a 7% coupon payable in cash in the second year and a 10% coupon payable in cash thereafter. The remaining 9% in year one; 8% in year two and 5% thereafter will be accrued and paid upon the occurrence of any capital or liquidity events of Ernest Holdings and will be payable in all events at maturity.

These transactions are herein collectively referred to as the “Ernest Acquisition Transactions.”

Following the consummation of these transactions, Ernest and its operating subsidiaries will be managed and operated by ManageCo, or one or more of ManageCo’s affiliates, pursuant to the terms of a management agreement, which terms shall include a base management fee payable to ManageCo and incentive payments tied to mutually agreed benchmarks. ManageCo and MPT Aztec Opco, LLC will share profits and distributions from Ernest Health Holdings according to a distribution waterfall under which, if certain benchmarks are met, such that after taking into account interest paid on the acquisition loan, ManageCo and MPT Aztec Opco, LLC will share in cash generated by Ernest Holdings in a ratio of 21% to ManageCo and 79% to Aztec Opco, LLC. Under the limited liability company agreement of Ernest Holdings, MPT Aztec Opco, LLC will have no management authority or control except for certain rights consistent with a passive ownership interest, such as a limited right to approve annual budgets and the right to approve extraordinary transactions, and except in the case of certain extraordinary events, which events include any defaults under the master sublease agreement or the acquisition loan, in which case MPT Aztec Opco, LLC is

given special member rights including, without limitation, the right to terminate the management agreement, hire new management, or market the company for sale.

The Company intends to consummate the Ernest Acquisition Transactions during the first quarter of 2012. No assurance can be given that any portion of the Ernest Acquisition Transactions will occur as described herein or at all.

The foregoing summary of the Purchase Agreement, the Master Sublease Agreement, the Real Estate Loan Agreement and the Agreement and Plan of Merger (collectively, the "Transaction Documents") does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Purchase Agreement, the Master Sublease Agreement, the Real Estate Loan Agreement and the Agreement and Plan of Merger, copies of which are filed as Exhibits 10.1, 10.2, 10.3 and 10.4 hereto and the terms of which are incorporated herein by reference.

The Transaction Documents have been included with this Form 8-K pursuant to applicable rules and regulations of the Securities and Exchange Commission in order to provide investors and shareholders with information regarding their terms. However, they are not intended to provide any other factual information about the Company, the Operating Partnership, the sellers under the Transaction Documents, their respective subsidiaries and affiliates, or any other party. In particular, the representations, warranties and covenants contained in the Transaction Documents have been made only for the purpose of the Transaction Documents, and, as such, are intended solely for the benefit of the parties to the Transaction Documents. In many cases, these representations, warranties and covenants are subject to limitations agreed upon by the parties and are qualified by certain disclosures exchanged by the parties in connection with the execution of the Transaction Documents. Furthermore, many of the representations and warranties in the Transaction Documents are the result of negotiated allocation of contractual risk among the parties and, taken in isolation, do not necessarily reflect facts about the Company, the Operating Partnership, the sellers under the Transaction Documents, their respective subsidiaries and affiliates or any other party. Likewise, any references to materiality contained in the representations and warranties may not correspond to concepts of materiality applicable to investors or shareholders. Finally, information concerning the subject matter of the representations and warranties may change after the date of the Transaction Documents and these changes may not be fully reflected in the Company's or the Operating Partnership's public disclosures.

As a result of the foregoing, investors and shareholders are strongly encouraged not to rely on the representations, warranties and covenants contained in the Transaction Documents, or on any descriptions thereof, as accurate characterizations of the state of facts or condition of the Company, the Operating Partnership or any other party. Investors and shareholders are likewise cautioned that they are not third-party beneficiaries under the Transaction Documents and do not have any direct rights or remedies pursuant to the Transaction Documents.

#### **Item 2.02. Results of Operations and Financial Condition.**

On January 31, 2012, the Company issued a press release announcing its financial results for the three months and year ended December 31, 2011, a copy of which is furnished as Exhibit 99.1 hereto and is incorporated herein by reference. The Company also posted certain fourth quarter 2011 supplemental information on its website at [www.medicalpropertytrust.com](http://www.medicalpropertytrust.com), a copy of which is furnished as Exhibit 99.2 hereto and is incorporated hereby reference. The information furnished pursuant to this Item 2.02, including Exhibit 99.1 and Exhibit 99.2, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended. In addition, this information shall not be deemed incorporated by reference in any filing of the Company with the Securities and Exchange Commission, except as expressly set forth by specific reference in any such filing.

#### **Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On January 30, 2012, the Company filed Articles of Amendment to the Company's Second Articles of Amendment and Restatement with the Maryland State Department of Assessments and Taxation increasing the number of authorized shares of common stock of the Company, par value \$.001 per share, from 150,000,000 to 250,000,000. The Articles of Amendment, which were effective upon filing, are included as Exhibit 3.1 hereto and are incorporated herein by reference.

**Item 7.01. Regulation FD Disclosure**

On January 31, 2012, the Company issued a press release announcing the Ernest Acquisition Transactions, a copy of which is furnished as Exhibit 99.3 hereto and is incorporated herein by reference.

On January 25, 2012, in connection with the Ernest Acquisition Transactions, the Company received a commitment letter and term sheet for a \$80.0 million senior unsecured term loan facility, from J.P. Morgan Chase Bank, N.A. and RBC Capital Markets, LLC. The term sheet provides for customary financial and operating covenants, substantially consistent with the Company's revolving credit facility, including covenants relating to total leverage ratio, fixed charge coverage ratio, mortgage secured leverage ratio, recourse mortgage secured indebtedness, consolidated adjusted net worth, unsecured leverage ratio and interest coverage ratio, and covenants restricting the incurrence of debt, imposition of liens, the payment of dividends and entering into affiliate transactions. The term sheet also provides for customary events of default, including among others, nonpayment of principal or interest, material inaccuracy of representations and failure to comply with the Company's covenants.

Effectiveness of the new term loan facility is subject to, among other things, definitive documentation and the satisfaction of customary closing conditions. There is no assurance that the Company will be able to successfully establish the new term loan facility on the terms described herein or at all.

In addition, the Company requested a \$70 million increase in the Company's existing revolving credit facility contemporaneously with the closing of the new term loan facility. The Company's revolving credit facility includes an accordion feature pursuant to which borrowings thereunder can be increased to up to \$400.0 million from \$330.0 million. The Company expects that the administrative agent under the revolving credit facility will arrange a syndicate of lenders willing to hold the requested incremental revolving commitments, but the Company may not be able to find commitments for this incremental facility.

The Company expects to close and fund the new term loan facility concurrently with the closing of the Ernest Acquisition Transactions.

The information furnished pursuant to this Item 7.01, including Exhibit 99.3, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended. In addition, this information shall not be deemed incorporated by reference in any filing of the Company with the Securities and Exchange Commission, except as expressly set forth by specific reference in any such filing.

**Item 8.01. Other Events.**

The audited consolidated financial statements of Ernest Health, Inc. and Subsidiaries as of December 31, 2010 and 2009, and for each of the two years in the period ended December 31, 2010, filed as Exhibit 99.4 hereto and incorporated herein by reference, have been audited by Ernst & Young LLP, independent auditors, as stated in their report appearing herein.

The unaudited condensed consolidated financial statements of Ernest Health, Inc. and Subsidiaries as of September 30, 2011 and for the nine months ended September 30, 2011 and 2010 and the notes related thereto are filed as Exhibit 99.5 hereto and incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

| <u>Exhibit No.</u> | <u>Description</u>   |
|--------------------|--|
| 3.1                | Articles of Amendment  |
| 10.1               | Purchase Agreement   |
| 10.2               | Master Sublease Agreement  |
| 10.3               | Real Estate Loan Agreement   |
| 10.4               | Agreement and Plan of Merger   |
| 23.1               | Consent of Ernst & Young LLP   |
| 99.1               | Press release announcing financial results for the three months and year ended December 31, 2011 |
| 99.2               | Fourth Quarter 2011 Supplemental Information   |
| 99.3               | Press release announcing the Ernest Acquisition Transactions                                     |
| 99.4               | Audited consolidated financial statements of Ernest Health, Inc. and Subsidiaries                |
| 99.5               | Unaudited condensed consolidated financial statements of Ernest Health, Inc. and Subsidiaries    |

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunder duly authorized.

MEDICAL PROPERTIES TRUST, INC.

By: /s/ R. Steven Hamner

Name: R. Steven Hamner

Title: Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

Date: January 31, 2012

## EXHIBIT INDEX

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| 99.1               | Press release announcing financial results for the three months and year ended December 31, 2011 |
| 99.2               | Fourth Quarter 2011 Supplemental Information   |
| 99.3               | Press release announcing the Ernest Acquisition Transactions                                     |
| 99.4               | Audited consolidated financial statements of Ernest Health, Inc. and Subsidiaries                |
| 99.5               | Unaudited condensed consolidated financial statements of Ernest Health, Inc. and Subsidiaries    |

**ARTICLES OF AMENDMENT  
OF  
MEDICAL PROPERTIES TRUST, INC.**

MEDICAL PROPERTIES TRUST, INC., a Maryland corporation (the "Corporation"), hereby certifies to the Maryland State Department of Assessments and Taxation (the "Department") that:

- FIRST: The Charter of the Corporation as currently in effect is hereby amended by deleting existing Section 5.1 in its entirety and substituting in lieu thereof a new Section 5.1 to read as follows:
- "Authorized Shares. The Corporation is authorized to issue an aggregate of 260,000,000 shares of stock (the "Capital Stock"), consisting of (a) 250,000,000 shares of common stock, par value \$0.001 per share (the "Common Stock"), and (b) 10,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"). The aggregate par value of all of the shares of all of the classes of stock of the Corporation is \$260,000."
- SECOND: The total number of shares of stock which the Corporation had authority to issue immediately prior to the foregoing amendment of the Charter was 160,000,000 shares of stock, consisting of 150,000,000 shares of Common Stock, \$.001 par value per share, and 10,000,000 shares of Preferred Stock, \$.001 par value per share. The aggregate par value of all authorized shares of stock having par value was \$160,000.
- THIRD: The total number of shares of stock which the Corporation has authority to issue pursuant to the foregoing amendment of the Charter is 260,000,000 shares of stock, consisting of 250,000,000 shares of Common Stock, \$.001 par value per share, and 10,000,000 shares of Preferred Stock, \$.001 par value per share. The aggregate par value of all authorized shares of stock having par value is \$260,000.
- FOURTH: The information required by Section 2-607(b)(2)(i) of the Maryland General Corporation Law is not changed by the foregoing amendment of the Charter.
- FIFTH: The foregoing amendment to the Charter has been approved by a majority of the entire Board of Directors and the amendment is limited to changes expressly permitted by the Maryland General Corporation Law to be made without action by the stockholders.
- SIXTH: The undersigned President and Chief Executive Officer of the Corporation acknowledges these Articles of Amendment to be the corporate act of the



Corporation and as to all matters or facts required to be verified under oath, the undersigned President and Chief Executive Officer of the Corporation acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and this statement is made under the penalties of perjury.

*[Signature page follows]*

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be signed in its name and on its behalf by its President and Chief Executive Officer and attested to by its Executive Vice President, Chief Operating Officer, Treasurer and Secretary on this 27th day of January, 2012.

MEDICAL PROPERTIES TRUST, INC.

By: /s/ Edward K. Aldag, Jr.  
Name: Edward K. Aldag, Jr.  
Title: Chairman, Chief Executive Officer  
and President

ATTEST:

/s/ Emmet E. McLean  
Emmet E. McLean  
Executive Vice President, Chief Operating Officer,  
Treasurer and Secretary

**FORM OF REAL PROPERTY ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**ERNEST HEALTH, INC.,**

**as “Ernest Health”**

**AND**

**THE ENTITIES LISTED ON SCHEDULE 1 ATTACHED HERETO,  
collectively as the “EHI Subsidiaries”**

**AND**

**THE ENTITIES LISTED ON SCHEDULE 1 ATTACHED HERETO,  
collectively as the “MPT Parties”**

**AND**

**FFC PARTNERS II, L.P., FFC EXECUTIVE PARTNERS II, L.P.,  
FFC PARTNERS III, L.P., and FFC EXECUTIVE PARTNERS III, L.P.,  
(for the limited purposes described herein)**

**As of January 31, 2012**

## REAL PROPERTY ASSET PURCHASE AGREEMENT

**THIS REAL PROPERTY ASSET PURCHASE AGREEMENT** (“**Agreement**”) made and entered into as of January 31, 2012 (the “**Effective Date**”), by and among ERNEST HEALTH, INC., a Delaware corporation (“**Ernest Health**”), the entities listed on **Schedule 1** hereto under the heading “**Sellers**” (individually and collectively as the context may require, the “**Sellers**”) and the entities listed on **Schedule 1** hereto under the heading “**Borrowers**” (individually and collectively as the context may require, the “**Borrowers**” and together with the Sellers and the Co-Located Operators (as hereinafter defined), the “**EHI Subsidiaries**”), and the entities listed on **Schedule 1** hereto under the heading “**Buyers - MPT Real Estate Owners**” (individually and collectively as the context may require, the “**Buyers**”) and the entities listed on **Schedule 1** hereto under the heading “**Lenders - MPT Real Estate Lenders**” (individually and collectively as the context may require, the “**Lenders**” and together with the Buyer, the “**MPT Parties**”), and FFC PARTNERS II, L.P., FFC EXECUTIVE PARTNERS II, L.P., FFC PARTNERS III, L.P., and FFC EXECUTIVE PARTNERS III, L.P., each a Delaware limited partnership, and solely for the express purposes provided for in Section 9.13(b) herein and for no other purpose (the “**FFC Funds**”). Ernest Health, the EHI Subsidiaries, the FFC Funds, and the MPT Parties are herein sometimes collectively referred to as the “**Parties**.” An index of defined terms used in this Agreement is attached as Annex A hereto.

### RECITALS

**WHEREAS**, the Sellers and the Borrowers collectively (i) own twelve (12) separate tracts of land in Arizona, Colorado, Idaho, Montana, New Mexico, South Carolina, Texas and Utah (including certain undeveloped land located in Provo, Utah), all being more particularly described on **Exhibit A-1** attached hereto, including all hereditaments, easements, rights of way and other appurtenances related thereto (the “**Owned Land**”), and all Improvements located thereon (the Owned Land and such Improvements located thereon are sometimes collectively referred to herein as the “**Owned Real Property**” and each, an “**Owned Property**”), and (ii) lease an approximately 6.09 acre tract of land in Casper, Wyoming, being more particularly described on **Exhibit A-2** attached hereto, including all hereditaments, easements, rights of way and other appurtenances related thereto (the “**Wyoming Leased Land**,” and together with the Owning Land, the “**Land**”), and all Improvements located thereon (the Wyoming Leased Land and the Improvements located thereon are sometimes referred to herein as the “**Ground Leased Real Property**,” and together with the Owning Real Property, the “**Real Property**”);

**WHEREAS**, the Sellers and the Borrowers collectively operate (A) a portfolio of thirteen (13) community-based acute rehabilitation and long-term acute care facilities in Arizona, Colorado, Idaho, Montana, New Mexico, South Carolina, Texas and Utah located on the Owning Real Property (each such facility shall be individually referred to as an “**Owning Facility**” and collectively, the “**Owning Facilities**”), and (B) a community-based acute rehabilitation facility located on the Ground Leased Real Property in Casper, Wyoming (the “**Wyoming Facility**,” and together with the Owning Facilities, the “**Facilities**”),

**WHEREAS**, certain of the Sellers and the Borrowers lease a portion of their Owned Facilities to those certain operators referenced in Section 4.5 hereto;

**WHEREAS**, concurrently herewith, Ernest Health Holdings, LLC, a Delaware limited liability company (the “**JV Entity**”), Ernest Health Acquisition Sub, Inc., a Delaware corporation (“**MergerCo**”), MPT Aztec Opco, LLC, a Delaware limited liability company, (the “**MPT TRS Entity**”) (solely for the limited purposes described therein), Ernest Health, and the FFC Funds (solely for the limited purposes described therein), have entered into that certain Agreement and Plan of Merger (the “**Merger Agreement**”);

**WHEREAS**, subject to satisfaction of the terms and conditions set forth herein and in the Merger Agreement, each Seller hereby agrees to sell to the applicable Buyer and each Buyer hereby agrees to purchase from the applicable Seller, the applicable Acquired Assets (as defined below) owned by such Seller, as set forth on **Schedule 1A** (collectively, the “**Sales**”).

**WHEREAS**, in connection with the closing of the transactions contemplated hereby: (i) the Buyers, as landlords, and the MPT TRS Entity Subsidiaries, as tenants, shall enter into a real property Lease Agreement in substantially the form attached hereto as **Exhibit B** (the “**Real Property Master Lease Agreement**”), and contemporaneously therewith (ii) the MPT TRS Entity Subsidiaries, as sublandlords, and the Sellers and certain other entities, as subtenants, shall enter into a real property Sublease Agreement in substantially the form attached hereto as **Exhibit C** (the “**Real Property Master Sublease Agreement**”) (collectively, the “**Leasing Documents**”); and

**WHEREAS**, concurrently with the effective time of the Merger, the Lenders and the Borrowers shall enter into that certain Real Estate Loan Agreement in substantially the form attached hereto as **Exhibit D** (as the same may be amended, modified or restated, the “**Real Estate Loan Agreement**”), together with the mortgages and/or deeds of trust, the promissory note, and the other documents and instruments contemplated therein (collectively, with the Real Estate Loan Agreement, the “**Real Estate Loan Documents**”), and pursuant to which the Borrowers shall obtain a first mortgage loan from the Lenders, and the Lenders shall make a first mortgage loan to the Borrowers, in the aggregate amounts set forth on **Schedule 1A** (collectively, the “**Real Estate Loans**”).

**WHEREAS**, subject to satisfaction of the terms and conditions set forth herein, the consummation of the Sales and the making of the Real Estate Loans (and the payment of the aggregate Purchase Price and the advancing of the aggregate Real Estate Loan Amounts (each as hereafter defined) will occur simultaneously (collectively, the “**Transactions**”) and prior, in all events, to the Merger.

**WHEREAS**, concurrently with the consummation of the Transactions, Ernest Health and the EHI Subsidiaries (collectively, the “**Ernest Health Parties**”) shall cause those certain revolving credit and term loan facilities to Ernest Health and to Elkhorn Valley Rehabilitation Hospital, LLC (“**Elkhorn LLC**”) (collectively, the “**CIT Loan**”) in the existing maximum aggregate principal amount of \$215,000,000, which CIT Loan is evidenced, *inter alia*, by (i) that certain Credit and Guaranty Agreement dated as of May 13, 2011 by and between Ernest Health, as borrower, CIT Healthcare LLC, as administrative agent, and the other parties thereto, (ii) that certain Second Lien Credit and Guaranty Agreement dated as of May 13, 2011 by and between

Ernest Health, as borrower, Fifth Street Finance Corp., as administrative agent, and the other parties thereto, and (iii) that certain Intercompany Note and Loan Agreement dated May 13, 2011 between Elkhorn LLC, as borrower, and Parent, as lender, and all other Indebtedness secured by the assets and properties of any of the Ernest Health Parties to be repaid and satisfied in full, and shall, in connection therewith, obtain the release or other discharge of all mortgage and other liens on the Properties (as defined below); provided that the Ernest Health Parties and Elkhorn LLC shall have the right to use the proceeds of the Transaction to repay the CIT Loan and other Indebtedness as contemplated herein.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the respective agreements and commitments set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, it is hereby agreed by and among the Parties as follows:

### 1. BASIC TRANSACTION.

**1.1 Sale and Purchase and Financing of Assets.** On and subject to satisfaction of the terms and conditions of this Agreement, (i) each Seller hereby agrees to sell, assign, convey, transfer and deliver to the applicable Buyer and each Buyer hereby agrees to purchase and otherwise acquire from such Seller, all of such Seller's right, title and interest in and to the Acquired Assets for the amounts set forth on **Schedule 1A** and (ii) each Borrower agrees to obtain a first mortgage loan from the Lenders and the Lenders agree to make a first mortgage loan to the applicable Borrowers, each in the amounts set forth on **Schedule 1A**, and in accordance with the terms of the Real Estate Loan Documents. Except as otherwise expressly provided to the contrary herein, the Ernest Health Parties' obligations and liabilities under this Agreement shall be joint and several and the MPT Parties' obligations and liabilities under this Agreement shall be joint and several.

The terms "**Acquired Assets**" and "**Financed Assets**" shall mean, with respect to each Seller and/or Borrower, individually and as applicable, all of such Seller's and/or Borrower's right, title and interest in and to the following:

(a) All Real Property;

(b) That certain Ground Lease, dated as of December 4, 2007 by and between Natrona County, Wyoming, as landlord, and Elkhorn Valley Rehabilitation Hospital, LLC, as tenant, as amended, modified or restated from time to time (the "**Ground Lease**");

(c) To the extent assignable, all intangible property relating exclusively to the Real Property, including, but not limited to, zoning rights, Company Permits and Licenses (other than those relating to the operation of the Facilities, including, without limitation, hospital licenses and Medicare and Medicaid provider agreements, which are specifically excluded) and indemnification or similar rights and all Warranties affecting or inuring to the benefit of the Real Property or the owner thereof (including, without limitation, any indemnification or similar rights and Warranties related to the Real Property);

(d) All site plans, surveys, soil and substrata studies, architectural drawings, plans and specifications, inspection reports, engineering and environmental plans and studies, title reports, floor plans, landscape plans and other plans relating to the Real Property; and

(e) All causes of action, claims and rights in Litigation (or which could result in Litigation against any party) pertaining or relating to the Real Property (including, without limitation, any causes of action, claims or rights in Litigation or other rights related to or arising under any purchase contracts respecting the Real Property)

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, including Section 1.1 above, each of the Ernest Health Parties, as applicable, shall retain all of its right, title and interest in and to and shall have no obligation to (and shall not be deemed to) sell, assign, convey, transfer, mortgage, pledge, hypothecate or otherwise deliver to Buyers and/or Lenders, as applicable, any or all of its assets and properties other than the Acquired Assets and the Financed Assets (collectively, the “**Excluded Assets**”), which Excluded Assets shall include, without limitation the following:

(a) All cash, funds, accounts receivables, securities and investments of any of the Ernest Health Parties;

(b) Loan receivables related to obligations of an Affiliate of any of the Ernest Health Parties;

(c) Any casualty, liability or other insurance policies of any of the Ernest Health Parties with respect to the Acquired Assets and/or the Financed Assets (subject to the assignment to any of the applicable MPT Parties of the proceeds of such policies in the event of a casualty pursuant to the provisions hereof and, as applicable, the terms and conditions of the Real Property Master Sublease or Real Estate Loan Agreement);

(d) All personal property of any kind or nature, including without limitation, all inventories, supplies, books and records (other than as expressly specified in Sections 1.1(c), (d), and (e) above);

(e) All Company Permits, Intellectual Property, and Material Contracts (each as defined in the Merger Agreement), healthcare compliance agreements and personal property leases (other than as expressly specified in Sections 1.1(c), (d), and (e) above);

(f) All leases, subleases, commitment letters, letters of intent and other rental agreements, whether written or oral, in effect (either on the date of this agreement or on the Closing Date), if any, that grant or will grant a possessory interest in and to any space in the Real Property or that otherwise assign or convey rights with regard to the Real Property or the Improvements, excluding the related party leases with the Co-located Operators for the Facilities located in Mesquite, Texas and Johnstown, Colorado which are being amended at or prior to Closing (collectively referred to as the “**Tenant Leases**”); and

(g) All leases of real property where any of the EHI Subsidiaries is the tenant, including any ground leases (collectively, the “**Collateral Leases**”, and together with the Tenant Leases, the “**EHI Subsidiaries’ Leases**”), excluding however the Ground Lease with respect to the Wyoming Facility.

**1.3 Purchase Price and Real Estate Loan Amount.** (i) The aggregate purchase price to be paid by the Buyers to the Sellers for the Acquired Assets (the “Purchase Price”) shall be the sum of (x) **TWO HUNDRED MILLION AND 00/100 DOLLARS (\$200,000,000)** and (y) the Schedule 4.4 Project Expenditure Reimbursement Amount (as defined in Section 4.4) and (ii) the aggregate mortgage loan amounts to be advanced by Lenders to the Borrowers for the Financed Assets (the “Real Estate Loan Amount”) shall be **ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000)**.

**1.4 Payment of Purchase Price and Advance of Real Estate Loan Amount.**

(a) The Individual Purchase Price (as defined below) for the Acquired Assets relating to each Property and the Ground Lease, as applicable, shall be paid at the Closing in cash by wire transfer or delivery of other immediately available U.S. funds payable to the order of the applicable Seller, or as otherwise directed in writing by Ernest Health.

(b) The Individual Real Estate Loan Amount (as defined below) for the Financed Assets relating to each Property shall be advanced at the Closing in cash by wire transfer or delivery of other immediately available U.S. funds payable to the order of the applicable Borrower, or as otherwise directed in writing by Ernest Health.

The Parties acknowledge that the delivery and disbursement of the foregoing proceeds shall be through the Title Company as described in Section 1.6(a).

**1.5 Liabilities of Seller.** MPT of Casper, LLC, a Delaware limited liability company, shall assume all obligations and liabilities of Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company, under the Ground Lease first arising, accruing or to be performed on or after the Closing Date. The applicable Buyer shall assume from the applicable Seller all obligations and liabilities relating to the Company Permits and Licenses described in Section 1.1(c) herein, subject, however, to Seller’s responsibilities with respect thereto under the Real Property Master Sublease Agreement. Except as set forth in the preceding sentences, and notwithstanding any other provision in this Agreement to the contrary, none of the MPT Parties shall assume or agree to pay, satisfy, discharge or perform, or shall be deemed by virtue of the execution and delivery of this Agreement, the other Transaction Documents, or any other document delivered at the Closing pursuant to this Agreement or the other Transaction Documents, or as a result of the consummation of the transactions contemplated by this Agreement, the other Transaction Documents or such other document, to have assumed, or to have agreed to pay, satisfy, discharge or perform, or shall be liable for, any liability, obligation, contract or Indebtedness of any of the Ernest Health Parties or any other Person, whether primary or secondary, direct or indirect, including, without limitation, any liability or obligation relating to the ownership, use or operation of any of the Acquired Assets, the Financed Assets or the Facilities prior to the Closing, any liability or obligation arising out of or related to any breach, default, tort or similar act committed by any of the Ernest Health Parties or any of their Affiliates, or for any failure of the Ernest Health Parties or any of their Affiliates to perform any



covenant or obligation for or during any period prior to the Closing, and any liability arising out of the ownership and operation of the Acquired Assets, the Financed Assets and the Facilities by the Ernest Health Parties or any other Person prior to the Closing (collectively, the **"Excluded Liabilities"**). The Ernest Health Parties will pay and discharge or cause to be paid and discharged all such Excluded Liabilities in the Ordinary Course of Business. The applicable Buyer will pay and discharge or cause to be paid and discharged all such liabilities and obligations arising out of or related to the activities of such Buyer or any of its Affiliates from and after the Closing with respect to the Acquired Assets only. The terms of this Section 1.5 shall survive the Closing. For the avoidance of doubt, all mortgage loans or other borrowings (including without limitation, the CIT Loan) secured by the applicable Property (other than the mortgage loans to be made by Lenders to Borrowers as contemplated in this Agreement) shall be repaid by the Ernest Health Parties (who shall all have the right to apply proceeds received by any of the EHI Subsidiaries hereunder towards the repayment of such mortgage loans or other borrowings), at or prior to the Closing, and none of the MPT Parties shall assume any obligations of the Ernest Health Parties or any of their Affiliates, as applicable, with respect thereto.

**1.6 Closing.** The Parties hereby agree that the closing of the transactions contemplated hereby shall be consummated as follows:

(a) The closing of the Transactions hereunder (the **"Closing"**) shall occur as promptly as practicable (but in no event later than the third (3rd) Business Day) after all of the conditions precedent for closing set forth in this Agreement have been satisfied (other than conditions which by their terms are required to be satisfied at the Closing) or, if permissible, waived by the party entitled to the benefit of the same (the **"Closing Date"**); provided, that, unless the Parties shall otherwise agree in writing, in no case shall the Closing occur prior to March 1, 2012. The Closing shall be handled through deliveries to the Title Company into escrow with the Title Company receiving and distributing proceeds in accordance with the terms of this Agreement, or in such other manner and at such other place as agreed to by the Parties hereto. Notwithstanding anything to the contrary contained herein, the Closing hereunder shall in all events be consummated immediately prior to the closing of the transactions contemplated under the Merger Agreement.

(b) At Closing, (i) the Ernest Health Parties shall deliver the documents to be delivered by each of them and their Affiliates pursuant to this Agreement, as well as possession of the applicable Acquired Assets, and the applicable MPT Parties shall pay the Individual Purchase Price for the applicable Acquired Assets as provided in this Agreement and deliver the documents required to be delivered by the Buyers and their Affiliates pursuant to this Agreement and (ii) Ernest Health and the Borrowers shall deliver the documents to be delivered by each of them and their Affiliates pursuant to this Agreement and the applicable Lenders shall pay the Individual Real Estate Loan Amount for the applicable Financed Assets as provided in this Agreement and deliver the documents required to be delivered by the Lenders and their Affiliates pursuant to this Agreement.

**1.7 Damage or Destruction or Condemnation of Acquired Assets.**

(a) If any Acquired Assets are damaged, destroyed or lost and not restored prior to Closing, Seller shall, at the Closing, assign its right to receive insurance proceeds, if any, to the

Buyer and Buyer shall close the purchase of the applicable Acquired Assets subject thereto without any reduction or credit against the applicable Individual Purchase Price. In such event, Seller shall have no further liability or obligation to pay for or repair such damage or to replace any of the applicable Property.

(b) If any Financed Assets are damaged, destroyed or lost and not restored prior to Closing, Borrower shall, at the Closing, assign its right to receive insurance proceeds, if any, to the Lender and Lender shall close the financing of the applicable Financed Assets subject thereto without any reduction or credit against the applicable Individual Mortgage Loan Amount. In such event, Borrower shall have no further liability or obligation to pay for or repair such damage or to replace any of the applicable Property, except only as and to the extent Lender makes funds available to Borrower after the Closing Date for such purpose.

(c) If, prior to the Closing Date, all or any portion of a Property is taken by, or made subject to, condemnation, eminent domain or other governmental acquisition proceedings, then Buyer and Lender shall nonetheless be obligated to close the acquisition and/or financing, as applicable, of the applicable Acquired Assets and/or Financed Assets and (i) the applicable Individual Purchase Price and/or Individual Mortgage Loan Amount shall be reduced (or credited) by an amount equal to any sum actually paid prior to Closing to the applicable Seller and/or Borrower for such governmental acquisition, and (ii) Seller and/or Borrower, as applicable, shall assign, transfer and set over to Buyer and/or Lender, as applicable, all of Seller's and/or Borrower's right, title and interest in and to any awards which may in the future be made on account of such governmental acquisition.

**1.8 Allocation of Purchase Price; Allocation of Real Estate Loan Amount.** The Purchase Price shall be allocated among the Acquired Assets of each Seller as set forth on **Schedule 1A** attached hereto, which schedule shall be updated to reflect the addition of any such new, wholly-owned subsidiary of Ernest Health as contemplated by the terms of Section 4.4(c). The Purchase Price for the Acquired Assets of each individual Seller set forth on **Schedule 1A** shall be referred to herein as the "**Individual Purchase Price**" for the Acquired Assets of such individual Seller. Such allocations shall be binding on the Parties for all purposes. Each Party agrees to report to all appropriate governmental authorities any attendant gain or other Tax item consistent with such allocation. The Real Estate Loan Amount shall be allocated among the Financed Assets of each individual Borrower as set forth on **Schedule 1A** attached hereto. The Real Estate Loan Amount for the Financed Assets of each individual Borrower set forth on **Schedule 1A** shall be referred to herein as the "**Individual Real Estate Loan Amount**" for the Financed Assets of such individual Borrower. Such allocations shall be binding on the Parties for all purposes. Each Party agrees to report to all appropriate governmental authorities any attendant gain or other Tax item consistent with such allocation.

**2. REPRESENTATIONS AND WARRANTIES OF THE ERNEST HEALTH PARTIES.** The Ernest Health Parties, jointly and severally, hereby represent, warrant and covenant to the MPT Parties as follows:

**2.1 Existence; Good Standing; Enforceability.**

(a) Ernest Health is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Ernest Health has all requisite corporate power and authority to own, operate and lease its properties and carry on its business as currently conducted. Ernest Health is duly licensed or qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction listed on **Schedule 2.1(a)** and each other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not result in a Ernest Health Material Adverse Effect. The copies of Ernest Health's Third Amended and Restated Certificate of Incorporation (the "**Certificate of Incorporation**") and Bylaws (the "**By-laws**"), each as amended to date and provided by Ernest Health to the MPT Parties, are complete and correct, and no amendments thereto are pending. Ernest Health is in compliance with the Certificate of Incorporation and the Bylaws in all material respects.

Ernest Health has all requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party and, subject to the receipt of the Stockholder Written Consent, to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and each other Transaction Document to which Ernest Health is a party, the performance by Ernest Health of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Ernest Health Board and no further action, other than the delivery of the Stockholder Written Consent, on the part of Ernest Health or its respective stockholders or equity owners is necessary to authorize the execution and delivery by Ernest Health of this Agreement or such other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby. This Agreement and the other Transaction Documents to which the Company is a party have been (or with respect to certain Transaction Documents to be executed at Closing, will be) duly executed and delivered by the Company and, assuming the due authorization, execution and delivery of this Agreement and such other Transaction Documents by each of the other parties hereto and thereto, constitute (or, as applicable with respect to certain Transaction Documents to be executed at Closing, shall constitute) legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms and conditions hereof and thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Notwithstanding the foregoing, Ernest Health makes no representations or warranties regarding the enforceability of any of the Contracts or other documents identified on **Schedule 2.1(b)** (collectively, the "**Financing Documents**"); provided, that, such Financing Documents shall include therein enforceability representations and warranties substantially similar to those provided herein.

**2.2 Capitalization.** The authorized capital stock of Ernest Health consists of (i) 11,052,913 shares of preferred stock, par value \$.01 per share, (A) 3,600,000 of which have been designated Series A Preferred Stock, of which 3,600,000 Series A Preferred Shares are issued and outstanding, (B) 5,952,913 of which have been designated Series B Preferred Stock, of which 5,772,913 Series B Preferred Shares are issued and outstanding and (C) 1,500,000 of which have been designated Series C Preferred Stock, of which 500,000 Series C Preferred Shares are issued and outstanding and (ii) 26,380,346 shares of Common Stock, of which

24,339,096 Common Shares are issued and outstanding, and as of the date hereof such shares of capital stock are held of record by the Persons and in the amounts listed on **Schedule 2.2**. All of the issued and outstanding shares of capital stock of Ernest Health have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth on **Schedule 2.2**, there are no outstanding subscriptions, options, warrants, commitments, preemptive rights, deferred compensation rights, agreements, arrangements or commitments of any kind to which Ernest Health is a party relating to the issuance of, or outstanding securities convertible into or exercisable or exchangeable for, any shares of capital stock of any class or other equity interests of Ernest Health. Except as set forth on **Schedule 2.2**, there are no agreements to which Ernest Health is a party with respect to the voting of any shares of capital stock of Ernest Health or which restrict the transfer of any such shares. Except as set forth on **Schedule 2.2**, there are no outstanding contractual obligations of Ernest Health to repurchase, redeem or otherwise acquire any shares of capital stock, other equity interests or any other securities of Ernest Health.

### **2.3 EHI Subsidiaries.**

(a) All of the Subsidiaries of Ernest Health are set forth in **Schedule 2.3(a)**. Except as set forth in **Schedule 2.3(a)**, Ernest Health owns, directly or indirectly, all of the outstanding shares of capital stock or other equity interest of each of the EHI Subsidiaries, in each case free and clear of all Encumbrances. Except as set forth on **Schedule 2.3(a)**, neither Ernest Health nor any of the EHI Subsidiaries owns, directly or indirectly, any capital stock, equity or other ownership interest in any other Person.

(b) Each of the EHI Subsidiaries is an entity of the type set forth on **Schedule 2.3(b)**, duly incorporated, organized or otherwise formed, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own, operate and lease its properties and to carry on its business as currently conducted. Each such Subsidiary is duly licensed or qualified to do business as a foreign organization under the laws of each jurisdiction listed on **Schedule 2.3(b)** and each other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not result in a Ernest Health Material Adverse Effect. The copies of the organizational and governing documents of each such Subsidiary, in each case as amended to date and delivered to Buyer's counsel, are complete and correct, and no amendments thereto are pending. Ernest Health and each EHI Subsidiary, as applicable, is in compliance with its respective organizational and governing documents in all material respects.

Except as set forth on **Schedule 2.3(c)(i)**, each of the EHI Subsidiaries has all requisite limited liability, partnership or corporate, as applicable, power and authority to execute and deliver this Agreement and each of the Transaction Document to which it is a party and to perform its obligations hereunder and thereunder. **Schedule 2.3(c)(ii)** sets forth, for each of the EHI Subsidiaries, such Subsidiary's managers, members, partners, shareholders and directors and any other Persons exercising similar authority. Following delivery of the Subsidiaries' Approvals in accordance with this Agreement, the execution and delivery of this Agreement and each of the Transaction Document to which any of the EHI Subsidiaries is party, the performance by the EHI Subsidiaries of their respective obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby will be as of Closing duly authorized by all

necessary action by the managers, members, partners, shareholders, directors, and other Persons exercising similar authority, as applicable, of each of the EHI Subsidiaries and no further action on the part of any of the EHI Subsidiaries shall be necessary to authorize the execution and delivery by any of the EHI Subsidiaries of this Agreement or the other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby.

(c) This Agreement and the other Transaction Documents to which any of the EHI Subsidiaries is a party have been (or, in the case of the Co-Located Operators, prior to the Closing, will be, and with respect to certain Transaction Documents to be executed at Closing, will be) duly executed and delivered by each of the EHI Subsidiaries and, assuming the due authorization, execution and delivery of this Agreement and such other Transaction Documents by each of the other parties hereto and thereto, constitute (or, as applicable with respect to certain Transaction Documents to be executed prior to or at Closing, shall constitute) legal, valid and binding obligations of the EHI Subsidiaries, enforceable against each of them in accordance with the terms and conditions hereof and thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Notwithstanding the foregoing, the Ernest Health makes no representations or warranties regarding the enforceability of any of the Financing Documents; *provided*, that, such Financing Documents shall include therein enforceability representations and warranties substantially similar to those provided herein.

(d) All of the issued and outstanding equity interest of each of the EHI Subsidiaries, as applicable, have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth on **Schedule 2.3(d)**, all of the issued and outstanding equity interests of the EHI Subsidiaries are free and clear of all Encumbrances, and there are no outstanding subscriptions, options, warrants, commitments, preemptive rights, deferred compensation rights, agreements, arrangements or commitments of any kind to which Ernest Health or any of the EHI Subsidiaries is a party relating to the issuance of, or outstanding securities convertible into or exercisable or exchangeable for, any shares of capital stock of any class or other equity interests of any of the EHI Subsidiaries. Except as set forth on **Schedule 2.3(d)**, there are no agreements to which Ernest Health or any of the EHI Subsidiaries is a party with respect to the voting of any shares of capital stock or other equity interest of any of the EHI Subsidiaries or which restrict the transfer of any such shares or equity interests. Except as set forth on **Schedule 2.3(d)**, there are no outstanding contractual obligations of Ernest Health or any of the EHI Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock, other equity interests or any other securities of any of the EHI Subsidiaries.

#### **2.4 No Conflict; Consents.**

(a) Except as set forth on **Schedule 2.4(a)**, the execution and delivery by each of the Ernest Health Parties of this Agreement and each other Transaction Document to which each of them is a party, and the consummation of the transactions contemplated hereby and thereby in accordance with their respective terms, do not: (i) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under, or give rise to a right of termination, amendment, acceleration or cancellation of, or result in the triggering of any payments or the creation of an Encumbrance on any property or asset of Ernest Health or the

EHI Subsidiaries under any Material Contract or Company Permit to which Ernest Health or any of the EHI Subsidiaries is a party or by which Ernest Health's or any of the EHI Subsidiaries' assets are bound; (ii) conflict with, or result in any violation of, any provision of the Certificate of Incorporation, By-laws or any other organizational or governing documents of Ernest Health or the EHI Subsidiaries; or (iii) violate or result in a violation of, in any material respect, or constitute a material default under (whether after the giving of notice, lapse of time or both), or result in the triggering of any payments or the creation of an Encumbrance on any material property or asset of Ernest Health or the EHI Subsidiaries under any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or other governmental agency applicable to Ernest Health or any of the EHI Subsidiaries.

(b) The execution and delivery by Ernest Health and the EHI Subsidiaries of this Agreement and each other Transaction Document to which any of them is a party, and the consummation by Ernest Health and the EHI Subsidiaries of the transactions contemplated hereby and thereby in accordance with their respective terms, do not require from Ernest Health or the EHI Subsidiaries any notice to, declaration or filing with, or consent or approval of any Governmental Body, except for: (A) the Stockholder Written Consent; and (B) as otherwise set forth on **Schedule 2.4(b)**.

## **2.5 Financial Statements.**

(a) The following financial statements are attached hereto as **Schedule 2.5(a)** (collectively, the "**Financial Statements**"):

(i) Audited consolidated balance sheets of Ernest Health and the EHI Subsidiaries as of the fiscal years ending December 31, 2009 and December 31, 2010, and consolidated statements of income and cash flows for each of the years then ended; and

(ii) An unaudited consolidated balance sheet of Ernest Health and the EHI Subsidiaries as of September 30, 2011 (the "**Base Balance Sheet**"), and unaudited consolidated statements of income and cash flows for the nine (9) month period then ended.

(b) Subject to the absence of footnotes and normal, year-end audit adjustments to any unaudited Financial Statements, which, to the Knowledge of Ernest Health, are not reasonably expected to be material in amount or effect (either individually or in the aggregate), the Financial Statements have been prepared in accordance with GAAP from the books and records of Ernest Health and the EHI Subsidiaries and present fairly in all material respects the consolidated financial condition and results of operation, of Ernest Health and the EHI Subsidiaries as of the dates and for the periods covered thereby.

(c) Since the date of the Base Balance Sheet, except for those liabilities that are fully reflected or reserved against on the Base Balance Sheet, and for liabilities incurred in the Ordinary Course of Business since the date of the Base Balance Sheet (none of which result from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement or violation of law) or in connection with the transactions contemplated by this Agreement or any other Transaction Document, and except as set forth on **Schedule 2.5(c)**, neither Ernest Health nor any of the EHI Subsidiaries has incurred any material

liability or obligation (i) of the type required by GAAP to be reflected or reserved on a balance sheet prepared in accordance with GAAP, or (ii) to the Ernest Health Parties' Knowledge, incurred any other material liability, whether absolute, accrued, contingent or otherwise, including any future material liability arising out of acts or omissions which have already occurred.

(d) All accounts receivable and other receivables reflected on the Base Balance Sheet, and those arising in the Ordinary Course of Business after the date thereof, are (i) in respect of services or products provided by Ernest Health or the EHI Subsidiaries arising from bona fide transactions in the conduct of the Ordinary Course of Business, (ii) in all material respects true and genuine, represent legal, valid and binding obligations of the respective debtors enforceable in accordance with their terms, and (iii) not subject to any defense, counterclaim, refunds or adjustments or right of set off, other than refunds, recoupments, retractions or other adjustments in the Ordinary Course of Business that are reserved in accordance with GAAP by credit balances or bad debt or other reserves on the Base Balance Sheet. No material payment of said receivables is contingent upon performance of any obligations or contract, past or future, and, except as set forth on **Schedule 2.5(d)**, all such receivables are free of all security interests and encumbrances created by Ernest Health, the EHI Subsidiaries, or their respective.

**2.6 Operating in Ordinary Course of Business.** Except as set forth on **Schedule 2.6**, from January 1, 2011 to the date of this Agreement, Ernest Health and the EHI Subsidiaries have operated only in the Ordinary Course of Business. Without limiting the generality of the foregoing, from January 1, 2011 to the date of this Agreement, (i) neither Ernest Health nor any of the EHI Subsidiaries has taken any of the actions described in **Section 4.1** which would, if taken after the date hereof, require the consent of the MPT Parties, and (ii) there has been no Ernest Health Material Adverse Effect.

**2.7 Title to Personal Property; Related Matters.**

(a) **Schedule 2.7(a)** sets forth in reasonable detail a list, as of December 31, 2011 of all material tangible personal properties, assets and equipment owned or used by Ernest Health and the EHI Subsidiaries (the "**Personal Property**"), in each case, having an initial cost basis per item in excess of \$50,000.

(b) Except as set forth on **Schedule 2.7(b)(i)**, Ernest Health and the EHI Subsidiaries have good and marketable title to, a valid leasehold interest in, or a valid license to use, all of the Personal Property, free and clear of all Encumbrances except Permitted Encumbrances. The Personal Property, taken as a whole, is in good operating condition and repair, and is capable of being used for its intended purposes, ordinary wear and tear excepted, and, as of Closing, will be located (i) on the Real Property, (ii) at the Ernest Health principal office, or (iii) at the locations identified on **Schedule 2.7(b)(ii)**.

(c) **Schedule 2.7(c)** sets forth an accurate and complete list of all leases of Personal Property requiring annual payments by Ernest Health or any of the EHI Subsidiaries in excess of \$250,000, if any, used in the operation of the business of Ernest Health and the EHI Subsidiaries (the "**Personal Property Leases**"). The Ernest Health Parties have delivered to the MPT Parties complete, correct and current copies of all of the Personal Property Leases.

(d) Except as set forth on **Schedule 2.7(d)**, since January 1, 2011, neither Ernest Health nor any of the EHI Subsidiaries has sold, transferred, assigned or disposed of any of the Personal Property or Personal Property Leases other than (i) in the Ordinary Course of Business or (ii) in respect of obsolete or unsalable items.

**2.8 Litigation.** Except as set forth on **Schedule 2.8**, as of the date hereof there is no Litigation against, involving or pending or, to the Ernest Health Parties' Knowledge, threatened, against Ernest Health or any of the EHI Subsidiaries, or any of the directors or officers or (or other Persons exercising similar governance authority on behalf of) Ernest Health or any of the EHI Subsidiaries in their capacity as directors or officers of Ernest Health or any of the EHI Subsidiaries (including, without limitation any suit, action, proceeding or investigation pursuant to Title 11 of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act of 1993, or any other federal, state or local law regulating employment). There is no Litigation pending, or to the Knowledge of the Ernest Health Parties, threatened, that questions the validity of this Agreement, any of the other Transaction Documents to which Ernest Health or any of the EHI Subsidiaries is a party, or any action taken or to be taken by Ernest Health or any of the EHI Subsidiaries in connection with this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby. Neither Ernest Health nor any of the EHI Subsidiaries are subject to any outstanding writ, order, judgment, injunction, decree, rule or order of any Governmental Body or any other Person (including, without limitation, any arbitral tribunal) outstanding against Ernest Health or any of the EHI Subsidiaries, and neither Ernest Health or any of the EHI Subsidiaries is in violation of any term of any judgment, decree, injunction or order outstanding against any of them. The Ernest Health Parties have provided the MPT Parties with true and correct copies of all pleadings, material correspondence and other documentation respecting any such Litigation described in this Section.

**2.9 Taxes.**

(a) Except as set forth on **Schedule 2.9(a)**, all material Tax Returns required to be filed by or with respect to Ernest Health and the EHI Subsidiaries have been timely filed (taking into account applicable extensions of time to file), and all such Tax Returns are accurate and complete in all material respects.

(b) Except as set forth on **Schedule 2.9(b)**, Ernest Health and the EHI Subsidiaries have paid or caused to be paid all material Taxes due and owing by any of them (whether or not shown on the Tax Returns described in **Section 2.9(a)**), or have made adequate provision on the books of Ernest Health or the EHI Subsidiaries, as applicable, for all Taxes owed or accrued by Ernest Health and the EHI Subsidiaries.

(c) Except as set forth on **Schedule 2.9(c)**, no U.S. federal, state, local or foreign audits or other administrative proceedings or court proceedings are pending with regard to any Taxes or Tax Returns of Ernest Health or any of the EHI Subsidiaries .

(d) Except as set forth on **Schedule 2.9(d)**, no assessment, deficiency, or other claims for any Taxes of Ernest Health or the EHI Subsidiaries has been proposed, asserted, or assessed in writing by any taxing authority, for which any of the MPT Parties, Ernest Health or the EHI



Subsidiaries may be held liable. Neither Ernest Health nor any of the EHI Subsidiaries has waived any material statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency which extension is currently effective.

(e) There are no Encumbrances filed by any Governmental Body for Taxes upon the assets of Ernest Health or the EHI Subsidiaries, except for (i) Encumbrances relating to current Taxes not yet due and payable or (ii) that are being contested in good faith by appropriate proceedings and as to which adequate provision has been made on the books of Ernest Health or the EHI Subsidiaries, as applicable, all of which contests are described in reasonable detail on the attached **Schedule 2.9(e)**.

(f) Except as set forth on **Schedule 2.9(f)**, Ernest Health and the EHI Subsidiaries have withheld and paid all Taxes and other amounts required by law or agreement to be withheld and paid by them in connection with any wages, salaries, or other amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and neither Ernest Health nor any of the EHI Subsidiaries is liable for any material arrearages of any tax or material penalties for failure to comply with the foregoing.

(g) Except as set forth on **Schedule 2.9(g)**, Ernest Health and the EHI Subsidiaries will not be required to include any item of income, or exclude any item of deduction from, taxable income for any taxable period ending after the Closing Date as a result of any (i) change in accounting method for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; (iv) prepaid amount received on or prior to the Closing Date; or (v) status as a beneficiary of any trust or as a partner or member of any partnership or limited liability company.

(h) Ernest Health and the EHI Subsidiaries have no liability for the Taxes of any Person other than Ernest Health and the EHI Subsidiaries as a transferee or successor by contract or otherwise, and other than pursuant to any commercial Contract entered into in the Ordinary Course of Business that does not primarily relate to Taxes.

(i) Neither Ernest Health nor any of the EHI Subsidiaries is or has been a party to any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(j) Neither Ernest Health nor any of the EHI Subsidiaries are party to any Tax abatement agreements relating to any of its properties or assets.

(k) The representations and warranties set forth in this **Section 2.9** shall constitute the only representations and warranties by Ernest Health with respect to Taxes.

## **2.10 Employee Benefit Plans.**

(a) **Schedule 2.10(a)** sets forth each employee benefit plan within the meaning of Section 3(3) of ERISA that is sponsored or maintained by Ernest Health or any of the EHI Subsidiaries or to which Ernest Health or any of the EHI Subsidiaries contributes or is obligated to contribute (the "**Benefit Plans**").

(b) Neither Ernest Health nor any of its ERISA Affiliates sponsors, maintains or contributes to (or is obligated to contribute to) any “employee pension plan,” as defined in Section 3(2) of ERISA, that is subject to Title IV of ERISA or Section 412 of the Code or any “multiemployer plan,” as defined in Section 3(37) of ERISA.

(c) The Benefit Plans have been administered in all material respects in accordance with the applicable provisions of ERISA and the Code, and Ernest Health and the EHI Subsidiaries are in compliance in all material respects with all other applicable laws and regulations respecting such Benefit Plans.

(d) Except as set forth on **Schedule 2.10(d)**, neither the execution and delivery of this Agreement and the other Transaction Documents, nor the consummation of the transactions contemplated hereby and thereby, will result in any “parachute payment” as defined in Section 280G of the Code or (ii) any “change in control” or other payment under any Benefit Plan or employment agreement or non-qualified deferred compensation plan or agreement.

## **2.11 Labor and Employment Matters.**

(a) **Schedule 2.11(a)** sets forth a list of all employees of Ernest Health and of each of the EHI Subsidiaries who provide, as of the date hereof, services at any of the Facilities (collectively, the “**Business Employees**”), and specifies which of Ernest Health or the applicable EHI Subsidiaries employs such Business Employees. Except as set forth on **Schedule 2.11(a)**, all of the Business Employees are “at will” employees. Except as set forth on **Schedule 2.11(a)**, neither Ernest Health nor any of the EHI Subsidiaries is a party to any oral (express or implied) or written: (i) employment agreement, or (ii) agreement that contains any severance or termination pay obligations with any Business Employee. The Ernest Health Parties have delivered to the MPT Parties true, correct and current copies (or, if not written, accurate descriptions of the parties and terms) of all such agreements.

(b) Except as set forth on **Schedule 2.11(b)**, Ernest Health and each of the EHI Subsidiaries are currently in compliance with, and during the prior three (3)-year period have complied with, in each case, in all material respects (and none of them has received any written notice of noncompliance with), all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, including, without limitation, any provisions relating to wages, hours, equal employment, occupational safety and health, workers’ compensation, unemployment insurance, collective bargaining, immigration, affirmative action and the payment and withholding of social security and other taxes.

(c) To the Ernest Health Parties’ Knowledge, as of the date hereof, (i) there are no material audits or investigations pending or scheduled by any Governmental Body pertaining to the employment practices of Ernest Health or any of the EHI Subsidiaries, including but not limited to audits or investigations concerning the payment of wages or overtime in accordance with applicable law or concerning the proper classification of any worker as an independent contractor or consultant; and (ii) no complaints relating to employment practices of Ernest Health or any of the EHI Subsidiaries have been made to any Governmental Body or submitted to Ernest Health or any of the EHI Subsidiaries.

(d) Neither Ernest Health nor any of the EHI Subsidiaries is a party to or otherwise bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union, labor organization, trade association or other employee organization, and no such agreements are currently being proposed and/or negotiated by Ernest Health or any of the EHI Subsidiaries. To the Knowledge of the Ernest Health Parties, (i) no Business Employee is represented by any labor union, trade association or other employee organization, (ii) neither Ernest Health nor any of the EHI Subsidiaries is subject to or has received any written charge, demand, petition or representation proceeding seeking to compel, require or demand it to bargain with any labor union or labor organization, (iii) there is no pending or, to the Ernest Health Parties' Knowledge, threatened labor strike, dispute, walkout, work stoppage, slow-down or lockout involving the Business Employees, Ernest Health or any of the EHI Subsidiaries, and (iv) no union has attempted to organize any group of the Business Employees, and no group of the Business Employees has sought to organize themselves into a union or similar organization for the purpose of collective bargaining.

(e) To the Ernest Health Parties' Knowledge, there is no material investigation, grievance, arbitration, complaint, claim or other dispute or controversy (collectively, "**Labor Proceeding**") pending or threatened, between Ernest Health and/or the EHI Subsidiaries, on the one hand, and any present or former Business Employee, on the other hand, nor has there been any such Labor Proceeding within the past twelve (12) months.

(f) As of the date hereof, neither Ernest Health nor any of the EHI Subsidiaries has received written notice that any of the individuals listed on **Schedule 2.11(f)** intends to terminate his or her employment or affiliation with Ernest Health or any of the EHI Subsidiaries.

**2.12 Contracts and Commitments; Enforceability.**

(a) Except as set forth on **Schedule 2.12(a)**, as of the date hereof neither Ernest Health nor any of the EHI Subsidiaries is a party to:

(i) any partnership agreement, joint venture agreement, or profit sharing agreement;

(ii) any agreement which creates a future payment obligation to or from Ernest Health or any of the EHI Subsidiaries in excess of \$500,000 in any calendar year;

(iii) any contract for capital expenditures or the acquisition or construction of fixed assets requiring payments by Ernest Health or any of the EHI Subsidiaries in excess of \$500,000;

(iv) any contract that requires the payment of royalties, commissions, finder's fees or similar payments;

(v) any employment or consulting agreement with any current director, officer or employee requiring an annual payment of cash compensation in excess of \$250,000 for each Person;

(vi) any contract providing for the marketing, sale, advertising or promotion of Ernest Health's or the EHI Subsidiaries' products or services involving annual expenditures of \$500,000 or more;

(vii) any sales, distribution, dealer or manufacturer's representative or franchise contracts involving annual expenditures in excess of \$500,000;

(viii) any contract with any commercial payor of Ernest Health or any of the EHI Subsidiaries that provides for most favored nation pricing, volume rebates or discounts (other than standard rebates or discounts provided in the Ordinary Course of Business);

(ix) any take or pay or requirements contracts or agreements or any other contracts or agreements requiring Ernest Health or any of the EHI Subsidiaries to pay regardless of whether products or services are received;

(x) any agreement with another Person materially limiting or restricting the ability of Ernest Health or any of the EHI Subsidiaries to enter into or engage in any market, territory, area or line of business;

(xi) any agreement for the sale of any of the assets of Ernest Health or any of the EHI Subsidiaries other than (A) pursuant to this Agreement or any other Transaction Document, (B) in the Ordinary Course of Business or (C) the disposition of unsalable or obsolete assets;

(xii) any agreement relating to the acquisition by Ernest Health or any of the EHI Subsidiaries of substantially all of the assets or capital stock of any Person or a merger, consolidation or business combination involving Ernest Health or any of the EHI Subsidiaries;

(xiii) any agreement relating to the incurrence, assumption, surety or guarantee of any Indebtedness;

(xiv) any agreement under which Ernest Health or any of the EHI Subsidiaries has made advances or loans to any other Person (excluding advances made to an employee of Ernest Health or any of the EHI Subsidiaries in the Ordinary Course of Business);

(xv) any agreement with any Person in a position to make, or influence the making of, referrals to Ernest Health or any of the Facilities, for items or services which are billable to any of the Government Programs;

(xvi) any agreement that provides for or obligates Ernest Health or any of the EHI Subsidiaries to indemnify, hold harmless or defend any Person (including, without limitation, any officers, directors, members, managers, partners, employees or agents of Ernest Health or any of the EHI Subsidiaries), other than commercial Contracts entered into in the Ordinary Course of Business the primary purpose of which is not related to the indemnification of any Person;

(xvii) any contracts or orders with any Governmental Body; or.

(xviii) any Personal Property Lease.

(b) Each of the Contracts set forth on **Schedule 2.12(a)** (the “**Material Contracts**”) is the legal, valid and binding obligation of Ernest Health and/or the EHI Subsidiaries (and, to the Ernest Health Parties’ Knowledge, of the other parties thereto), enforceable against them (and, to Ernest Health Parties’ Knowledge, of the other parties thereto), in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). The Ernest Health Parties have delivered to the MPT Parties complete and correct copies of all of the Material Contracts. Except as stated on **Schedule 2.12(b)**, (i) each Material Contract is in full force and effect, (ii) neither Ernest Health or any of the EHI Subsidiaries is and, to the Knowledge of the Ernest Health Parties, no other party to any such agreement is in material default under any such agreement, (iii) no party has received notice of any default, offset, counterclaim or defense under any Material Contract; and (iv) to the Ernest Health Parties’ Knowledge, no condition or event has occurred which with the passage of time or the giving of notice or both would constitute a default or breach by the Ernest Health Parties under the terms of any Material Contract.

### **2.13 Intellectual Property.**

(a) **Schedule 2.13(a)** sets forth a complete and accurate list, as of the date hereof, of Intellectual Property owned by Ernest Health or any of the EHI Subsidiaries and material to the conduct of the business of Ernest Health and the EHI Subsidiaries, taken as a whole, as currently conducted.

(b) Except as set forth on **Schedule 2.13(b)**, Ernest Health or one or more of the EHI Subsidiaries is the owner of, or has adequate, enforceable licenses or other rights to use, all Intellectual Property, as is necessary in connection with the business of Ernest Health and the EHI Subsidiaries as currently conducted taken as a whole, and no such rights thereto have been granted to others by Ernest Health or any of the EHI Subsidiaries.

(c) Except as set forth in **Schedule 2.13(c)**, all of the Intellectual Property is owned or used by Ernest Health and/or the EHI Subsidiaries free and clear of Encumbrances except Permitted Encumbrances, and none is subject to any outstanding order, decree, judgment, stipulation or charge.

(d)(i) To the Ernest Health Parties’ Knowledge, Ernest Health’s and the EHI Subsidiaries’ respective use of the Intellectual Property does not infringe upon or otherwise violate the rights of any other Person, (ii) no Person has asserted in writing to Ernest Health or any of the EHI Subsidiaries that Ernest Health’s or any of the EHI Subsidiaries’ use of the Intellectual Property infringes upon the patents, trade secrets, trade names, trademarks, service marks, copyrights or other intellectual property rights of any other Person, and (iii) neither Ernest Health nor any of the EHI Subsidiaries is a party to any suit, action or proceeding which involves a claim of infringement, unauthorized use, or violation of any Intellectual Property used or

owned by any Person against Ernest Health or the EHI Subsidiaries, or challenging the ownership, use, validity or enforceability of any Intellectual Property owned or used by Ernest Health or the EHI Subsidiaries. Further, to the Ernest Health Parties' Knowledge, there is no unauthorized use, disclosure, infringement or misappropriation of any of the Intellectual Property by any third party.

(e) **Schedule 2.13(e)** sets forth a complete and accurate list of all material licenses, sublicenses and other agreements to which Ernest Health and/or the EHI Subsidiaries are a party (i) granting any other Person the right to use the Intellectual Property, or (ii) pursuant to which Ernest Health or the EHI Subsidiaries are authorized to use any third party Intellectual Property, which are incorporated in, are, or form a part of any services rendered by Ernest Health or any EHI Subsidiary or which are otherwise used (or currently proposed to be used) by Ernest Health or the EHI Subsidiaries in the business of Ernest Health and the EHI Subsidiaries as currently conducted, other than commercial off-the-shelf software.

**2.14 Insurance.** **Schedule 2.14** sets forth, as of the date hereof, a complete and accurate list and brief description of all insurance policies (including the insurer, term of such policy, insured parties, type and amount of coverage, deductible and aggregate limit of the insurer's liability for such policy) held by, or for the benefit of, Ernest Health and the EHI Subsidiaries (the "**Insurance Policies**"). Each Insurance Policy is legally valid, binding and in full force and effect, all premiums due thereon have been paid in full, and Ernest Health and the applicable EHI Subsidiaries are in compliance, in all material respects, with the terms of such insurance policies.

**2.15 Permits; Compliance with Laws; Reimbursement; Accreditation.**

(a) **Schedule 2.15(a)** contains a complete and accurate list, as of the date hereof, of all material Licenses and material accreditations or certifications issued by private accreditation agencies held by Ernest Health and the EHI Subsidiaries that are required to conduct their respective businesses as currently conducted and to occupy and operate the Facilities, including, without limitation, all provider agreements with governmental payors (the "**Company Permits**").

(b) Except as set forth in **Schedule 2.15(b)**, Ernest Health and/or the EHI Subsidiaries, as applicable, possess all such Company Permits, such Company Permits are in full force and effect.

(c) Except as set forth on **Schedule 2.15(c)**, (i) Ernest Health and the EHI Subsidiaries are in compliance, in all material respects, with the terms of all Company Permits, (ii) no suspension or cancellation of any such Company Permits is pending or, to the Knowledge of the Ernest Health Parties, threatened, and (iii) neither Ernest Health nor any of the EHI Subsidiaries have received any written notice from any Governmental Body with respect to, as applicable, the threatened or pending denial, revocation, termination, or suspension of any of Company Permits.

(d) Ernest Health and each of the EHI Subsidiaries are in material compliance with all laws, statutes, ordinances, regulations, rules, orders, judgments, decrees, orders and writs of a

Governmental Body applicable to Ernest Health or any of the EHI Subsidiaries or by which any property or asset of Ernest Health or the EHI Subsidiaries is bound. Neither Ernest Health nor any of the EHI Subsidiaries has received any written notice from any Governmental Body to the effect that Ernest Health or the EHI Subsidiaries are not in material compliance with any applicable laws, statutes, ordinances, regulations, rules, orders, judgments, decrees, order, writs and other actions of a Governmental Body.

## **2.16 Healthcare Compliance.**

(a) The activities of Ernest Health and the EHI Subsidiaries are currently being, conducted in compliance in all material respects with all Healthcare Laws.

(b) There is no Litigation, audit or recoupment pending by or before any Governmental Body or, to the Knowledge of the Ernest Health Parties, threatened, which alleges a violation of Healthcare Laws by Ernest Health or any of the EHI Subsidiaries. Neither Ernest Health nor any of the EHI Subsidiaries, has received, at any time during prior three (3) years, any written notice alleging a violation of any Healthcare Law. Neither Ernest Health nor any of the EHI Subsidiaries, has received, at any time during prior three (3) years, any written notice indicating that qualification as a participating provider in any government or private reimbursement program may be terminated or withdrawn.

(c) None of Ernest Health, the EHI Subsidiaries, nor any of their respective officers, directors, or employees, or, to the Ernest Health Parties' Knowledge, any Physicians performing services at the Facilities, is, or has been at any time during the past three (3) years, excluded, suspended or debarred from participation or is otherwise ineligible to participate in any federal or individual state health care program, including, but not limited to the Government Programs.

(d) Except as would not have a material and adverse effect, Ernest Health and the EHI Subsidiaries hold all Licenses required under applicable Healthcare Laws now in effect which are necessary to own, lease or otherwise hold and operate their properties and assets and to conduct their respective businesses as currently conducted.

(e) All Contracts between third party payors and Ernest Health or any of the EHI Subsidiaries (each, a "**Payor Contract**") were entered into in the Ordinary Course of Business. Ernest Health and the EHI Subsidiaries are in compliance in all material respects with all Payor Contracts.

(f) Except as set forth on **Schedule 2.16(f)**, every Contract providing for remuneration to a Physician (or his or her immediate family member) for services performed at, or on behalf of, Ernest Health or any of the EHI Subsidiaries is pursuant to a written contract which complies with an applicable exception under the Stark Law.

(g) The Facilities are currently licensed as specified in the attached **Schedule 2.16(g)**, with the number of licensed beds specified thereon, and will remain so licensed through the Closing Date in compliance with and subject only to the usual and customary laws and government regulations pertaining to the operation of hospitals so licensed, as applicable, in the States of Texas, Colorado, Montana, New Mexico, Wyoming, Arizona, Idaho, South Carolina, and Utah.

(h) Except as set forth on **Schedule 2.16(h)**, each of the Facilities (i) are enrolled and are providers authorized to participate without restriction under the Government Programs; (ii) are in compliance in all material respects with all the conditions of participation for the Government Programs, (iii) have received all approvals or qualifications necessary for capital reimbursement; and (iv) are in compliance with 42 C.F.R. §§ 489.20 and 489.24 and their Medicare provider agreements.

(i) Except as set forth on **Schedule 2.16(i)**, Ernest Health and the EHI Subsidiaries are, and have been, in compliance in all material respects with all filing requirements with respect to cost reports of the Facilities, including, without limitation, the appropriate allocation of expenses associated with any management or consulting services provided by any employees of Ernest Health or the EHI Subsidiaries, and, to the Knowledge of Ernest Health, such reports do not claim, and the Facilities have not received, payment or reimbursement materially in excess of the amount provided or allowed by applicable law or any applicable agreements.

(j) Except as set forth on **Schedule 2.16(j)**, each of the LTCH Operators (i) are excluded from the inpatient prospective payment system specified in 42 C.F.R. §412.1(a); (ii) satisfy all requirements necessary for Medicare reimbursement as a “long-term care hospital” as set forth in C.F.R., Title 42, Part 412, as applicable; and (iii) to the Knowledge of Ernest Health, no action is pending or threatened by any Governmental Body which would affect the ability of any of the LTCH Operators to be reimbursed as a “long-term care hospital” under Medicare.

(k) Except as set forth on **Schedule 2.16(k)**, each of the IRF Operators (i) are excluded from the inpatient prospective payment system specified in 42 C.F.R. §412.1(a); (ii) satisfy all requirements necessary for Medicare reimbursement as an “inpatient rehabilitation facility” as set forth in C.F.R., Title 42, Part 412, as applicable; and (iii) to the Knowledge of Ernest Health, no action is pending or threatened by any Governmental Body which would affect the ability of any of the IRF Operators to be reimbursed as an “inpatient rehabilitation facility” under Medicare.

(l) Except as set forth on **Schedule 2.16(l)**, each of the Sellers, Borrowers and Co-Located Operators (i) satisfy all requirements necessary for Medicare reimbursement as “hospitals-within-hospitals” as set forth in C.F.R., Title 42, Part 412, as applicable; (ii) in each state where such Seller, Borrower or Co-Located Operator is located, comply in all material respects with any state laws and regulations applicable to hospitals located in the same building, or on the same campus, as another hospital; and (iii) to the Knowledge of the Ernest Health Parties, no action is pending or threatened by any Governmental Body which would affect ability of any of such applicable Sellers, Borrowers or Co-Located Operators, to be reimbursed as “hospitals-within-hospitals” under Medicare.

(m) Each of the Facilities has been accredited by the Joint Commission and the Ernest Health Parties have delivered to the MPT Parties true, correct and complete copies of the following documents: (i) the most recent Joint Commission accreditation survey reports for each of the Facilities and deficiency list and plan of correction, if any, and a list and description of any events in the past three (3) years at each of the Facilities that constitutes “Adverse Events” (as defined by the Joint Commission), if any, and any documentation that was created, prepared or produced by Ernest Health or any of the EHI Subsidiaries, to satisfy the Joint Commission



requirements relating to addressing such Adverse Events; and (ii) any state licensing survey reports with respect to the Facilities for the three (3) year period prior to the date of this Agreement, as well as any statements of deficiencies and any plans of correction in connection with such reports. Ernest Health and the EHI Subsidiaries have taken reasonable steps to correct or cause to be corrected all such deficiencies and a description of any uncorrected deficiency is set forth on **Schedule 2.16(n)**.

**2.17 Transactions with Affiliates.** **Schedule 2.17** sets forth a complete and correct list of all Contracts between either Ernest Health or any of the EHI Subsidiaries with any Person that is an Affiliate of Ernest Health or any of the EHI Subsidiaries, other than Contracts for compensation and benefits received as employees, directors, officers or consultants of Ernest Health or any of the EHI Subsidiaries.

**2.18 No Brokers.** Except as set forth on **Schedule 2.18**, neither Ernest Health nor any of the EHI Subsidiaries has entered into any contract, arrangement or understanding with any Person or firm that may result in the obligation of such entity or any of the MPT Parties or their Affiliates to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or consummation of the Transactions.

**2.19 Patriot Act Compliance.**

(a) To the extent applicable to Ernest Health or any of the EHI Subsidiaries, each of them has complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which comprises Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "**Patriot Act**") and the regulations promulgated thereunder, and the rules and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**").

(b) Neither Ernest Health nor any of the EHI Subsidiaries is included on the List of Specially Designated Nationals and Blocked Persons maintained by the OFAC, and neither Ernest Health nor any of the EHI Subsidiaries is a resident in, or organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

**2.20 Ability to Grant Security Interest.** Except as set forth on **Schedule 2.20**, to the Knowledge of Ernest Health, Ernest Health may grant the Buyer and/or its Affiliates a first priority security interest in (a) the outstanding shares of capital stock and other equity interests of each of the EHI Subsidiaries, (b) the accounts receivable of Ernest Health and each EHI Subsidiary, (c) the Personal Property, (d) the Personal Property Leases, (e) the Intellectual Property, and (f) the Licenses and Company Permits (including, without limitation, all provider agreements with governmental payors).

## **2.21 Title and Condition of the Real Property.**

(a) **Exhibit A-1** sets forth the legal descriptions of the Owned Real Property. **Exhibit A-2** sets forth the legal description of the Ground Leased Real Property. At the Closing, the applicable Seller shall convey to the applicable Buyer good and marketable title in the applicable parcel(s) of Owned Real Property and assign its rights, title and interest in the Ground Lease, in each case free and clear of any and all Encumbrances (other than Permitted Encumbrances).

(b) To the Knowledge of the Ernest Health Parties, the location, construction, occupancy, operation, use and sale of the Real Property do not violate, in any material respect, (i) any applicable Law, statute, ordinance, rule, regulation, order or determination of any Governmental Body, including, without limitation, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, or (ii) any restrictive covenant or deed restriction (recorded or otherwise) affecting the Real Property, including, without limitation, any applicable zoning or subdivision ordinance or building code, flood disaster law or health and environmental law or regulation and the Ernest Health Parties have received no written notice from any Governmental Body or other Person asserting any such material violation.

(c) With regard to the Real Property, to the Knowledge of the Ernest Health Parties, and except as shown on the Surveys or as otherwise disclosed in the Title Commitments, there are no (i) encroachments onto or from adjacent properties; (ii) violations of set-back, building or side lines; (iii) encroachments onto any easements or servitudes located on such Land; (iv) pending or threatened boundary line disputes; (v) portions of such Land located in a flood plain or in an area defined as a wetland under applicable state or federal law; (vi) cemeteries or gravesites located on the Land; or (vii) mine shafts under the Land or any other latent defects, such as sinkholes, regarding or affecting the Land.

(d) To the Knowledge of the Ernest Health Parties, the existing water, sewer, gas and electricity lines, storm sewer and other utility systems are adequate to serve the utility needs of the Real Property as currently used, (ii) all of said utilities are installed and operating, and (iii) all installation and connection charges have been paid in full.

(e) Neither the whole nor any portion of the Land has been condemned, requisitioned or otherwise taken by any public authority (a “**Public Taking**”). None of the Ernest Health Parties has received any written notice: (i) of any Public Taking with regard to the Land which has not been formally withdrawn, (ii) of any threatened or contemplated Public Taking, (iii) from any public authority of any public improvements that are required to be made and/or which have not heretofore been assessed and (iv) of any pending or threatened special, general or other assessments against or affecting any of the Land (except those expressly identified in any Title Commitments).

(f) There is no Litigation pending or, to the Knowledge of the Ernest Health Parties, threatened in writing, against or affecting all or any portion of the Real Property, except as set forth in **Schedule 2.21(f)** hereto. True and correct copies of all pleadings and material correspondence relating to such Litigation have been delivered to the MPT Parties.

(g) Certificates of occupancy have been issued for the Improvements, and, as of the Closing, all of the same will be in full force and effect.

(h) To the Knowledge of the Ernest Health Parties, (i) there are no facts or conditions which would result in the termination of the current access from the Land to any presently existing public highways and/or roads adjoining or situated on the Land or to sewer or other utility services to serve the Land. As of Closing, Sellers and/or Borrowers, as applicable, will own, or hold rights with respect to, and will be able to convey or cause to be conveyed (or mortgaged) to the applicable Buyers and/or Lenders, all currently utilized parking for the applicable Real Property.

(i) **Schedule 2.21(i)** sets forth an accurate and complete list of all Tenant Leases. The Ernest Health Parties have delivered or otherwise made available to MPT Parties complete, correct and current copies of all Tenant Leases. To the Knowledge of the Ernest Health Parties, as applicable, **Schedule 2.21(i)**: (i) designates which of the Tenant Leases described therein are with the referral sources (as determined by any of the Healthcare Laws) for the Improvements and (ii) specifies the rent and security deposit, if any, for each Tenant Lease. Sellers and/or Borrowers, as applicable, have delivered or otherwise made available to the Buyers and/or Lenders, as applicable, complete, correct and current copies, in all material respects, of all written Tenant Leases. Except for the Leases (and as contained therein) and any other items listed on **Schedule 2.21(i)**, to the Knowledge of the Ernest Health Parties, there are no purchase contracts, leases of space, options, rights of first refusal or other written or oral agreements of any kind whereby any Person will have acquired or will have any basis to assert any right, title or interest in, or right to the possession, use, enjoyment or proceeds of, any part or all of the Real Property or the Improvements.

(j) Except as set forth in **Schedule 2.21(j)**, no Seller or Borrower has accepted the payment of rent or other sums due under any of the Tenant Leases for more than one (1) month in advance. As of the Closing, none of the Tenant Leases and none of the rents or other charges payable thereunder, if any, will have been assigned, pledged or encumbered by Sellers and/or Borrowers (except to Lenders) as security for any obligation. Except as set forth on **Schedule 2.21**, as of the Closing, no brokerage or leasing commissions or other compensation will be due or payable to any Person with respect to, or on account of any Tenant Lease or any then exercised extensions or renewals thereof, if any, excepting those agreements entered into or accepted in writing by the Buyers and/or Lenders.

(k) Except as set forth on **Schedule 2.21(k)**, (i) at the Closing the Seller and/or the Borrower, as applicable, will have good and marketable title in the Tenant Leases, free and clear of any and all Encumbrances (other than Permitted Encumbrances), (ii) the Tenant Leases are freely assignable by the applicable Ernest Health Parties, to the applicable MPT Parties (or their Affiliates), and the Ernest Health Parties may grant a first priority security interest in the Tenant Leases to such MPT Parties, (iii) have not been modified, amended or assigned by the Ernest Health Parties, (iv) are, or will be at the Closing, legally valid, binding and enforceable against the Ernest Health Parties and, to their Knowledge, the other parties thereto in accordance with

their respective terms and are in full force and effect; (v) there are no monetary defaults or nonmonetary material defaults by the Ernest Health Parties or, to their Knowledge, the other parties thereto under any of the Tenant Leases; and (vi) no condition or event has occurred which with the passage of time or the giving of notice or both would constitute a monetary or material non-monetary default by any Ernest Health Party or, to the Knowledge of the Ernest Health Parties, any other Party thereto, under the terms of any of the Tenant Leases.

(l) Except as set forth on **Schedule 2.21(l)**, to the Knowledge of the Ernest Health Parties, all material tenant improvements, repairs and other work and obligations, if any, then required to be performed by the landlord under each of the Tenant Leases will be fully performed and paid for in full on or prior to the Closing.

(m) **Schedule 2.21(m)** sets forth an accurate and complete list of all Collateral Leases. The Ernest Health Parties have delivered or otherwise made available to the MPT Parties complete, correct and current copies of all Collateral Leases and the Ground Lease. Except as set forth on **Schedule 2.21(m)**, the Collateral Leases and the Ground Lease are freely assignable by the applicable Ernest Health Parties, to the applicable MPT Parties (or their designated Affiliates), as applicable, and the Ernest Health Parties may grant a first priority security interest in such Collateral Leases and the Ground Lease to such MPT Parties. The Collateral Leases and the Ground Lease in each case have not been modified, amended or assigned by any of the Sellers and/or Borrowers, are, or will be at the Closing, legally valid, binding and enforceable against the applicable Ernest Health Parties and, to their Knowledge, all other parties thereto, in accordance with their respective terms and are in full force and effect. There are no monetary defaults and no material non-monetary defaults by the Ernest Health Parties or, to their Knowledge, any other party under any of the Collateral Leases or the Ground Lease; and, no condition or event has occurred which with the passage of time or the giving of notice or both would constitute such a monetary or material non-monetary breach by any Ernest Health Party or, to the Ernest Health Parties' Knowledge, any other party thereto under the terms of any of the Collateral Leases or the Ground Lease. Prior to the Closing, the MPT Parties, the Sellers and/or Borrowers, as applicable, shall request, in writing, that the counterparties to each applicable Collateral Lease and the Ground Lease consent to the assignment of such Collateral Lease and the Ground Lease to Buyers and/or Lenders (or their Affiliates), as applicable, such consent to be in form and substance reasonably satisfactory to both the MPT Parties, and the Sellers and/or the Borrowers, as applicable.

(n) The Real Property and the land and improvements subject to the Collateral Leases constitute all the land and improvements used in connection with the current operation of the Improvements.

(o) None of the Sellers and/or Borrowers have made or agreed or offered to make, or revoked or agreed or offered to revoke, a Tax election with respect to or affecting the Real Property at any time during the last two (2) years. Except as set forth on **Schedule 2.21(o)**, no Seller and/or Borrower, as applicable, is a party to any Tax abatement agreement relating to the Real Property. Except as disclosed with reasonable specificity on **Schedule 2.21(o)**, there are no outstanding waivers or agreements extending the statute of limitations for any period with respect to any Tax to which the Real Property may be subject following the Closing.

**2.22 Compliance with Environmental Laws.** Except as set forth on *Schedule 2.22* and/or in the ESA Reports,

(a) with respect to the ownership, operation and/or leasing of the Real Property, no Ernest Health Party, nor to the Knowledge of the Ernest Health Parties, any other Person has installed, stored, used, generated, manufactured, treated, handled, refined, produced, processed, or disposed of (or arranged for the disposal of) Hazardous Materials in, on or under the Real Property, except in compliance in all material respects with the Environmental Laws.

(b) there are no underground storage tanks located at, on or under the Real Property that have not been sealed or otherwise decommissioned in accordance with Environmental Laws, and the Real Property does not contain any friable asbestos-containing building material;

(c) no Ernest Health Party nor, to the Knowledge of the Ernest Health Parties, any other Person has undertaken any activity on the Real Property which would cause (i) the Real Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, any Environmental Law, or (ii) the discharge of Hazardous Material into any watercourse, body of, surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material, which in the case of clauses (i) and (ii), would require a permit under any Environmental Law;

(d) no investigation, administrative order, Litigation or settlement with respect to any Environmental Law is in existence or to the Knowledge of the Ernest Health Parties, threatened in writing with respect to the Real Property; and

(e) with respect to the ownership, operation, and/or leasing of the Real Property, no written notice has been served on any of the Ernest Health Parties from any Governmental Body claiming any material violation of any Environmental Law, or requiring compliance with any Environmental Law, or demanding payment or contribution for environmental damage or injury to natural resources.

**2.23 Disclaimer of Other Representations and Warranties.**

(a) THE MPT PARTIES ACKNOWLEDGE AND AGREE THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUT IN ALL EVENTS SUBJECT TO SECTION 9.13 HEREIN, (I) SELLERS ARE SELLING AND THE BUYERS ARE PURCHASING THE ACQUIRED ASSETS AND (II) BORROWERS ARE MORTGAGING AND OTHERWISE PLEDGING, AND LENDERS ARE FINANCING THE FINANCED ASSETS, IN ITS "AS IS, WHERE IS" CONDITION AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, WITHOUT ANY WARRANTY, REPRESENTATION, GUARANTY, PROMISE OR INDUCEMENT, EXPRESS OR IMPLIED, BY ANY OF THE ERNEST HEALTH SUBSIDIARIES OR ANY REPRESENTATIVE, AGENT, OFFICER OR EMPLOYEE OF ANY OF THE ERNEST HEALTH SUBSIDIARIES AS TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO, (A) THE PROPERTY'S PHYSICAL AND ENVIRONMENTAL CONDITION, (B) THE SUITABILITY OF THE PROPERTY FOR ANY USE OR PURPOSE WHATSOEVER, INCLUDING ANY PURPOSE OR USE INTENDED BY MPT PARTIES FOR THE PROPERTY, (C) THE PROPERTY'S

COMPLIANCE WITH ANY APPLICABLE LAW, RULE, ORDER OR OTHER GOVERNMENTAL REGULATION, OR (D) THE AGE, SIZE, DIMENSIONS, PROFITABILITY OR OTHER SUCH MATTERS RELATING TO THE OWNERSHIP OR OPERATION OF THE PROPERTY. Both prior to and after the execution of this Agreement, EHI Subsidiaries may, and, if required by this Agreement shall, deliver to MPT Parties in various forms information concerning the Acquired Assets and/or the Financed Assets prepared by parties other than EHI Subsidiaries. Such information is delivered as an accommodation to assist MPT Parties's due diligence investigation, and MPT Parties shall have the duty to undertake its own independent investigation of the Acquired Assets and Financed Assets and such information provided by EHI Subsidiaries. Except as specifically set forth in this Agreement, such information is provided by EHI Subsidiaries without representation or warranty with respect to the accuracy thereof. The provisions of this paragraph shall survive the Closing

(b) NONE OF ERNEST HEALTH, ANY OF THE EHI SUBSIDIARIES OR ANY OF ITS REPRESENTATIVES, DIRECTORS, OFFICERS OR STOCKHOLDERS, HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO ERNEST HEALTH OR ANY OF THE EHI SUBSIDIARIES OR THE BUSINESS OF ERNEST HEALTH OR ANY OF THE EHI SUBSIDIARIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 2 OR IN THE MERGER AGREEMENT.

(c) Without limiting the generality of the foregoing, neither Ernest Health nor any of the EHI Subsidiaries, nor any Representative of Ernest Health or any of the EHI Subsidiaries, nor any of their respective employees, officers, directors or stockholders, has made, and shall not be deemed to have made, any representations or warranties in the materials relating to the business of Ernest Health and the EHI Subsidiaries made available or delivered to the MPT Parties, including due diligence materials, or in any presentation of the business of Ernest Health and the EHI Subsidiaries by management of Ernest Health or others in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder and deemed to be relied upon by the MPT Parties in executing, delivering and performing this Agreement and the transactions contemplated hereby. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including but not limited to, any offering memorandum or similar materials made available or delivered by the Ernest Health Parties and their Representatives, are not and shall not be deemed to be or to include representations or warranties of any of the Ernest Health Parties, and are not and shall not be deemed to be relied upon by the MPT Parties in executing, delivering and performing this Agreement and the transactions contemplated hereby.

**3. REPRESENTATIONS AND WARRANTIES OF THE MPT PARTIES.** The MPT Parties hereby jointly and severally make to the Ernest Health Parties the representations and warranties contained in this Section 3.

**3.1 Organization.** Each of the MPT Parties is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and

each has all requisite limited liability company power and authority to own, operate and lease its properties and to carry on its respective business as currently conducted. Each of the MPT Parties is duly licensed or qualified to do business as a foreign limited liability company under the laws of each jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified has not had an MPT Material Adverse Effect. None of the MPT Parties has ever elected to be taxed as a corporation for U.S. federal, state or local income tax purposes.

**3.2 Authority.** Each of the MPT Parties has all requisite limited liability company power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, and to perform their respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other Transaction Document to which any of the MPT Parties is a party, the performance by each of the MPT Parties of their respective obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action by the manager and member, as applicable, of each of the MPT Parties and no other action on the part of any of the MPT Parties is necessary to authorize the execution and delivery by the MPT Parties of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the MPT Parties, and, assuming due and valid authorization, execution and delivery hereof by the Ernest Health Parties, is a valid and binding obligation of each of the MPT Parties, as the case may be, enforceable against each of them in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Notwithstanding the foregoing, the MPT Parties make no representations or warranties regarding the enforceability of any of the Financing Documents.

**3.3 No Conflict.** The execution and delivery by each of the MPT Parties of this Agreement and each other Transaction Document to which any of the MPT Parties is a party, and the consummation by the MPT Parties of the transactions contemplated hereby and thereby in accordance with their respective terms, do not (a) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under, or give rise to a right of termination of, any contract, agreement, permit, license, authorization or obligation to which any of the MPT Parties is a party or by which any of the MPT Parties or any of their respective assets are bound, (b) conflict with, or result in, any violation of any provision of the certificate of formation, limited liability company agreement or other organizational documents of any of the MPT Parties; (c) violate or result in a violation of, or constitute a default under (whether after the giving of notice, lapse of time or both), any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or other governmental agency applicable to any of the MPT Parties, or (d) require from any of the MPT Parties any notice to, declaration or filing with, or consent or approval of any Governmental Body or other Person, except in the case of clauses (a) and (c) of this [Section 3.3](#) for any such conflicts, defaults, violations, terminations and any waivers which, if not obtained, would not have an MPT Material Adverse Effect.

**3.4 Required Financing.** Each of the MPT Parties have furnished to Ernest Health, true, correct and complete copies of fully-executed commitment letters from MPT Operating Partnership, L.P., a Delaware limited partnership ("**MPT Operating Partnership**"), dated as of

the date hereof (the "**Commitment Letters**"), pursuant to which MPT Operating Partnership has committed, subject only to the terms and conditions set forth in the Commitment Letters, to provide or cause to be provided equity and debt financing to (a) the Affiliated MPT Property Companies (as defined in the Merger Agreement) and the Affiliated MPT TRS Lender Companies (as defined in the Merger Agreement) of up to an aggregate amount of \$300,000,000, and (b) the MPT TRS Entity of up to an aggregate amount of \$96,500,000. Each of the Commitment Letters are in full force and effect and have not been terminated as of the date hereof. Upon receipt of funds in accordance with the Commitment Letters, the MPT Parties, the Affiliated MPT Property Companies, and the Affiliated MPT TRS Lender Companies will have at the Closing funds sufficient to consummate the transactions contemplated by this Agreement, Merger Agreement, and any other Transaction Document to which any of them is a party. The financings contemplated by the Commitment Letters is not subject to any condition precedent or other restriction or contingency limiting the availability of such financing other than as expressly set forth in the Commitment Letters. Each of the MPT Parties affirms that it is not a condition to Closing or any of its other obligations under this Agreement, the Merger Agreement, or any other Transaction Document to which any of them is a party that it obtain the financing contemplated by the Commitment Letters or any other financing for or related to any of the transactions contemplated by this Agreement, the Merger Agreement or any other Transaction Document to which any of them or any of the Affiliated MPT Property Companies or the Affiliated MPT TRS Lender Companies is a party.

**3.5 Litigation.** There is no Litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to the actual knowledge of the MPT Parties, threatened in writing against any of the MPT Parties, nor are any of the MPT Parties subject to any outstanding order, writ, judgment, injunction or decree, in either case, which would (a) prevent, hinder or materially delay the consummation of the Transactions or (b) otherwise prevent, hinder or materially delay performance by any of the MPT Parties of any of their material obligations under this Agreement.

**3.6 Brokers.** Except as set forth on **Schedule 3.6**, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from any of the Ernest Health Parties in connection with the Transactions based upon arrangements made by or on behalf of any of the MPT Parties or any of their respective Affiliates.

**3.7 Absence of Conduct; Undisclosed Liabilities.** Prior to the date hereof, none of the MPT Parties has engaged in any business, nor do either of them have any liabilities or obligations, other than those related to or incurred in connection with this Agreement, the Merger Agreement, or any other Transaction Documents to which any of the MPT Parties is a party, and the transactions contemplated hereby or thereby.

**3.8 Inspection; No Other Representations.** Each of the MPT Parties is an informed and sophisticated Person, and has engaged expert advisors experienced in the evaluation and acquisition and/or financing of companies such as the EHI Subsidiaries as contemplated hereunder. Each of the MPT Parties has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the transactions contemplated hereby. The MPT Parties



have received all materials relating to the business of the Ernest Health Parties that they have requested and have been afforded the opportunity to obtain any additional information necessary to verify the accuracy of any such information or of any representation or warranty made by the Ernest Health Parties hereunder or to otherwise evaluate the merits of the transactions contemplated hereby. Without limiting the generality of the foregoing, each of the MPT Parties acknowledges that (a) none of the Ernest Health Parties make any representation or warranty with respect to (i) any projections, estimates or budgets delivered to or made available to the MPT Parties of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Ernest Health Parties or the future business and operations of any of the Ernest Health Parties or (ii) any other information or documents made available or delivered to the MPT Parties or their Representatives with respect to Ernest Health, the EHI Subsidiaries or any of their respective businesses, assets, liabilities or operations, except as expressly set forth in Section 2 of this Agreement, and (b) none of the MPT Parties has relied or will rely upon any representation or warranty except those representations or warranties set forth in Section 2 hereof, in negotiating, executing, delivering and performing this Agreement and the transactions contemplated hereby.

#### **4. PRE-CLOSING COVENANTS.**

**4.1 Conduct of Business Prior to Closing.** Except as expressly provided or permitted herein, as set forth on **Schedule 4.1**, as required by contract in effect on the date hereof or by law, or as consented to in writing by the MPT Parties, during the period commencing on the date of this Agreement and ending at the Closing Date or the earlier termination of this Agreement, each of the Ernest Health Parties shall (a) act and carry on its business in all material respects in the Ordinary Course of Business and in compliance in all material respects with all applicable laws and regulations and (b) use commercially reasonable efforts to maintain and preserve its business organization, assets and properties, to use commercially reasonable efforts to keep available the services of each of their current officers and employees and to preserve their present relationships with patients, suppliers and other Persons with which any of the Ernest Health Parties has significant business relations. Without limiting the generality of the foregoing, except as expressly provided or permitted herein or as set forth on **Schedule 4.1**, or as required by contract in effect on the date hereof or by law, from and after the date hereof until the Closing Date or the earlier termination of this Agreement, none of the Ernest Health Parties shall, directly or indirectly, do any of the following without the prior written consent of the MPT Parties (which consent shall not be unreasonably withheld or delayed):

(a) split, combine or reclassify any of its capital stock or equity interests or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, equity interests, or any of its other securities;

(b) authorize for issuance, issue or sell or agree or commit to issue or sell (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any stock or equity interests of any class or any other securities or equity equivalents (other than the issuance of Common Shares upon the exercise of Options that are outstanding on the date of this Agreement);

(c) make any change to the Certificate of Incorporation or By-laws, or the organizational or governing documents of the EHI Subsidiaries, terminate or alter its legal existence and or business organization;

(d)(i) incur any Indebtedness, except for borrowings under Ernest Health's existing credit facilities, or guarantee any Indebtedness of another Person, (ii) issue or sell any debt securities of any of the Ernest Health Parties, guarantee any debt securities of another Person, or enter into any "keep well" or other agreement to maintain any financial statement condition of another Person, or (iii) make any loans, advances (other than advances to employees of any of the Ernest Health Parties in the Ordinary Course of Business) or capital contributions to, or investment in, any other Person, other than by the Ernest Health Parties in any of Ernest Health's direct or indirect wholly-owned Subsidiaries;

(e) fail to pay or satisfy any Indebtedness when the same becomes due and payable;

(f) knowingly waive, release, cancel, or assign any material rights or claims, other than in the Ordinary Course of Business (including any material write-off or other material compromise of any accounts receivable or other receivable of Ernest Health or any of the EHI Subsidiaries); provided, however, that, for the avoidance of doubt, Ernest Health shall not be prohibited from paying any Indebtedness or any expenses in connection with the Merger and related transactions);

(g) materially change accounting policies or procedures or Tax elections, except as required by GAAP or applicable law;

(h)(i) materially increase the rates of direct compensation or bonus compensation payable or to become payable to any officer, management level employee, agent or consultant of Ernest Health or any of the EHI Subsidiaries, except (A) in the Ordinary Course of Business, (B) in accordance with the existing terms of contracts entered into prior to the date of this Agreement, (C) for the acceleration of unvested Options and/or restricted stock as provided for under the applicable incentive agreements, or (D) for bonuses payable to senior management of Ernest Health in connection with the transactions contemplated by this Agreement and the Merger Agreement which are approved by the Ernest Health Board, or (ii) adopt any new Benefit Plan or materially amend or modify any existing Benefit Plan;

(i)(i) merge with, enter into a consolidation with or otherwise acquire an interest of the outstanding equity interests in any Person or acquire a substantial portion of the assets or business of any Person (or any division or line of business thereof), or (ii) otherwise acquire (including, through leases, subleases and licenses of real, personal or intangible property) any material assets, except, in the case of this clause (ii), in the Ordinary Course of Business;

(j) sell, lease, license, pledge or otherwise dispose of or encumber (i) any portion of the Real Property or (ii) any other material properties or assets of Ernest Health or any of the EHI Subsidiaries other than with respect to the items in clause (ii) above in the Ordinary Course of Business or in connection with the disposition of obsolete properties or assets;

(k) fail to maintain any of the Insurance Policies in full force and effect;

(l) amend or terminate (i) any Material Contract to which Ernest Health or any of the EHI Subsidiaries is party, or (ii) any other Contract to which Ernest Health or any of the EHI Subsidiaries is a party, except with respect to clauses (i) and (ii) for terminations or amendments provided by the terms thereof or with respect to clause (ii) only, except in the Ordinary Course of Business;

(m) settle or compromise any Litigation or other disputes (whether or not commenced prior to the date of this Agreement) other than settlements or compromises for Litigation or other disputes where the amount paid in settlement or compromise does not exceed \$100,000 individually or \$500,000 in the aggregate for all such Litigation or other disputes;

(n) terminate or materially and adversely modify its relationships with any material suppliers, trade creditors or trade debtors, except in the Ordinary Course of Business;

(o) make any capital expenditure or commitment for the acquisition of assets or properties in excess of One Million One Hundred and Ninety Three Dollars (\$1,193,000);

(p) terminate, amend or modify in any material respect any of the Tenant Leases, Collateral Leases or the Ground Lease; or

(q) enter into any executory agreement, commitment or undertaking, whether in writing or otherwise, to do any of the activities prohibited by the foregoing provision, or permit any of its equity holders, directors, officers, members, managers, partners, or Person or group of Persons possessing and/or exercising similar authority to authorize the taking of, any action prohibited by the foregoing provisions.

**4.2 Repayment of Indebtedness and Release of Encumbrances.** At or prior to the Closing Date, the Ernest Health Parties shall cause (i) the repayment or release of all mortgage loans or other borrowings secured by any of the Acquired Assets, Financed Assets, or interests therein, including any defeasance or penalty payments thereon, if applicable, and (ii) the release of all Encumbrances (other than Permitted Encumbrances) on any of the Acquired Assets, Financed Assets, or interests therein.

**4.3 Insurance.** The Ernest Health Parties will keep in full force and effect all existing Insurance Policies which are presently in effect, subject to the continuing availability of such insurance coverages on reasonable terms and conditions; provided, however, that no such Insurance Policies shall be voluntarily or consensually terminated by the Ernest Health Parties unless the Ernest Health Parties provide the MPT Parties with thirty (30) days prior written notice thereof.

**4.4 Acts Affecting Real Property.**

(a) None of the Ernest Health Parties shall perform any construction or remove any improvements upon or about any Facility except as described on the attached **Schedule 4.4(a)**. For clarification and not in limitation of the foregoing, the Parties acknowledge and agree that during the period commencing on December 2, 2011 and ending on the Closing Date (the "**Project Expenditure Period**"), the Sellers and/or Borrowers, as applicable, will (or may), incur certain obligations and/or expenditures with respect to the Properties (or proposed properties)

identified on **Schedule 4.4(a)** (the “**Schedule 4.4 Projects**”) which obligations and/or expenditures may be incurred to, among other things, (i) acquire certain land, buildings or other improvements and/or (ii) engage in certain capital and other improvements (including both so-called hard costs and soft costs, including costs of architects and other contractors directly relating to such Properties (or proposed properties)) with respect to such Schedule 4.4 Projects.

(b) **Schedule 4.4(b)** lists all Contracts to which, as of the date hereof, any of Ernest Health Parties or any of their respective Affiliates is a party with respect to the obligations and/or expenditures in connection with the Schedule 4.4 Projects.

(c) The amount of all out-of-pocket expenditures made by the Ernest Health Parties during the Project Expenditure Period with respect to the Schedule 4.4 Projects (collectively, the “**Schedule 4.4 Project Expenditure Reimbursement Amount**”) shall be reimbursed to the applicable Sellers or Borrowers, as applicable, at Closing pursuant to a dollar-for-dollar increase in the Individual Purchase Price or the Individual Real Estate Loan Amount, as applicable, payable by the Buyers or the Lenders, as applicable; provided, however, that if such expenses are incurred by or on behalf of a new wholly-owned subsidiary of Ernest Health, then the reimbursement shall be made to such new subsidiary, and to the extent the expenditures by such new subsidiary in connection with the Schedule 4.4 Projects are used to acquire assets of a type that are described in the definition of Acquired Assets, then such new subsidiary shall become a party to this Agreement as a “**Seller**” and shall transfer its Acquired Assets to a buyer party designated by the MPT Representative.

(d) Subject to Section 5.9, the applicable Seller shall convey any of the Schedule 4.4 Projects relating to such Seller’s Acquired Assets to the applicable Buyer at Closing as part of and included with such Acquired Assets.

(e) It is intended that the EHI Subsidiaries shall not incur any taxable gain (or economic cost) in connection with the conveyance of the Schedule 4.4 Projects to MPT Parties hereunder, but shall receive on a dollar-for-dollar basis as provided herein for all amounts incurred or realized by EHI Subsidiaries in connection therewith.

**4.5 Co-Located Operators.** After the date hereof but prior to the Closing Date, each of the Co-Located Operators shall become a party hereto by executing a joinder to this Agreement, and shall be listed on **Schedule 1** hereto together with all other EHI Subsidiaries.

**4.6 Mesquite Parking.** After the date hereof, Ernest Health shall cause Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company d/b/a Mesquite Rehab Institute, LLC, to use its commercially reasonable efforts to obtain a collateral assignment, consent and/or estoppel, in each case in a form mutually agreeable to the parties, from Mimosa Lane Baptist Church, Inc., landlord to that certain Lease Agreement for Vehicle Parking Spaces, dated January 15, 2010.

## **5. ADDITIONAL AGREEMENTS.**

### **5.1 [Intentionally Omitted]**

### **5.2 Access to Information.**

(a) From and after the date hereof until the Closing Date or the earlier termination of this Agreement, each of the Ernest Health Parties shall, and shall cause each of their respective officers, employees and agents to (a) give the MPT Parties and their Representatives reasonable access upon reasonable notice and during times mutually convenient to the MPT Parties and senior management of the Ernest Health Parties to the Facilities, properties, employees, books and records of the Ernest Health Parties as from time to time may be reasonably requested, (b) permit the MPT Parties and their Representatives to make such inspections and to make copies of such books and records as they may reasonably require, and (c) furnish the MPT Parties and their Representatives with such financial and operating data as the MPT Parties may from time to time reasonably request. Notwithstanding the foregoing, neither Ernest Health nor any of the EHI Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would contravene any law, rule, regulation, order, judgment, decree, or binding agreement entered into prior to the date of this Agreement or would reasonably be expected to violate or result in a loss or impairment of any attorney-client or work product privilege. The parties hereto will use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply. Any such investigation by the MPT Parties shall not unreasonably interfere with any of the businesses or operations of the Ernest Health Parties. Notwithstanding anything to the contrary in this Agreement, neither the MPT Parties nor their Representatives shall have any contact whatsoever with respect to the Ernest Health Parties or with respect to the transactions contemplated by this Agreement with any partner, lender, lessor, vendor, customer, supplier, employee or consultant of the Ernest Health Parties, except in consultation with Ernest Health and then only with the express prior approval of Ernest Health, which approval shall not be unreasonably withheld, conditioned or delayed. All requests by the MPT Parties for access or information shall be submitted or directed exclusively to an individual or individuals to be designated by Ernest Health.

(b) The MPT Parties and their Representatives (including their designated engineer, architects, surveyors and/or consultants) may, upon reasonable notice and during times mutually convenient to the MPT Parties and senior management of the Ernest Health Parties enter into and upon all or any portion of the Real Property in order to investigate and assess, as the MPT Parties deem necessary or appropriate in their sole and absolute discretion, any change to the condition (including the structural and environmental condition) of the assets and properties of any of the Ernest Health Parties occurring after the date hereof; provided, however, that the MPT Parties shall indemnify, defend and hold harmless the Ernest Health Parties from and against any and all loss, cost, expense and/or liability of any kind or nature incurred by the Ernest Health Parties as the result of any such investigation and/or assessment and provided further that, in no event shall the MPT Parties and/or their Representatives undertake any intrusive testing of any kind without the prior written consent of the Ernest Health Parties. Each of the Ernest Health Parties shall cooperate with the MPT Parties and their Representatives in conducting such investigation, and shall allow the MPT Parties and their Representatives reasonable access to the Real Property, the Facilities and the other assets and properties of the Ernest Health Parties, together with permission to conduct such investigation, and shall provide to the MPT Parties and their Representatives all reasonably necessary information maintained by any of the Ernest Health Parties in connection therewith.

**5.3 Confidentiality Agreement.** The parties shall adhere to the terms and conditions of that certain confidentiality agreement, by and between Ernest Health, Medical Properties Trust, Inc., and MPT Operating Partnership, L.P., dated August 17, 2011 (the “**Confidentiality Agreement**”).

**5.4 Third Party Consents and Regulatory Approvals.** Subject to the terms and conditions of this Agreement, each of the parties hereto will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under this Agreement and applicable laws and regulations to consummate the Transactions as soon as practicable after the date hereof, including (i) preparing and filing, in consultation with the other party and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions and filings and to obtain as promptly as reasonably practicable all consents, clearances, waivers, licenses, orders, registrations, approvals, permits, Tax rulings and authorizations necessary to be obtained from any third party and/or any Governmental Body (including, without limitation, with respect to any change of control consent or notification requirements to applicable federal and state healthcare regulatory agencies, if required) in order to consummate the Transactions or any of the other transactions contemplated by this Agreement and (ii) taking all reasonable steps as may be necessary, proper or advisable to obtain all such consents, clearances, waivers, licenses, orders, registrations, approvals, permits, Tax rulings and authorizations.

**5.5 Confidentiality; Press Releases.** The Parties hereto will, and will cause each of their Affiliates and Representatives to, maintain the confidentiality of this Agreement. The parties agree that public announcements or press release, if any, with respect to this Agreement or the transactions contemplated hereby shall be mutually approved in advance by the Parties; provided, however, that, notwithstanding any provision hereof or in the Confidentiality Agreement to the contrary, a Party may, without the prior consent of the other Parties hereto, may (i) issue or cause publication of any such press release or public announcement to the extent that such party reasonably determines, after consultation with outside legal counsel, such action to be required by law or by the rules of any applicable self-regulatory organization (including, without limitation, federal and state securities laws and the rules and regulations of the NYSE or NASDAQ), in which event such Party will use its commercially reasonable efforts to allow the other Parties hereto reasonable time to comment on such press release or public announcement in advance of its issuance, and (ii) disclose that it has entered into this Agreement and the other Transaction Documents, and may provide and disclose information regarding this Agreement, the Parties to this Agreement and the other Transaction Documents, the Real Property, the Facilities, and the other assets and properties subject hereto and thereto, and such additional information which such party may reasonably deem necessary, to its proposed investors in connection with a public offering or private offering of securities (including, without limitation, the offerings to be conducted by Medical Properties Trust, Inc. in anticipation of the transactions contemplated herein), or any current or prospective lenders with respect to its financing, and to investors, analysts and other parties in connection with earnings calls and other normal communications with investors, analysts and other parties, or (iii) include any information in a prospectus, prospectus supplement or other offering circular or memorandum in connection with public or private capital raising or other activities undertaken by such party. Notwithstanding the foregoing, nothing in this Section 5.5 shall prohibit any holder of any of Ernest Health’s shares of capital stock or Options from disclosing the terms of the Transactions and this Agreement to any investor in such holder, in the ordinary course of such holder’s business.

**5.6 No Solicitations.** None of the Ernest Health Parties will, and will not permit any of their respective Representative to, directly or indirectly, (i) discuss, negotiate, undertake, authorize, recommend, propose or enter into, either as the proposed surviving, merged, acquiring or acquired corporation, any transaction involving a merger, consolidation, business combination, purchase or disposition of any amount of the assets of any of the Ernest Health Parties (other than in the Ordinary Course of Business) or any capital stock or equity interests of any of the Ernest Health Parties, or any other similar transaction other than the transactions contemplated by this Agreement and the other Transaction Documents (an "**Acquisition Transaction**"), (ii) knowingly facilitate, encourage, solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (iii) furnish or cause to be furnished to any Person or entity any information concerning the business, operations, properties or assets of any of the Ernest Health Parties in connection with an Acquisition Transaction, or (iv) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person or entity to do or seek any of the foregoing. The Ernest Health Parties shall notify the MPT Parties immediately if any discussions or negotiations are sought to be initiated any inquiry or proposal is made, or any such information is requested with respect to any Acquisition Transaction.

**5.7 Further Action.** Each of the Parties hereto shall use commercially reasonable efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable and execute and deliver such documents and other papers, as may be reasonably required or requested to carry out the provisions of this Agreement and each of the other Transaction Documents and consummate and make effective the transactions contemplated hereby and thereby, but without in any manner limiting such party's specific rights and obligations set forth in this Agreement and the other Transaction Documents.

**5.8 Other Actions by Parties.** Without in any manner limiting any Party's specific rights and obligations set forth in this Agreement and the other Transaction Documents, no party hereto shall take (and shall use commercially reasonable efforts to cause its Affiliates not to take), directly or indirectly, any action that would reasonably be expected to, individually or in the aggregate, prevent, materially delay or materially impede the consummation of the Transactions or the other transactions contemplated by this Agreement.

**5.9 Schedule 4.4 Projects.**

(a) The MPT Parties will fund the total development costs, including all hard and soft costs, relating to the completion of the Schedule 4.4 Projects (the "**Total Development Costs**"), upon the terms and conditions set forth in this **Section 5.9. Schedule 5.9(a)** sets forth the estimated maximum projected Total Developments Costs with respect to each of the Schedule 4.4 Projects, which shall take into account any sums previously expended by the MPT Parties pursuant to **Section 4.4**, such maximum amount as finally determined by mutual agreement of the parties being referred to in each case as a "**Cap.**"

(b) Prior to or as promptly as practicable following the Closing and as a condition to the funding of the Schedule 4.4 Projects described herein, the Parties will enter into a Funding and Development Agreement (subject to the approval of the Board of Directors of Medical Properties Trust, Inc., in form and substance which is reasonably satisfactory to the Parties, which will provide for (i) the transfer to an MPT Party Affiliate identified by the MPT Parties of all real property relating to each such Schedule 4.4 Project, including land and existing improvements and all contracts to acquire same; (ii) the agreement of such MPT Party Affiliate, subject to receipt of title, survey and third party reports on such Schedule 4.4 Project reasonably satisfactory to such MPT Party Affiliate, to fund the Total Development Costs for each such Schedule 4.4 Project up to the Cap; (iii) the joint and several responsibility of the Ernest Health Parties for all cost overruns and or change orders from all plans and specifications submitted to the MPT Party Affiliate and the requirement that all such change orders be subject to the prior written approval of the MPT Party Affiliate in its sole discretion; (iv) the Ernest Health Parties, together, with any developer, being jointly and severally responsible for the oversight, supervision and timely completion of each such Schedule 4.4 Project; (v) the construction of all improvements relating to such Schedule 4.4 Project being pursuant to third party construction agreements with architects, contractors, subcontractors and other third parties, which construction and third parties and agreements are approved by the MPT Party Affiliate in its reasonable discretion, and such contracts being collaterally assigned to such MPT Party Affiliate; (vi) the MPT Party Affiliate being named with respect to such Schedule 4.4 Project as an insured on all insurance coverages and a beneficiary of all performance bonds (in form and substance satisfactory to such MPT Party Affiliate in its reasonable discretion); and (vii) the land and improvements relating to such Schedule 4.4 Project being added to the Real Property Master Lease, with rent payable at the Lease Rate. The provisions of this Section 5.9 shall survive the Closing.

## **6. CONDITIONS TO OBLIGATION TO CLOSE; DELIVERABLES; CLOSING MATTERS.**

**6.1 Conditions to the Obligations of Each Party to Effect the Transactions** . The respective obligations of the Parties to effect the Transactions are subject to the fulfillment or waiver by written consent of the other Parties, where permissible, at or prior to the Closing Date, of each of the following conditions:

(a) [Intentionally Omitted].

(b) No Injunctions, Orders or Restraints; Illegality; Lawsuits. No preliminary or permanent injunction or other order, decree or ruling issued by a court or other Governmental Body of competent jurisdiction, and no statute, rule, regulation or executive order promulgated or enacted by any governmental agency of competent jurisdiction, shall be in effect which would have the effect of (i) making the consummation of the Transactions illegal or (ii) otherwise prohibiting the consummation of the Transactions. Further, there shall not have been instituted in a court of competent jurisdiction by any creditor of Ernest Health or any of the EHI Subsidiaries, any Governmental Body or any other third party, any suit, action or proceeding to restrain, enjoin or invalidate the transactions contemplated by this Agreement and the other Transaction Documents; provided, however, that if any such suit, action or proceeding is so instituted, then Ernest Health and the MPT Parties shall use their commercially reasonable efforts to defend against the same and to take such other actions as may be necessary or desirable to permit the transactions contemplated by this Agreement and the other Transaction Documents to be consummated.



(c) Merger Agreement. All conditions set forth in Sections 8.1, 8.2 and 8.3 of the Merger Agreement shall have been satisfied or waived (other than those that are to be satisfied or performed on the Closing Date and which are then capable of being performed or satisfied).

(d) No Termination. None of the Parties shall have terminated this Agreement in accordance with the provisions of Section 7.1 hereof.

**6.2 Additional Conditions to Obligations of the MPT Parties.** The obligations of the MPT Parties to effect the Transactions are further subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by the MPT Parties at or prior to the Closing Date:

(a) Representations and Warranties. The representations and warranties of the Ernest Health Parties contained in this Agreement (without giving effect to any limitation as to “materiality,” “Ernest Health Material Adverse Effect”, or similar terms set forth therein) shall be true and correct in all respects (i) as of the date of this Agreement and (ii) as of the Closing Date as though made on the Closing Date, (except to the extent such representations and warranties expressly relate to a specific date or are made as of the date hereof, in which case such representations and warranties shall be true and correct in all respects as of such date), in each case of clauses (i) and (ii) above, without giving effect to the transactions contemplated by this Agreement or any other Transaction Document, and except where the failure of such representations and warranties (taken as a whole) to be so true and correct has not had a Ernest Health Material Adverse Effect.

(b) Performance and Obligations of the Ernest Health Parties. The Ernest Health Parties shall have performed or complied in all material respects with all agreements and covenants required by this Agreement and the other Transaction Documents to be performed or complied with by the Ernest Health Parties on or prior to the Closing Date.

(c) Ernest Health Material Adverse Effect. Since the date of this Agreement, an Ernest Health Material Adverse Effect shall not have occurred.

(d) Officer’s Certificates. Each of the MPT Parties shall have received certificates in form and substance reasonably satisfactory to the MPT Parties from each of the Ernest Health Parties, which is executed and delivered by their respective Chief Executive Officer or Chief Financial Officer (or Persons exercising similar authority), dated as of the Closing Date, (A) stating therein that the conditions set forth in Sections 6.2(a), (b), and (c) have been satisfied in all respects, (B) certifying, with respect to Ernest Health, as to (1) the Certificate of Incorporation and By-Laws, each as in effect from the date of this Agreement until the Closing Date, and (2) a copy of the votes and authorizing resolutions of the Ernest Health Board and the Stockholder Written Consent authorizing and approving the applicable matters contemplated hereunder and under the other Transaction Documents, (C) certifying with respect to the EHI Subsidiaries, as applicable, as to (1) such EHI Subsidiary’s articles or certificate of incorporation, bylaws, operating agreements, limited liability company agreements, partnership agreements,

and other similar organizational and governing documents, each as in effect from the date of this Agreement until the Closing Date and (2) a copy of the applicable Subsidiaries' Approvals and any other votes and authorizing resolutions of the requisite number of directors, stockholders, members, managers, partners or other Persons exercising similar authority authorizing and approving the applicable matters contemplated hereunder and under the other Transaction Documents, and (D) providing specimen signatures of the officers or authorized agents of each of the Ernest Health Parties.

(e) Certificates of Existence and Good Standing. The MPT Parties shall have received certificates of existence and good standing of the Ernest Health Parties dated within twenty (20) days prior to the Closing Date from, as applicable, the State of its incorporation or formation, and each other jurisdiction in which the character of their respective properties or in which the transaction of their respective businesses makes qualification as a foreign entity necessary.

(f) Third-Party Consents. The Ernest Health Parties shall have delivered to the MPT Parties written, consents or waivers in a form reasonably satisfactory to the MPT Parties of the third parties to those contracts set forth on **Schedule 6.2(f)**, and all such consents and waivers shall be in full force and effect.

(g) Approvals of Governmental Bodies. The Merger shall have been approved by the Colorado Department of Public Health and Environment and JV Entity and MPT Aztec Opco, LLC shall have received copies of all material notices sent thereto by or on behalf of the Ernest Health Parties, and copies of all approvals and consents received therefrom by the Ernest Health Parties.

(h) Additional Ernest Health Parties Deliverables.

(i) Closing Real Estate Documents. The Ernest Health Parties shall have executed and delivered the Real Property Master Sublease Agreement as well as the documents and instruments specified in this Section 6.2(h) and in Section 6.4 hereof.

(ii) Payoff Letters. The Ernest Health Parties shall have delivered or caused to be delivered payoff letters in respect of all Indebtedness of the Ernest Health Parties to be paid at Closing, including any principal, interest, fees or penalties outstanding or accrued thereunder, in each case, as of the Closing Date.

(iii) Documents Pursuant to the Merger Agreement. The Ernest Health Parties shall have, and shall have caused each of their respective Affiliates to have, executed and delivered to the MPT Parties and their respective Affiliates, as applicable, all agreements, documents, instruments and certificates to be executed and/or delivered by them pursuant to the Merger Agreement.

(iv) Assignments of Rents and Leases. The EHI Subsidiaries shall have executed and delivered to the MPT Parties and their Affiliates an Assignment of Rents and Leases in a form mutually agreed to by the parties with respect to all of their Tenant Leases (and shall have used commercially reasonable

efforts to obtain estoppels from the lessees thereunder), and which secure the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (collectively, the “**Assignments of Rents and Leases**”).

(v) Guaranty by Ernest Health. Ernest Health shall have executed and delivered to MPT Parties and their Affiliates a Guaranty substantially in the form attached hereto as **Exhibit E**, which secures the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (the “**Ernest Health Guaranty**”).<sup>1</sup>

(vi) Guaranty by JV Entity. The JV Entity shall have executed and delivered to the MPT Parties and their Affiliates a certain Guaranty substantially in the form attached hereto as **Exhibit F**, which secures the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (the “**JV Entity Guaranty**”).

(vii) Guaranty by the EHI Subsidiaries. The EHI Subsidiaries shall have executed and delivered to the MPT Parties and their Affiliates a Guaranty substantially in the form attached hereto as **Exhibit G**, which secures the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (the “**EHI Subsidiaries’ Guaranty**”).

(viii) Security Agreement. The EHI Subsidiaries shall have executed and delivered to the MPT Parties and their Affiliates a Security Agreement substantially in the form attached hereto as **Exhibit H**, which secures the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (the “**Security Agreement**”).

(ix) Pledge Agreement by Ernest Health. Ernest Health shall have executed and delivered to the MPT Parties and their Affiliates a certain Pledge Agreement substantially in the form attached hereto as **Exhibit I**, pursuant to which Ernest Health pledges all of its direct and indirect equity interests in the EHI Subsidiaries to the MPT Parties and their Affiliates in order to secure the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (the “**Ernest Health Pledge Agreement**”).

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<sup>1</sup> Conditions to be revised if parties agree to forms of agreements at signing.

(x) Pledge Agreement by JV Entity. The JV Entity shall have executed and delivered to the MPT Parties and their Affiliates a certain Pledge Agreement substantially in the form attached hereto as **Exhibit J**, pursuant to which JV Entity pledges all of its shares of stock in Ernest Health to the MPT Parties and their respective Affiliates in order to secure the respective liabilities and obligations of each of the Ernest Health Parties under the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and the other Transaction Documents (the “**JV Entity Pledge Agreement**”).

(xi) Noncompetition Agreements. The JV Entity, the Management Company, and Ernest Health shall have executed and delivered to the MPT Parties and their Affiliates certain Noncompetition Agreements substantially in the form attached hereto as **Exhibit K** (collectively, the “**Noncompetition Agreements**”).

(xii) Ground Lease. Elkhorn, LLC shall have executed and delivered to the applicable MPT Party an Assignment of Ground Lease, together with a consent and/or estoppel of Natrona County, Wyoming, as landlord of such Ground Lease in a form mutually agreeable to the parties (the “**Collateral Assignment**”).

(xiii) Title Commitments and Surveys. The MPT Parties shall have received the Title Commitments and Surveys for the Real Property substantially in the form received by the MPT Parties as of the date hereof (it being acknowledged that the inclusion of any additional Permitted Encumbrances shall not cause (or be deemed to cause) a failure of this condition).

(xiv) Lease Amendments. The applicable Ernest Health Parties shall have amended those certain Affiliate leases listed and described on **Schedule 6.2(h)(xiv)** and the lease memoranda related thereto and shall have delivered to the MPT Parties evidence of such amendment, in form and substance reasonably satisfactory to the MPT Parties.

(xv) Environmental Indemnification Agreements. The Ernest Health Parties shall have executed and delivered to the MPT Parties Environmental Indemnification Agreements substantially in the form attached hereto as **Exhibit L** (the “**Environmental Indemnities**”).

(xvi) Management Subordination. The Ernest Health Parties shall have delivered to the MPT Parties a Management Subordination Agreement substantially in the form attached hereto as **Exhibit M** (the “**Management Subordination**”).

(xvii) Closing Statement. The Ernest Health Parties shall have executed and delivered to the MPT Parties a Closing Statement regarding the transactions contemplated herein, and which in form and substance mutually satisfactory to the parties (the “**Closing Statement**”).

**6.3 Additional Conditions to Obligations of the Ernest Health Parties.** The obligation of the Ernest Health Parties to effect the Transactions is further subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by Ernest Health at or prior to the Closing Date:

(a) Representations and Warranties. Each of the representations and warranties of the MPT Parties contained in this Agreement (without giving effect to any limitation as to “materiality” or “MPT Material Adverse Effect” or similar terms set forth therein) shall be true and correct in all respects as of the date when made and as of the Closing Date as though made on the Closing Date (except to the extent such representations and warranties expressly relate to a specific date or as of the date hereof, in which case such representations and warranties shall be true and correct in all material respects as of such date), subject to changes permitted by this Agreement or any other Transaction Document, except where the failure of such representations and warranties (taken as a whole) to be so true and correct has not had a MPT Material Adverse Effect.

(b) Performance of Obligations of the MPT Parties. Each of the MPT Parties shall have performed or complied in all material respects with all agreements and covenants required by this Agreement and the other Transaction Documents to be performed or complied with by it on or prior to the Closing Date.

(c) Officer’s Certificate. The Ernest Health Parties shall have received a certificate executed and delivered by the Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer of each of the MPT Parties (or their parent entities), dated as of the Closing Date, stating therein that the conditions set forth in Sections 6.3(a) and (b) have been satisfied and which shall include a copy of the resolutions of the MPT Parties’ members, authorizing the transactions contemplated herein, the execution and delivery of all documents required to effectuate such, and designating the officers or managers of the MPT Parties who are authorized to execute and deliver such documents on behalf of the MPT Parties, together with a Certificate of Incumbency with respect to such officers or managers.

(d) Additional Buyer and MergerCo Deliverables.

(i) Closing Real Estate Documents. The MPT Parties shall have executed and delivered the Leasing Documents as well as the documents and instruments described in this Section 6.3(d) and specified in Section 6.4 hereof.

(ii) Documents Pursuant to the Merger Agreement. The MPT Parties shall have, and shall have caused their respective Affiliates to have, executed and delivered to Ernest Health Parties and each of their respective Affiliates, as applicable, all agreements, documents, instruments and certificates to be executed and delivered by them pursuant to the Merger Agreement.

(iii) Other Ancillary Documents. As applicable, the MPT Parties and each of their respective Affiliates shall have executed and delivered, as applicable, the

Assignments of Rents and Leases, the JV Entity Guaranty, the EHI Subsidiaries' Guaranty, the Ernest Health Guaranty, the Security Agreement, the JV Entity Pledge Agreement, Ernest Health Pledge Agreement, the Noncompetition Agreements, the Collateral Assignment, Environmental Indemnities, Management Subordination and the Closing Statement.

#### **6.4 Closing Documents.**

(a) At Closing, the applicable Ernest Health Parties shall execute and deliver to the applicable MPT Parties the following documents necessary to consummate the transactions contemplated hereunder:

With respect to Acquired Assets:

(i) One or more Special Warranty Deeds (the "**Deeds**") in recordable form conveying to the applicable Buyer title to the applicable Owned Real Property subject only to the Permitted Encumbrances in a form mutually agreeable to the parties.

(ii) One or more Bills of Sale conveying the applicable property as described in Sections 1.1(c), (d) and (e), to the applicable Buyers subject only to the Permitted Encumbrances, substantially in the form attached hereto as **Exhibit N**.

(iii) An assignment to MPT of Casper, LLC, a Delaware limited liability company, of the Ground Lease substantially in the form attached hereto as **Exhibit O**, together with an amendment to the lease memorandum relating thereto and a consent and estoppel from the landlord thereof (the "Ground Lease Documents").

(iv) To the extent possessed by Sellers, an original of all certificates of occupancy for the applicable Property.

(v) Drawings, plans and specifications and maintenance and warranty manuals for the applicable Real Property, if any, that are in the possession or control of any of the Ernest Health Parties.

(vi) A FIRPTA certificate stating that each Seller is not a non-U.S. person.

(vii) An affidavit of payment of applicable sales and related Taxes;

(viii) a certified list of all Tenant Leases and Collateral Leases, in form and substance reasonably satisfactory to the Parties; and

(ix) such other documents and instruments reasonably and customarily required by the Title Company, provided that the same do not impose any liability on the Ernest Health Parties.

With respect to Financed Assets:

(i) The Real Estate Loan Agreement and the other Real Estate Loan Documents; and

(ii) such other documents and instruments reasonably and customarily required by the Title Company, provided that the same do not impose any liability on the Ernest Health Parties.

(b) At Closing, the MPT Parties, as applicable, will execute and/or deliver to the Ernest Health Parties, as applicable, all amounts and documents necessary to consummate the transactions contemplated hereunder including, without limitation, the following with respect to the Acquired Assets and/or the Financed Assets, as applicable:

(i) The aggregate Purchase Price and the aggregate Real Estate Loan Amount, all in immediately available funds; and

(ii) Any of the Ground Lease Documents to which any MPT Party is a party.

(c) At Closing, the Parties shall execute and deliver the following with respect to the applicable Real Property being conveyed:

(i) Real estate transfer declarations required by the states, counties and municipalities in which the applicable Property is located;

(ii) A memorandum of Lease in form and substance reasonably satisfactory to the Parties; and

(iii) Any other documents mutually agreed to by the Parties.

(d) At Closing, Borrower and Lender shall execute and deliver the following with respect to the applicable Property or Properties being financed:

(i) All documents required by the states, counties and municipalities in which the applicable Real Property is located;

(ii) Any other documents mutually agreed to by the Parties.

**6.5 Closing Cost Allocations and Prorations.**

(a) Except as expressly provided in this Section 6.5, each Party shall be responsible for its attorneys' and other professional fees and costs incurred by it in connection with this Agreement and the transactions contemplated hereby.

(b) MPT Parties shall pay the costs of the Title Insurance and the Survey, inspection, investigation and testing costs, and shall also pay all of the costs of recording the Deeds and the Mortgages, and any other instruments documenting conveyance and/or encumbrance of the Acquired Assets and/or the Financed Assets, as applicable, all recording and filing fees, all documentary stamps, transfer and all other taxes payable upon recordation of the Deeds and Mortgages.

## **7. TERMINATION.**

**7.1 Termination.** This Agreement may be terminated at any time prior to the Closing Date, as follows:

(a) by the written consent of any of MPT Parties and Ernest Health;

(b) by either Ernest Health, on the one hand, or the MPT Parties, on the other hand, by written notice to the other if any Governmental Body of competent jurisdiction shall have issued an injunction or taken any other action (which injunction or other action the parties hereto shall use commercially reasonable efforts to lift) that permanently restrains, enjoins or otherwise prohibits the consummation of the Transaction, and such injunction shall have become final and non-appealable;

(c) by either Ernest Health, on the one hand, or the MPT Parties, on the other hand, by written notice to the other, if the consummation of the Transactions shall not have occurred on or before May 1, 2012 (the "**Termination Date**"); provided, however, that the right to terminate the Agreement pursuant to this Section 7.1(c) shall not be available to any party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of the Transactions to close on or before such date;

(d) by Ernest Health, if none of the Ernest Health Parties are then in material breach of any term of this Agreement, upon written notice to the MPT Parties if there occurs a breach of any representation, warranty or covenant of any of the MPT Parties contained in this Agreement, such that the conditions set forth in Section 6.1 or Section 6.3 cannot be satisfied or cured prior to the Termination Date; provided, however, that such breach is either not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by Ernest Health to the MPT Parties;

(e) by any of the MPT Parties, if none of the MPT Parties is then in material breach of any term of this Agreement, upon written notice to Ernest Health if there occurs a breach of any representation, warranty or covenant of any of the Ernest Health Parties contained in this Agreement, such that the conditions set forth in Section 6.1 or Section 6.2 cannot be satisfied or cured prior to the Termination Date; provided, however, that such breach is not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by the MPT Parties to Ernest Health.

**7.2 Effect of Termination.** In the event of the termination of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become null and void and have no effect, without any liability on the part of the MPT Parties, the Ernest Health Parties, or any of their respective directors, officers, employees, partners, managers, members or stockholders, and all rights and obligations of any party hereto shall cease, except that the provisions contained in, and the definitions pertaining to, Section 5.3, Section 5.5, this Section 7.2 and Article IX shall survive the termination of this Agreement; provided, however, that notwithstanding the foregoing, no party shall be relieved or released from any liabilities or damages arising out of its wrongful repudiation, termination or intentional and knowing breach by such party of a representation, warranty or covenant prior to such termination.



## **8. REPRESENTATIVES OF PARTIES.**

**8.1 Ernest Health Parties.** Each of the Ernest Health Parties hereby appoints Ernest Health as their duly authorized agent and representative (the “**Ernest Health Parties’ Representative**”) to take all actions and enforce all rights of the Ernest Health Parties under this Agreement, including, without limitation, (i) giving and receiving any notice or instruction permitted or required under this Agreement; (ii) interpreting all of the terms and provisions of this Agreement; (iii) authorizing payments or obtaining reimbursement as may be provided for herein; (iv) consenting to, compromising or settling all disputes with the MPT Parties under this Agreement; (v) conducting negotiations and dealing with the MPT Parties under this Agreement; and (vi) taking any other actions on behalf of the Ernest Health Parties relating to the Ernest Health Parties’ rights, claims, duties and obligations under this Agreement. In the performance of the MPT Parties’ duties and obligations hereunder, the MPT Parties shall be authorized and permitted to correspond and transact with Ernest Health Parties’ Representative on behalf of all the Ernest Health Parties and shall be entitled to rely upon any document or instrument executed and delivered by the Ernest Health Parties’ Representative.

**8.2 MPT Parties.** The MPT Parties hereby appoint MPT of Loveland, LLC as their duly authorized agent and representative (the “**MPT Representative**”) to take all actions and enforce all rights of the MPT Parties under this Agreement, including, without limitation, (i) giving and receiving any notice or instruction permitted or required under this Agreement; (ii) interpreting all of the terms and provisions of this Agreement; (iii) authorizing payments or obtaining reimbursement as may be provided for herein; (iv) consenting to, compromising or settling all disputes with the Ernest Health Parties under this Agreement; (v) conducting negotiations and dealing with the Ernest Health Parties under this Agreement; and (vi) taking any other actions on behalf of the MPT Parties relating to the MPT Parties’ rights, claims, duties and obligations under this Agreement. In the performance of the Ernest Health Parties duties and obligations hereunder, the Ernest Health Parties shall be authorized and permitted to correspond and transact with the MPT Representative on behalf of all the MPT Parties and shall be entitled to rely upon any document or instrument executed and delivered by the MPT Representative.

## **9. GENERAL PROVISIONS.**

**9.1 Notices.** All notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given if delivered personally, sent by overnight courier (providing proof of delivery) or via facsimile (providing proof of receipt) to the parties at the following addresses (or at such other address for a party as specified by like notice):

If to the Ernest Health Parties, to:

Ernest Health, Inc.  
7770 Jefferson Street, NE, Suite 320  
Albuquerque, NM 87109  
Attn: Keith Longson  
Facsimile: (505) 856-6800

and

Ferrer Freeman & Company, LLC  
10 Glenville Street  
Greenwich, CT 06831  
Attn: David Freeman  
Facsimile: (203) 532-8016

with copy to:

Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
Attn: Stuart L. Rosenthal, Esq.  
Facsimile: (212) 355-3333

If to the MPT Parties, to:

c/o MPT Operating Partnership, L.P.  
1000 Urban Center Drive, Suite 501  
Birmingham, Alabama 35242  
Attn: Legal Department  
Phone: (205) 969-3755  
Facsimile: (205) 969-3756

with copy to:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
1600 Wells Fargo Tower  
420 Twentieth Street North  
Birmingham, Alabama 35203  
Attn: Thomas O. Kolb, Esq.  
Phone: (205) 250-8321  
Facsimile: (205) 322-8007

**9.2 Disclosure Schedules.** Certain information set forth in the schedules to this Agreement (as may be amended from time to time by a Schedule Supplement, the "**Schedules**") is included solely for informational purposes and may not be required to be disclosed pursuant to

this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the MPT Parties or the Ernest Health Parties, as applicable, in this Agreement or that such information is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, MPT Parties or the Ernest Health Parties, or their respective Affiliates, as applicable. The section number headings in the Schedules correspond to the section numbers in this Agreement and any information disclosed in any section of the Schedules shall be deemed to be disclosed and incorporated into any other section of the Schedules where the relevance of such disclosure is reasonably apparent on its face, whether or not there is a schedule reference in such other section; provided, however, that the parties shall use their reasonable efforts to include such applicable schedule cross-references in each of the Schedules regardless of whether the relevance of such disclosure is reasonable apparent of its face. From the date of this Agreement until the Closing Date, (a) the Ernest Health Parties shall amend and/or supplement the Schedules to reflect (i) any deficiencies or inaccuracies in such Schedule arising out of circumstances or matters occurred or existed at or prior to the date hereof, and (ii) any deficiencies or inaccuracies in such Schedule arising out of circumstances or matters which first occurred or arose after the date of hereof, where such deficiency or inaccuracy would cause a failure of any condition set forth in Section 6.1 or Section 6.2, and (b) the Ernest Health Parties may amend and/or supplement the Schedules with respect to any other matter that, if existing or occurring at or prior to the date hereof, would have been required to be set forth or described on such a Schedule or that is necessary to complete or correct any information in any representation or warranty contained in any of such Schedules (any such amendment or supplement, a "**Schedule Supplement**"); provided, that, no additions, changes, or disclosures contained in any Schedule Supplement shall be deemed to cure any breach or inaccuracy of a representation or warranty, covenant or agreement or to satisfy any condition unless otherwise agreed to in writing by the MPT Parties or be considered for purposes of establishing whether or not the closing conditions set forth in Section 6.1 or Section 6.2 have been satisfied.

**9.3 Assignment.** Except as expressly permitted by the terms hereof, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties; provided, however, that the MPT Parties may assign their respective rights, interests or obligations to any Person, provided no such an arrangement shall release any such MPT Party from its obligations hereunder.

**9.4 Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable.

**9.5 Interpretation.** When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference will be to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words

“without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms used herein with initial capital letters have the meanings ascribed to them herein and all terms defined in this Agreement will have such defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein, or in any agreement or instrument that is referred to herein, means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. As used herein, the terms “provided to”, “delivered”, “made available to” and terms of similar import shall mean, with respect to any documents or information provided, delivered or made available by Ernest Health or any of the EHI Subsidiaries, or any of their respective Affiliates or Representatives) to the MPT Parties, or any of their respective Representatives or Affiliates, all documents and information provided, delivered, or made available in any form and by any means, including, without limitation, by posting to any virtual data room established by or on behalf of Ernest Health and to which the MPT Parties and/or any of their respective Representatives or Affiliates has been granted access.

**9.6 Fees and Expenses.** Except as otherwise set forth in this Agreement, whether or not the Transactions are consummated, each of the MPT Parties, on the one hand, and the Ernest Health Parties, on the other hand, shall bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement and each other Transaction Document.

**9.7 Choice of Law.** All disputes, claims or controversies arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its rules of conflict of laws.

**9.8 Service of Process; Venue.** For purposes of this Agreement, each of the parties hereto hereby (i) consents to service of process in any legal action, suit or proceeding among the parties to this Agreement arising in whole or in part under or in connection with the negotiation, execution and performance of this Agreement in any manner permitted by Delaware law, (ii) agrees that service of process made in accordance with this Section 9.8 or made by registered or certified mail, return receipt requested, at its address specified pursuant to Section 9.1, will constitute good and valid service of process in any such legal action, suit or proceeding and (iii) waives and agrees not to assert (by way of motion, as a defense, or otherwise) in any such legal action, suit or proceeding any claim that service of process made in accordance with clause (i) or (ii) does not constitute good and valid service of process. Each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Delaware Court of Chancery, New Castle County, or if that court does not have jurisdiction, a federal court sitting in the State of Delaware in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that all claims in respect of

such action or proceeding may be heard and determined in any such court, (c) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto.

### **9.9 Specific Performance and Remedies.**

(a) The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached and that each party hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the provisions of this Agreement (without any requirement to post any bond or other security in connection with seeking such relief), in addition to any other remedy at law or equity, exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). The parties hereto agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by the Ernest Health Parties, on the one hand, and to prevent or restrain breaches of this Agreement by the MPT Parties, on the other hand, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the parties under this Agreement. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding relating to this Section 9.9, for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Section 9.9 in any court other than the aforesaid courts. For purposes of this Section 9.9, each of the parties hereto hereby consents to service of process in accordance with the terms of Section 9.8 of this Agreement.

(b) If the Closing shall not have occurred because of a breach by any of the parties of their respective obligations under this Agreement and all of the conditions to such parties' obligations as set forth in Article 6 have either been satisfied or previously waived (or would have been satisfied or are capable of being satisfied but for such breach of such parties' respective obligations under this Agreement), then the non-breaching parties shall have the right to a court order specifically enforcing the provisions of this Agreement to which such breach applies and, in any event, to specifically force the Closing to occur. If any of the non-breaching parties brings any action to enforce specifically the performance of the terms and provisions of this Agreement by the breaching parties, the Termination Date shall automatically be extended by (x) the amount of time during which such action is pending, plus twenty (20) Business Days or (y) such other time period established by the Delaware court presiding over such action.

**9.10 Amendment.** This Agreement may be amended by the parties hereto by an instrument in writing signed on behalf of each of the parties hereto at any time; provided, however, that after the execution of the Stockholder Written Consent, no amendment shall be made that by law requires further approval by the holders of the shares of the capital stock of Ernest Health without obtaining such requisite approval.

**9.11 Extension; Waiver.** At any time prior to the Closing Date, the parties hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto and (c) waive compliance by the other party with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of the party against which such waiver or extension is to be enforced. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party.

**9.12 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION WITH SUCH AGREEMENTS.

**9.13 No Survival.**

(a) The representations and warranties of the parties set forth in this Agreement shall terminate as of the Closing, other than the representations and warranties of the Ernest Health Parties in Sections 2.1(b), 2.3(c), and 2.4(a)(ii), and the representations and warranties of the MPT Parties in Sections 3.2 and 3.3(b), each of which shall survive indefinitely.

(b) The FFC Funds hereby join in this Agreement for the purpose of making to the Buyer and MergerCo all of the representations and warranties set forth in Sections 2.1(b), 2.3(c), and 2.4(a)(ii) hereof, each of which shall survive indefinitely. The FFC Funds shall be jointly and severally liable for any Losses arising out of any breach of any of the representations and warranties made in such sections, including, without limitation, with respect to all reasonably attorney fees incurred by any of the MPT Parties or their respective Affiliates in connection therewith.

**9.14 Mutual Drafting.** The parties hereto are sophisticated and have been represented by attorneys throughout the transactions contemplated hereby who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of laws or rules relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement or any agreement or instrument executed in connection herewith, and therefore waive their effects.

**9.15 Exhibits within Exhibits.** All exhibits or schedules referenced within any of the Exhibits attached hereto, which are not otherwise attached in an agreed upon form to such Exhibit, this Agreement, or the Merger Agreement, shall be mutually agreed to by the parties.

9.16 Miscellaneous. This Agreement, together with the Schedules and Exhibits hereto, and any documents executed by the parties simultaneously herewith or pursuant thereto, constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, written and oral, among the parties with respect to the subject matter hereof, other than the Confidentiality Agreement, which shall survive the execution of this Agreement and any termination of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and, except as expressly set forth herein, is not intended to confer upon any other Person any rights or remedies hereunder. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile or "PDF" transmission.

*[Remainder of this page intentionally blank; Signature pages follow.]*

**LIST OF ANNEX AND EXHIBITS**

|             |   |
|-------------|---|
| Annex A     | Defined Terms                                   |
| Exhibit A-1 | Legal Description of Owned Land                 |
| Exhibit A-2 | Legal Description of Wyoming Leased Land        |
| Exhibit B   | Form of Real Property Master Lease Agreement    |
| Exhibit C   | Form of Real Property Master Sublease Agreement |
| Exhibit D   | Form of Real Estate Loan Agreement              |
| Exhibit E   | Form of Ernest Health Guaranty                  |
| Exhibit F   | Form of JV Entity Guaranty                      |
| Exhibit G   | Form of EHI Subsidiaries' Guaranty              |
| Exhibit H   | Form of Security Agreement                      |
| Exhibit I   | Form of Ernest Health Pledge Agreement          |
| Exhibit J   | Form of JV Pledge Agreement                     |
| Exhibit K   | Form of Noncompetition Agreements               |
| Exhibit L   | Form of Environmental Indemnities               |
| Exhibit M   | Subordination of Management Agreement           |
| Exhibit N   | Form of Bill of Sale                            |
| Exhibit O   | Form of the Ground Lease Documents              |



## ANNEX A

### DEFINED TERMS

The following terms (whether or not capitalized and whether used in the singular or plural) shall have the following meanings as used in this Agreement:

“**Acquired Assets**” shall have the meaning set forth in Section 1.1.

“**Acquisition Promissory Note**” means that certain Promissory Note to be made by Mergerco in favor of the MPT TRS Entity (as the same may be amended, modified or restated), which shall evidence a loan by the MPT TRS Entity to MergerCo in the principal amount of Ninety-Three Million Two Hundred Thousand and 00/100 Dollars (\$93,200,000.00), the proceeds of which shall be used to satisfy the obligations of the JV Entity and MergerCo set forth in the Merger Agreement;

“**Acquisition Transaction**” shall have the meaning as set forth in Section 5.6.

“**Affiliate**” of any Person shall mean another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

“**Agreement**” shall have the meaning set forth in the preamble of this Agreement.

“**Assignments of Rents and Leases**” shall have the meaning as set forth in Section 6.2(h)(iv).

“**Base Balance Sheet**” shall have the meaning as set forth in Section 2.5(a)(ii).

“**Benefit Plans**” shall have the meaning as set forth in Section 2.10(a).

“**Borrowers**” shall have the meaning set forth in the preamble of this Agreement.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, or the office of the Secretary of State of the State of Delaware, are authorized or required by law to close.

“**Business Employees**” shall have the meaning set forth in Section 2.11(a).

“**Buyers**” shall have the meaning set forth in the preamble of this Agreement.

“**By-laws**” shall have the meaning as set forth in Section 2.1(a).

“**Cap**” shall have the meaning set forth in Section 5.9(a).

“**Certificate of Incorporation**” shall have the meaning as set forth in Section 2.1(a).

“**CIT Loan**” shall have the meaning set forth in the recitals of this Agreement.

“**Closing**” shall have the meaning set forth in Section 1.6.

“**Closing Date**” shall have the meaning set forth in Section 1.6.

“**Closing Statement**” shall have the meaning as set forth in Section 6.2(h)(xvii).

“**Code**” means Internal Revenue Code of 1986, as amended.

“**Collateral Assignment**” shall have the meaning set forth in Section 6.2(h)(xii).

“**Collateral Leases**” shall have the meaning set forth in Section 1.2(g).

“**Co-Located Operators**” shall refer to (i) Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company, located at 4441 East Lohman Avenue, Las Cruces, New Mexico 88011, (ii) Advanced Care Hospital of Northern Colorado, LLC, a Delaware limited liability company, located at 4401A Union Street, Johnston, Colorado 80534, and (iii) Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company d/b/a Mesquite Rehab Institute, LLC, located at 1024 North Galloway Avenue, Mesquite, Texas 75149.

“**Commitment Letters**” shall have the meaning set forth in Section 3.4.

“**Common Share**” shall mean a share of Ernest Health’s Common Stock.

“**Common Stock**” shall mean Ernest Health’s Common Stock, par value \$.01 per share. As used herein, “Common Stock” shall include any shares of Common Stock that have been issued by Ernest Health to Person(s) pursuant to restricted stock or similar agreements that impose vesting and/or repurchase or forfeiture requirements on such shares.

“**Company Permits**” shall have the meaning set forth in Section 2.15(a).

“**Confidentiality Agreement**” shall have the meaning as set forth in Section 5.3.

“**Contracts**” means all contractual agreements, whether written or oral, relating to or affecting the assets or the operation of the Facilities to which any of the Ernest Health Parties is a party, and all contracts, agreements or offers with regard to the development and construction of any additional healthcare facilities.

“**Deeds**” shall have the meaning set forth in Section 6.4(a)(i).

“**Effective Date**” shall have the meaning set forth in the preamble of this Agreement.

“**EHI Subsidiaries**” shall have the meaning set forth in the preamble of this Agreement.

“**EHI Subsidiaries’ Guaranty**” shall have the meaning as set forth in Section 6.2(h)(vii).

“**EHI Subsidiaries’ Leases**” shall have the meaning set forth in Section 1.2(g).

“**Elkhorn LLC**” shall have the meaning set forth in the recitals of this Agreement.

“**Encumbrance**” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, lien (statutory or otherwise) or preference, security interest, restrictions or easements or other encumbrance of any kind or nature whatsoever.

“**Environmental Indemnities**” shall have the meaning set forth in Section 6.2(h)(xv).

“**Environmental Law**” means each federal, state and local law and regulation relating to pollution, protection or preservation of human health or the environment, including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources, and including each law and regulation relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacturing, processing, distribution, use, treatment, generation, storage, containment (whether above ground or underground), disposal, transport or handling of Hazardous Materials, or the preservation of the environment or mitigation of adverse effects thereon and each law and regulation with regard to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials, including, without limitation, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder, in each case as amended from time to time.

“**ERISA**” shall mean the United States Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“**ERISA Affiliate**” shall mean, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 4.14(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that include the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

“**Ernest Health**” shall have the meaning set forth in the preamble of this Agreement.

“**Ernest Health Board**” means the Board of Directors of Ernest Health.

“**Ernest Health Guaranty**” shall have the meaning as set forth in Section 6.2(h)(y).

“**Ernest Health Material Adverse Effect**” shall mean a material adverse effect on the financial condition, business, results of operations or assets of, Ernest Health and the EHI Subsidiaries, taken as a whole, except for any such effects resulting from or relating to (i) the negotiation, execution, announcement or performance of this Agreement or the consummation of the transactions contemplated by this Agreement or the matters set forth in the Schedules, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, licensors, distributors, partners, providers, employees or any matter described in the Schedules, (ii) changes in general business, economic or financial market conditions, so long as such change does not adversely affect the Ernest Health Parties, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which

they operate, (iii) changes in national or international political or social conditions (whether as a result of acts of terrorism, war (whether or not declared), armed conflicts or otherwise) so long as such change does not adversely affect Ernest Health Parties, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iv) the failure of Ernest Health to achieve any periodic earnings, revenue, expense or other estimated projections or budget, (v) changes to financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) so long as such change does not adversely affect the Ernest Health Parties, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (vi) changes in conditions generally applicable to businesses in the same or similar industries as Ernest Health Parties, so long as such change does not adversely affect the Ernest Health Parties, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate; (vii) changes in laws, regulations, rules, ordinances, policies, mandates, guidelines or other requirements of any Governmental Body applicable to the Ernest Health Parties; and (viii) changes in GAAP or its application.

“**Ernest Health Parties**” shall have the meaning set forth in the recitals of this Agreement.

“**Ernest Health Parties’ Representative**” shall have the meaning set forth in [Section 8.1](#).

“**Ernest Health Pledge Agreement**” shall have the meaning as set forth in [Section 6.2\(h\)\(ix\)](#).

“**ESA Reports**” means, individually and collectively, (i) those certain Phase I Environmental Site Assessments prepared for Ernest Health by Terracon Consultants, Inc. with respect to each Property (dated as of different dates during 2010) and made available to MPT Parties and/or Lender prior to the Effective Date and (ii) any other environmental site assessments with respect to a Property obtained by the MPT Parties prior to Closing pursuant to [Section 5.2\(b\)](#) hereof.

“**Excluded Assets**” shall have the meaning set forth in [Section 1.2](#).

“**Excluded Liabilities**” shall have the meaning set forth in [Section 1.5](#).

“**Facilities**” shall have the meaning set forth in the recitals of this Agreement.

“**FFC Funds**” shall have the meaning set forth in the preamble of this Agreement.

“**Financed Assets**” shall have the meaning set forth in [Section 1.1](#).

“**Financial Statements**” shall have the meaning as set forth in [Section 2.5\(a\)](#).

“**Financing Documents**” shall have the meaning as set forth in [Section 2.1\(b\)](#).

“**Fixtures**” shall mean all permanently affixed non-medical equipment, machinery, fixtures, and other items of real property, including all components thereof, now and hereafter located in, on or used in connection with, and permanently affixed to or incorporated into the Improvements, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, and built-in vacuum, cable transmission, oxygen and similar systems, all of which, to the greatest extent permitted by law, are hereby deemed by the parties to constitute real estate, together with all replacements, modifications, alterations and additions thereto.

“**GAAP**” shall mean U.S. generally accepted accounting principles, as applied on a basis that is consistent with the Ernest Health Parties’ Financial Statements.

“**Governmental Body**” shall mean any United States federal, state or local, or any supra-national or non-U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self-regulatory organization, court, tribunal or judicial or arbitral body, including the Securities and Exchange Commission.

“**Government Programs**” shall mean the government programs under Title XVIII of the Social Security Act (“**Medicare**”), Title XIX of the Social Security Act (“**Medicaid**”) and the TRICARE/CHAMPUS Program.

“**Ground Lease**” shall have the meaning set forth in Section 1.1.

“**Ground Lease Documents**” shall have the meaning set forth in Section 6.4(a)(iii).

“**Ground Leased Real Property**” shall have the meaning set forth in the recitals of this Agreement.

“**Hazardous Materials**” any substance deemed hazardous under any Environmental Law, including, without limitation, asbestos or any substance containing asbestos, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, infectious wastes, biomedical and medical wastes, chemicals known to cause cancer or reproductive toxicity, lead and lead-based paints, radon, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic wastes, materials or substances under any Environmental Law.

“**Health Benefit Laws**” shall mean laws relating to the licensure, certification, qualification or authority to transact business relating to the provision of, or payment for, or both the provision of and payment for, health benefits, health care or insurance coverage, including ERISA, COBRA, HIPAA, SCHIP, Medicare, Medicaid, CHAMPUS/TriCare, and laws relating to the regulation of workers compensation, utilization review, third party administrative services, case management and coordination of benefits.

“**Health Compliance Laws**” shall mean all applicable laws pertaining to billing, kickbacks, false claims, self-referral, claims processing, marketing, HIPAA security standards

for the storage, maintenance, transmission, utilization and access to and privacy of patient information, and HIPAA and state standards for electronic transactions and data code sets, including, without limitation, the False Claims Act (31 U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section 51 et seq.), the Federal Health Care Programs Anti-Kickback Statute (42 U.S.C. Section 1320a-7a(b)), the Stark Law, the Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a), or the Truth in Negotiations (10 U.S.C. Section 2304 et seq.), Health Care Fraud (18 U.S.C. Section 1347), Mail Fraud (18 U.S.C. Section 1341), Wire Fraud (18 U.S.C. Section 1343), Theft or Embezzlement (18 U.S.C. Section 669), Fraud and False Statements (18 U.S.C. Section 1001), False Statements Relating to Health Care Matters (18 U.S.C. Section 1035), and any other applicable federal health care law or equivalent state statutes or any rule or regulation promulgated by a Governmental Body with respect to any of the foregoing, as any of the same may be amended, modified and/or restated from time to time.

**“Healthcare Laws”** shall mean Health Benefit Laws, Health Compliance Laws and Information Privacy and Security Laws.

**“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations.

**“Improvements”** means the Facilities and all other buildings, improvements, structures and Fixtures located on the Land (either on the date of this Agreement or on the Closing Date), including without limitation, landscaping, parking lots and structures, roads, drainage and all above ground and underground utility structures, equipment systems and other so-called “infrastructure” improvements.

**“Indebtedness”** shall mean (i) any indebtedness of any of the Ernest Health Parties for borrowed money and accrued but unpaid interest, premiums and penalties relating thereto, (ii) any indebtedness of any of the Ernest Health Parties evidenced by a note, bond, debenture or other similar security, (iii) any lease that has been accounted for as a capital lease on the balance sheet of any of the Ernest Health Parties, as applicable, prepared in accordance with GAAP and (iv) any indebtedness referred to in clauses (i) through (iii) above of any Person which is either guaranteed by, or secured by an Encumbrance upon any property or asset owned by, any of the Ernest Health Parties; provided, however, that for the avoidance of doubt, Indebtedness shall exclude the amount of the Company Transaction Expenses (as defined in the Merger Agreement), and shall further exclude the CIT Loan if and to the extent the CIT Loan is satisfied out of the proceeds payable to any of the Ernest Health Parties pursuant to this Agreement.

**“Individual Purchase Price”** shall have the meaning set forth in Section 1.8.

**“Individual Real Estate Loan Amount”** shall have the meaning set forth in Section 1.8.

**“Information Privacy or Security Laws”** shall mean the HIPAA Laws and any other laws concerning the privacy and/or security of Personal Information, including but not limited to the Gramm-Leach-Bliley Act, state data breach notification laws, state health information privacy laws, the Federal Trade Commission Act and state consumer protection laws.

**“Insurance Policies”** shall have the meaning as set forth in Section 2.14.

**“Intellectual Property”** shall mean (i) patents, registered and unregistered trademarks and service marks, brand names, trade names, domain names, copyrights, designs and trade secrets and (ii) applications for and registrations of such patents, trademarks, service marks, trade names, domain names, copyrights and designs.

**“IRF Operators”** shall mean, collectively:

- (a) Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company;
- (b) Greenwood Regional Rehabilitation Hospital LLC, a South Carolina limited liability company;
- (c) Mountain Valley Regional Rehabilitation Hospital, Inc., a Delaware corporation;
- (d) New Braunfels Regional Rehabilitation Hospital, Inc., a Delaware corporation;
- (e) Northern Colorado Rehabilitation Hospital, Inc., a Colorado corporation;
- (f) South Texas Rehabilitation Hospital, LP, a Delaware limited partnership;
- (g) Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company;
- (h) Rehabilitation Hospital of Southern New Mexico, Inc., a Delaware corporation; and
- (i) Spartanburg Rehabilitation Institute, Inc., a Delaware corporation f/k/a Regional Rehabilitation Hospital, Inc.

**“Joint Commission”** shall mean The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations.

**“JV Entity”** shall have the meaning as set forth in the recitals of this Agreement.

**“JV Entity Guaranty”** shall have the meaning as set forth in Section 6.2(h)(vi).

**“JV Entity Pledge Agreement”** shall have the meaning as set forth in Section 6.2(h)(x).

**“Knowledge”** or **“Knowledge of the Ernest Health Parties”** shall mean with respect to the Ernest Health Parties, the actual knowledge of a particular fact or matter, after due inquiry, of Darby Brockette, Keith Longson, Coe Schlicher, Tony Hernandez, David Fuller, or Denise Kann.

**“Labor Proceeding”** shall have the meaning as set forth in Section 2.11(e).

**“Land”** shall have the meaning set forth in the recitals of this Agreement.

**“Law”** means any federal, state or local statute, rule, regulation, ordinance, order, code, policy or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof by a Governmental Body or otherwise, including, without limitation, any judicial or administrative order, consent, decree or judgment.

“**Leasing Documents**” shall have the meaning set forth in the recitals of this Agreement.

“**Lenders**” shall have the meaning set forth in the preamble of this Agreement.

“**Liability**” or “**Liabilities**” shall mean any direct or indirect liabilities, Indebtedness, commitments, obligations, duties or responsibilities of any kind or nature, whether accrued or fixed, absolute or contingent, determined or determinable, matured or unmatured due or to become due, asserted or unasserted or known or unknown and regardless of whether it is accrued or required to be accrued or disclosed pursuant to GAAP.

“**Licenses**” shall mean all notifications, licenses, permits, franchises, certificates, approvals, exemptions, classifications, registrations and other similar documents and authorizations issued by any Governmental Body (including, without limitation, all provider agreements), and applications, amendments and modifications of any of the foregoing.

“**Litigation**” shall mean any litigation, claims, disputes, suits, actions, proceedings, inquiries, arbitration, mediation, or investigations.

“**LTCH Operators**” shall mean, collectively:

- (a) Advanced Care Hospital of Montana, Inc., a Delaware corporation;
- (b) Advanced Care Hospital of Northern Colorado, LLC, a Delaware limited liability company;
- (c) Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company.
- (d) Laredo Specialty Hospital, LP, a Delaware limited partnership;
- (e) Mesquite Specialty Hospital, LP, a Delaware limited partnership;
- (f) Northern Idaho Advanced Care Hospital, Inc., a Delaware corporation;
- (g) Southwest Idaho Advanced Care Hospital, Inc., a Delaware corporation; and
- (h) Utah Valley Specialty Hospital, Inc., a Delaware corporation.

“**Losses**” shall mean any and all losses, damages, awards, judgments, costs and expenses actually suffered or incurred by a Person; provided, that Losses shall not include any consequential, incidental or indirect damages, diminution in value damages, lost profits or punitive, special or exemplary damages, and in particular, without limitation, no “multiple of profits” or “multiple of cash flow” or similar valuation methodology shall be used in calculating the amount of any Losses.

“**Management Company**” means Guiding Health Management Group, LLC, a Delaware limited liability company.



“**Management Subordination**” shall have the meaning set forth in Section 6.2(h)(xvi).

“**Material Contracts**” shall have the meaning as set forth in Section 2.12(b).

“**Merger**” shall mean the merger contemplated in the Merger Agreement.

“**Merger Agreement**” shall have the meaning set forth in the recitals of this Agreement.

“**MergerCo**” shall have the meaning set forth in the recitals to this Agreement.

“**MPT Material Adverse Effect**” shall mean a material adverse effect on the financial condition, business, results of operations or assets, of the MPT Parties, taken as a whole, except for any such effects resulting from or relating to (i) the negotiation, execution, announcement or performance of this Agreement or the consummation of the transactions contemplated by this Agreement or the matters set forth in the Schedules, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, licensors, distributors, partners, providers, employees or any matter described in the Schedules, (ii) changes in general business, economic or financial market conditions, so long as such change does not adversely affect the MPT Parties or their Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iii) changes in national or international political or social conditions (whether as a result of acts of terrorism, war (whether or not declared), armed conflicts or otherwise) so long as such change does not adversely affect the MPT Parties or their Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iv) changes to financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) so long as such change does not adversely affect the MPT Parties or their Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (v) changes in conditions generally applicable to businesses in the same or similar industries as the MPT Parties and their Affiliates, so long as such change does not adversely affect the MPT Parties or their Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate; (vi) changes in laws, regulations, rules, ordinances, policies, mandates, guidelines or other requirements of any Governmental Body applicable to the MPT Parties and their Affiliates; and (vii) changes in GAAP or its application.

“**MPT Operating Partnership**” shall have the meaning set forth in Section 3.4.

“**MPT Parties**” shall have the meaning set forth in the preamble of this Agreement.

“**MPT Representative**” shall have the meaning as set forth in Section 8.2.

“**MPT TRS Entity**” shall have the meaning set forth in the recitals of this Agreement.

“**MPT TRS Entity Subsidiaries**” means, collectively, (i) MPT of Johnstown Hospital, LLC, a Delaware limited liability company, (ii) MPT of Post Falls Hospital, LLC, a Delaware limited liability company, (iii) MPT of Boise Hospital, LLC, a Delaware limited liability company, (iv) MPT of Billings Hospital, LLC, a Delaware limited liability company, (v) MPT of

Greenwood Hospital, LLC, a Delaware limited liability company, (vi) MPT of Comal County Hospital, LLC, a Delaware limited liability company, (vii) MPT of Mesquite Hospital, LLC, a Delaware limited liability company, (viii) MPT of Laredo Hospital, LLC, a Delaware limited liability company, (ix) MPT of Provo Hospital, LLC, a Delaware limited liability company, and (x) MPT of Casper Hospital, LLC, a Delaware limited liability company.

“**Noncompetition Agreements**” shall have the meaning as set forth in Section 6.2(h)(xi).

“**OFAC**” shall have the meaning as set forth in Section 2.19(a).

“**Option**” means each option to acquire Common Shares in Ernest Health under Ernest Health’s 2004 Stock Option Plan, as amended to date.

“**Ordinary Course of Business**” means the ordinary course of business of Ernest Health and the EHI Subsidiaries consistent with past practice.

“**Owned Facility**” and “**Owned Facilities**” shall each have the meaning set forth in the recitals of this Agreement.

“**Owned Land**” shall have the meaning set forth in the recitals of this Agreement.

“**Owned Property**” shall have the meaning set forth in the recitals of this Agreement.

“**Owned Real Property**” shall have the meaning set forth in the recitals of this Agreement.

“**Parties.**” shall have the meaning set forth in the preamble of this Agreement.

“**Patriot Act**” shall have the meaning as set forth in Section 2.19(a).

“**Payor Contract**” shall have the meaning as set forth in Section 2.16(e).

“**Permitted Encumbrance**” shall mean each of (a) Encumbrances for or arising from current taxes not yet due and payable or which are being contested in good faith by appropriate proceedings; (b) carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s or other similar Encumbrances arising in the Ordinary Course of Business with respect to the Schedule 4.4 Projects; (c) Encumbrances on any tangible personal property acquired or held by Ernest Health or the EHI Subsidiaries in the Ordinary Course of Business, securing indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such property; (d) Encumbrances securing capital lease obligations with respect to tangible personal property; (e) easements, covenants, conditions and other restrictions, in each such case, of public record; (f) matters set forth in the Title Commitments issued by the Title Company in accordance with this Agreement (excluding liens in respect of borrowed money); (g) matters disclosed on the Surveys delivered pursuant to this Agreement; and (f) other matters, encumbrances and defects that would not otherwise cause the Property to be no longer “marketable” or are otherwise approved by the MPT Parties in writing.

“**Person**” shall mean an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity or group (as defined in [Section 13\(d\)](#) of the Securities Exchange Act of 1934, as amended).

“**Personal Information**” shall mean the information pertaining to an individual that is regulated or protected by one or more of the Information Privacy and Security Laws.

“**Personal Property**” shall have the meaning set forth in [Section 2.7\(a\)](#).

“**Personal Property Leases**” shall have the meaning set forth in [Section 2.7\(c\)](#).

“**Physician**” shall have the meaning as defined in the Stark Law.

“**Project Expenditure Period**” shall have the meaning set forth in [Section 4.4\(a\)](#).

“**Public Taking**” shall have the meaning set forth in [Section 2.21\(e\)](#).

“**Purchase Price**” shall have the meaning set forth in [Section 1.3](#).

“**Real Estate Loans**” shall have the meaning set forth in the recitals of this Agreement.

“**Real Estate Loan Agreement**” shall have the meaning set forth in the recitals of this Agreement.

“**Real Estate Loan Amount**” shall have the meaning set forth in [Section 1.3](#).

“**Real Estate Loan Documents**” shall have the meaning set forth in the recitals of this Agreement.

“**Real Property**” shall have the meaning set forth in the recitals of this Agreement.

“**Real Property Master Lease Agreement**” shall have the meaning as set forth in the recitals of this Agreement.

“**Real Property Master Sublease Agreement**” shall have the meaning as set forth in the recitals of this Agreement.

“**Representatives**” shall mean the directors, officers, employees, Affiliates, agents, investment bankers, financial advisors, attorneys, accountants, advisors, brokers, finders, consultants or representatives of the MPT Parties, the Ernest Health Parties, or any of their respective Affiliates, as the case may be.

“**Sales**” shall have the meaning set forth in the recitals of this Agreement.

“**Schedule Supplement**” has the meaning set forth in [Section 9.2](#).

“**Schedules**” shall have the meaning as set forth in [Section 9.2](#).

“**Schedule 4.4 Projects**” shall have the meaning set forth in [Section 4.4\(a\)](#).

“**Schedule 4.4 Project Expenditure Reimbursement Amount**” shall have the meaning set forth in Section 4.4(c).

“**Security Agreement**” shall have the meaning as set forth in Section 8.2(h)(viii).

“**Sellers**” shall have the meaning set forth in the preamble of this Agreement.

“**Stark Law**” shall mean the Ethics in Patient Referrals Act of 1989, as amended, 42 U.S.C. 1395nn.

“**Stockholder Written Consent**” shall mean the written consent of holders of Company Shares entitled to vote on this Agreement in an amount necessary, under applicable law and in accordance with the Delaware General Corporation Law (as amended) and Ernest Health’s Certificate of Incorporation and Bylaws, as applicable, approving and adopting this Agreement, the Transactions, the Merger Agreement, the Merger, and the other transactions contemplated hereby and thereby, and approving the appointment of the Stockholders’ Representative (as defined in the Merger Agreement).

“**Subsidiaries’ Approvals**” shall have the meaning ascribed thereto in the Merger Agreement.

“**Subsidiary**” shall mean with respect to any entity, that such entity shall be deemed to be a “Subsidiary” of another Person if such other Person directly or indirectly owns, beneficially or of record, (i) an amount of voting securities or other interests in such entity that is sufficient to enable such Person to elect at least a majority of the members of such entity’s board of directors or other governing body, or (ii) at least a majority of the outstanding equity interests of such entity.

“**Surveys**” means “as-built” ALTA surveys obtained by the MPT Parties, at the MPT Parties’ expense, by an engineer or surveyor licensed in the State(s) in which the Real Property is located and which are otherwise in form and substance satisfactory to the MPT Parties, in their sole discretion.

“**Tax Returns**” shall mean any report, return, document or other filing (including any additional or supporting material and any amendments or supplements) required to be supplied to any Governmental Body with respect to Taxes.

“**Taxes**” shall mean any and all taxes, charges, fees, levies or other assessments, imposed by any taxing authority, and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies or other assessments.

“**Termination Date**” shall have the meaning as set forth in Section 7.1(c).

“**Tenant Leases**” shall have the meaning set forth in the Section 1.2(f).

“**Title Commitments**” means the title commitments issued by the Title Company to the applicable MPT Parties, at the MPT Parties’ expense, and pursuant to the terms of which the Title Company has committed to issue the Title Policies to the applicable MPT Parties.

“**Title Company**” means First American Title Insurance Company.

“**Title Policies**” means the ALTA owner’s leasehold and lender title insurance policies issued by the Title Company to the applicable MPT Parties, at the MPT Parties’ expense, and which insures title to the Real Property in an amount, containing such endorsements, and otherwise in such form and substance as the MPT Parties Lender may require, in their sole discretion.

“**Total Development Costs**” shall have the meaning set forth in Section 5.9(a).

“**Transactions**” shall have the meaning set forth in the recitals of this Agreement.

“**Transaction Documents**” means, collectively, this Agreement, the Merger Agreement, the Acquisition Promissory Note, the Real Property Master Lease Agreement, the Real Property Master Sublease Agreement, the Real Estate Loan Documents, and each other agreement entered into or document delivered in connection with the transactions contemplated by any of the foregoing.

“**Warranties**” All warranties, representations and guaranties with respect to any of the Acquired Assets or Financed Assets, whether express or implied, which Ernest Health or EHI Subsidiaries now holds or under which either of them is the beneficiary.

“**Wyoming Facility**” shall have the meaning set forth in the recitals of this Agreement.

“**Wyoming Leased Land**” shall have the meaning set forth in the recitals of this Agreement.

**SCHEDULE 1**

Sellers, Borrowers, Buyers, Lenders and Facilities

| <u>Facilities<br/>(Address)</u>                                  | <u>Sellers (S)<sup>2</sup></u>   |
|--|--|
| 3528 Gabel Road<br>Billings, Montana 59102                       | Advanced Care Hospital of Montana, Inc.,<br>a Delaware corporation ( )                             |
| 4401A Union Street<br>Johnston, Colorado 80534 <sup>3</sup>      | Northern Colorado Rehabilitation Hospital, Inc.,<br>a Colorado corporation ( )                     |
| 600 North Cecil<br>Post Falls, Idaho 83854                       | Northern Idaho Advanced Care Hospital, Inc.,<br>a Delaware corporation ( )                         |
| 1530 Parkway<br>Greenwood, South Carolina 29646                  | Greenwood Regional Rehabilitation Hospital, LLC,<br>a South Carolina limited liability company ( ) |
| 2005 Bustamante Street<br>Laredo, Texas 78041                    | Laredo Specialty Hospital, LP,<br>a Delaware limited partnership ( )                               |
| 306 West River Bend Lane<br>Provo, Utah 84604                    | Utah Valley Specialty Hospital, Inc.,<br>a Delaware corporation ( )                                |
| 1024 North Galloway Avenue<br>Mesquite, Texas 75149 <sup>4</sup> | Mesquite Specialty Hospital, LP,<br>a Delaware limited partnership ( )                             |
| 5715 E. 2 <sup>nd</sup> Street<br>Casper, Wyoming 82609          | Elkhorn Valley Rehabilitation Hospital, LLC,<br>a Delaware limited liability company               |
| 651 West Franklin Road<br>Boise, Idaho 83709                     | Southwest Idaho Advanced Care Hospital, Inc.,<br>a Delaware corporation ( )                        |
| 2041 Sundance Parkway<br>New Braunfels, Texas 78130              | New Braunfels Regional Rehabilitation, Inc.,<br>a Delaware corporation ( ) <sup>5</sup>            |

<sup>2</sup> Provo, Utah Land to be added  
<sup>3</sup> Also a Co-Located Facility  
<sup>4</sup> Also a Co-Located Facility  
<sup>5</sup> Titleholder to be confirmed

**Facilities  
(Address)**

3700 North Windsong Drive  
Prescott Valley, Arizona 86314

425 East Alton Gloor Blvd  
Brownsville, Texas 78526

4441 East Lohman Avenue  
Las Cruces, New Mexico  
88011

4441 East Lohman Avenue  
Las Cruces, New Mexico 88011<sup>6</sup>

**Facilities  
(Address)**

3528 Gabel Road  
Billings, Montana 59102

4401A Union Street  
Johnston, Colorado 80534

600 North Cecil  
Post Falls, Idaho 83854

1530 Parkway  
Greenwood, South Carolina 29646

2005 Bustamante Street  
Laredo, Texas 78041

306 West River Bend Lane  
Provo, Utah 84604

1024 North Galloway Avenue, Mesquite, Texas  
75149

**Borrowers (B)**

Mountain Valley Regional Rehabilitation Hospital, Inc., a Delaware corporation (\_\_\_)

South Texas Rehabilitation Hospital, LP, a Delaware limited partnership (\_\_\_)

Rehabilitation Hospital of Southern New Mexico, Inc., a Delaware corporation (\_\_\_)

Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company ( )<sup>7</sup>

**Buyers (B) - (MPT Real Estate Owners)**

MPT OF BILLINGS, LLC,  
a Delaware limited liability company ( )

MPT OF JOHNSTOWN, LLC,  
a Delaware limited liability company ( )

MPT OF POST FALLS, LLC,  
a Delaware limited liability company ( )

MPT OF GREENWOOD, LLC,  
a Delaware limited liability company ( )

MPT OF LAREDO, LLC,  
a Delaware limited liability company ( )

MPT OF PROVO, LLC,  
a Delaware limited liability company ( )

MPT OF MESQUITE, LLC,  
a Delaware limited liability company ( )

<sup>6</sup> Also a Co-Located Facility

<sup>7</sup> Also a Co-Located Operator

5715 E. 2<sup>nd</sup> Street  
Casper, Wyoming 82609

651 West Franklin Road  
Boise, Idaho 83709

2041 Sundance Parkway  
New Braunfels, Texas 78130

**Facilities**  
**(Address)**

3700 North Windsong Drive  
Prescott Valley, Arizona 86314

425 East Alton Gloor Blvd  
Brownsville, Texas 78526

4441 East Lohman Avenue  
Las Cruces, New Mexico 88011

MPT OF CASPER, LLC,  
a Delaware limited liability company ( )

MPT OF BOISE, LLC,  
a Delaware limited liability company ( )

MPT OF COMAL COUNTY, LLC,  
a Delaware limited liability company ( )

**Lenders (L) -(MPT Real Estate Lenders)**

MPT OF PRESCOTT VALLEY [HOSPITAL], LLC,  
a Delaware limited liability company ( )

MPT OF BROWNSVILLE [HOSPITAL], LLC,  
a Delaware limited liability company ( )

MPT OF LAS CRUCES [HOSPITAL], LLC,  
a Delaware limited liability company ( )



**FORM OF LEASE AGREEMENT**

by and among

**THE ENTITIES LISTED ON SCHEDULE 1-A ATTACHED HERETO,**

collectively, as Lessor

AND

**THE ENTITIES LISTED ON SCHEDULE 1-B ATTACHED HERETO,**

collectively, jointly and severally, as Lessee

January 31, 2012

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## LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease") is dated this 31st day of January, 2012, by and among the entities listed on ***Schedule 1-A*** attached hereto and made a part hereof by reference and incorporation (collectively, the "Lessor"), having their principal office at 1000 Urban Center Drive, Suite 501, Birmingham, Alabama 35242, and the entities listed on ***Schedule 1-B*** attached hereto and made a part hereof by reference and incorporation (collectively, jointly and severally, the "Lessee"), having their principal office at 1000 Urban Center Drive, Suite 501, Birmingham, Alabama 35242.

### STATEMENT OF INTENT

Subject to Articles V, XII, XIII, XXV and Section 14.2, this Lease constitutes one unitary, indivisible, non-severable true lease of all the Leased Property. This Lease does not constitute separate leases contained in one document each governed by similar terms. The use of the expression "unitary lease" to describe this Lease is not merely for convenient reference. It is the conscious choice of a substantive appellation to express the intent of Lessor and Lessee in regard to an integral part of this transaction, which is to accomplish the creation of an indivisible lease. Lessor and Lessee agree that from an economic point of view the portions of the Leased Property leased pursuant to this Lease constitute one economic unit and that the Rent and all other provisions have been negotiated and agreed to based upon a lease of all the portions of the Leased Property as a single, composite, inseparable transaction. Except as expressly provided in this Lease for specific isolated purposes (and in such cases only to the extent expressly so stated), all provisions of this Lease, including definitions, commencement and expiration dates, rental provisions, use provisions, renewal provisions, breach, default, enforcement, termination and assignment and subletting provisions, shall apply equally and uniformly to all the Leased Property as one unit and are not severable. The economic terms of this Lease would have been substantially different had separate leases or a "divisible" lease been acceptable to Lessor. A default of any of the terms or conditions of this Lease occurring with respect to any portion of the Leased Property relating to a particular Facility shall constitute a default under this Lease with respect to all the Leased Property. Except as expressly provided in this Lease for specific isolated purposes (and in such cases only to the extent expressly so stated), Lessor and Lessee agree that the provisions of this Lease shall at all times be construed, interpreted and applied such that the intention of Lessor and Lessee to create a unitary lease shall be preserved and maintained. Lessor and Lessee agree that for the purposes of any assumption, rejection or assignment of this Lease under 11 U.S.C. Section 365 or any amendment or successor section thereof, this is one indivisible and non-severable lease dealing with and covering one legal and economic unit which must be assumed, rejected or assigned as a whole with respect to all (and only all) the Leased Property.

**WITNESSETH:**

WHEREAS, Lessor is the current owner of that certain real property more particularly described on ***Exhibits A-1*** through ***A-9*** attached hereto and incorporated herein by reference (collectively, the "Owned Land"), and is also the current owner of all of the Leased Improvements (as hereinafter defined) located on the Owned Land;

WHEREAS, pursuant to that certain Assignment and Assumption of Ground Lease dated as of \_\_\_\_\_, 2012 (the "Assignment of Ground Lease"), Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company, assigned to Lessor all of its right, title and interest in, to and under that certain Ground Lease dated December 4, 2007 (the "Wyoming Ground Lease") between Natrona County, Wyoming, as lessor (the "Wyoming Ground Lease Lessor"), and Elkhorn Valley Rehabilitation Hospital, LLC, as lessee, whereby Lessor (i) holds a leasehold interest in the real property more particularly described in the Wyoming Ground Lease, which property is more particularly identified on ***Exhibit A-10*** (the "Wyoming Ground Leased Property"), and (ii) owns the interest in the improvements located on the Wyoming Ground Leased Property (the "Wyoming Facility Improvements") during the term of the Wyoming Ground Lease (after which time the improvements located on the Wyoming Ground Leased Property revert to the Wyoming Ground Lease Lessor);

WHEREAS, Lessor desires to lease the Land (as hereinafter defined) and Leased Improvements to Lessee, and Lessee desires to lease the same from Lessor, on the terms and conditions hereinafter provided; and

WHEREAS, Lessor acknowledges that, contemporaneously herewith, Lessee will enter into a Lease Agreement (as the same may be modified, amended or restated from time to time, the "Sublease") to sublease the Land and the Leased Improvements to those entities listed on ***Schedule 1-C*** attached hereto and made a part hereof by reference and incorporation (collectively, the "Sublessee"), and Lessor hereby approves the Sublease.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I  
DEFINITIONS

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP at the applicable time, (c) all references herein to Articles, Sections, Schedules, parties and Exhibits shall be deemed to refer to Articles, Sections and Schedules of, and parties and Exhibits to, this Lease, unless the context shall otherwise require, and (d) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

Additional Charges: As defined in Section 3.2.

Adjustment Date: January 1 of each year during the Term (as hereinafter defined), commencing on January 1, 2013.

Affiliate: With respect to any Person (i) any Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, (ii) any other Person that owns, beneficially, directly or indirectly, 10% or more of the outstanding capital stock, shares or equity interests of such Person, or (iii) any officer, director, employee, partner, member, manager or trustee of such Person or any Person controlling, controlled by or under common control with such Person (excluding trustees and persons serving in similar capacities who are not otherwise an Affiliate of such Person). For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities or otherwise.

Assignment of Ground Lease: As defined in the Recitals.

Award: All compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation.

Bankruptcy Code: Chapter 11 U.S.C. § 101, et seq.

Base Rent: The aggregate of the Allocated Base Rent relating to all of the Facilities.

Billings Facility: That certain forty (40)-licensed bed LTCH located in Billings, Yellowstone County, Montana.

Boise Facility: That certain forty (40)-licensed bed LTCH located in Boise, Ada County, Idaho.

Business: As applicable, the operation of the IRF Facilities as IRFs, the operation of the MHC Facilities as MHCs, and the operation of the LTCH Facilities as LTCHs, and, in each case, the engagement in and pursuit and conduct of any business venture or activity incident thereto.

Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which money centers in the City of New York, New York are authorized or obligated by law or executive order to close.

**Capital Additions:** With respect to each Facility, (a) extraordinary renovations or expansions of buildings, structures or other improvements currently located on that portion of the Leased Property where such Facility is located (or on additional parcels added to such Leased Property), (b) the addition of one or more parcels of land to such portion of the Leased Property (whether by purchase or ground lease), or (c) the addition of one or more new buildings or additional structures placed on such portion of the Leased Property or any such additional parcels of land, including, without limitation, the construction of a new wing or new story.

**Casper Wyoming Facility:** That certain forty (40)-licensed bed IRF located in Casper, Natrona County, Wyoming.

**Commencement Date:** \_\_\_\_\_, 2012.

**Condemnation:** The (i) exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor or (ii) voluntary sale or transfer by Lessor to any Condemnor, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

**Condemnor:** Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

**Consumer Price Index:** The Consumer Price Index, all urban consumers, all items, U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics, in which 1982-1984 equals one hundred (100). If the Consumer Price Index is discontinued or revised during the term of this Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

**CPI:** The Consumer Price Index.

**Date of Taking:** The date the Condemnor has the right to possession of the property being condemned.

**Declarations:** As defined in Section 31.8.

**Dollar Amount:** As defined in Section 7.2.

**DTPA:** As defined in Schedule 31.13.

**Encumbrances:** As defined in Article XXXVI.

**Escalator:** As defined in Section 3.1(b).

**Events of Default:** As defined in Section 14.1.



Existing Subleases: As defined in Section 20.4.

Extension Notice: As defined in Article II.

Extension Term(s): As defined in Article II.

Facility: Each of the IRF Facilities, the MHC Facilities and the LTCH Facilities, sometimes collectively referred to as the “Facilities.”

Facility Instrument: A note (whether secured or unsecured), loan agreement, credit agreement, guaranty, security agreement, mortgage, deed of trust or other agreement pursuant to which a Facility Lender has provided financing to Lessor in connection with any portion of the Leased Property or any part thereof, or financing provided to Lessee, if such financing is provided by Lessor or any Affiliate of Lessor or in connection with a Capital Addition, and any and all renewals, replacements, modifications, supplements, consolidations, spreaders and extensions thereof.

Facility Lender: A holder (which may include any Affiliate of Lessor) of any Facility Instrument.

Facility Lessee: The individual lessee which operates a particular Facility.

Facility Loan: A loan made by a Facility Lender.

Fixed Term: As defined in Article II.

Fixtures: All equipment, machinery, fixtures, and other items of real property, including all components thereof, now and hereafter located in, on, or used in connection with, and permanently affixed to or incorporated into the buildings and structures on, the Land, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, and built-in oxygen and vacuum systems, all of which, to the greatest extent permitted by law, are hereby deemed by the parties to constitute real estate, together with all replacements, modifications, alterations and additions thereto.

Force Majeure: As defined in Section 31.9.

GAAP: The United States generally accepted accounting principles and practices as in effect from time to time and applied consistently throughout the periods involved.

**Governmental Body:** Any United States federal, state or local, or any supra national or non U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self regulatory organization, court, tribunal or judicial or arbitral body, including the Securities and Exchange Commission.

**Greenwood Facility:** That certain thirty-four (34)-licensed bed IRF (in addition to twelve (12)-licensed skilled nursing facility beds) located in Greenwood, Greenwood County, South Carolina.

**Ground Lease Rent:** All rent and all other sums and amounts due and payable under the Wyoming Ground Lease.

**Health Benefit Laws:** Laws relating to the licensure, certification, qualification or authority to transact business relating to the provision of, or payment for, or both the provision of and payment for, health benefits, health care or insurance coverage, including ERISA, COBRA, HIPAA, SCHIP, Medicare, Medicaid, CHAMPUS/TriCare, and laws relating to the regulation of workers compensation, utilization review, third party administrative services, case management, and coordination of benefits.

**Health Compliance Laws:** All applicable laws pertaining to billing, kickbacks, false claims, self-referral, claims processing, marketing, HIPAA security standards for the storage, maintenance, transmission, utilization and access to and privacy of patient information, and HIPAA and state standards for electronic transactions and data code sets, including, without limitation, the False Claims Act (31 U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section 51 et seq.), the Federal Health Care Programs Anti-Kickback Statute (42 U.S.C. Section 1320a-7a(b)), the Stark Law, the Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a), or the Truth in Negotiations (10 U.S.C. Section 2304 et seq.), Health Care Fraud (18 U.S.C. Section 1347), Mail Fraud (18 U.S.C. Section 1341), Wire Fraud (18 U.S.C. Section 1343), Theft or Embezzlement (18 U.S.C. Section 669), Fraud and False Statements (18 U.S.C. Section 1001), False Statements Relating to Health Care Matters (18 U.S.C. Section 1035), and any other applicable federal health care law or equivalent state statutes or any rule or regulation promulgated by a Governmental Body with respect to any of the foregoing, as any of the same may be amended, modified and/or restated from time to time.

**Healthcare Laws:** Health Benefit Laws, Health Compliance Laws and Information Privacy and Security Laws.

**HWH Requirements:** The requirements set forth in C.F.R. Title 42, Part 412, as applicable, and any state laws and regulations applicable to hospitals located in the same building or on the same campus as another hospital, as the same may be amended, modified or restated from time to time.

**Impacted Facility:** As defined in Article XII.

**Impositions:** Collectively, with respect to each Facility, all civil monetary penalties, fines and overpayments imposed by state and federal regulatory authorities, all Real Estate Taxes, all state and local sales and use taxes, single business, gross receipts, transaction privilege, rent or similar taxes, franchise (including but not limited to taxes based on capital, net worth or assets), license, business entity, annual report fees and other taxes imposed on any business entities, including limited partnerships, limited liability companies and other “pass through” entities, and any such taxes and statutory representation fees imposed on Lessor or Lessor’s Affiliates (including Lessor’s parent organizations), sales and use taxes, all single business, gross receipts, transaction privilege, rent or similar taxes and assessments (including, without limitation, all assessments, charges and costs imposed under the Permitted Exceptions (including, without limitation, all penalties, fines, damages, costs and expenses for any violation of or a default under any of the Permitted Exceptions)), all assessments for utilities, public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), ground rents, water, wastewater, sewer, sanitary sewer or other rents and charges, excises, tax levies, fees (including, without limitation, impact, development, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the portion of the Leased Property relating to such Facility, the Rent relating thereto (including all interest and penalties thereon due to any failure in payment by Lessee), and all other fees, costs and expenses which at any time prior to, during or in respect of the Term may be charged, assessed or imposed on or in respect of or be a lien upon (a) Lessor or Lessor’s interest in the portion of the Leased Property relating to such Facility, (b) such portion of the Leased Property or any part thereof or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, sales from, or activity conducted on, or in connection with, such portion of the Leased Property or the leasing or use of such portion of the Leased Property or any part thereof. Notwithstanding any provision hereof to the contrary, nothing contained in this Lease shall be construed to require Lessee to pay (1) any tax based on net income (whether denominated as a financial institutions or other tax) imposed on Lessor, or (2) any transfer tax of Lessor, or (3) any tax imposed with respect to the sale, exchange or other disposition by Lessor of any portion of the Leased Property or the proceeds thereof, or (4) except as expressly provided elsewhere in this Lease, any principal or interest on any Encumbrance on any portion of the Leased Property, except to the extent that any tax, assessment, tax levy or charge which Lessee is obligated to pay pursuant to the first sentence of this definition and which is in effect at any time during the Term is totally or partially repealed, and a tax, assessment, tax levy or charge set forth in clause (1) or (2) is levied, assessed or imposed expressly in lieu thereof, in which case the substitute tax, assessment, tax levy or charge shall be deemed to be an Imposition.

**Information Privacy or Security Laws:** The HIPAA Laws and any other laws concerning the privacy and/or security of Personal Information, including but not limited to the Gramm-Leach-Bliley Act, state data breach notification laws, state health information privacy laws, the Federal Trade Commission Act and state consumer protection laws.

Insurance Premiums: As defined in Section 4.4.

Insurance Requirements: All terms of any insurance policy required by this Lease and all requirements of the issuer of any such policy, and such additional insurance which Lessor may reasonably require.

IRF: An in-patient rehabilitation facility operated on the Leased Property, or a portion thereof, licensed in the state of its location.

IRF Facilities: Collectively, the Greenwood Facility, the Casper Facility and the New Braunfels Facility.

Land: The Owned Land and the Wyoming Ground Leased Property, together with all hereditaments, easements, mineral rights, rights of way and other appurtenances related thereto, and any other parcel of land acquired or leased and made subject to this Lease. With respect to each Facility, "Land" shall mean the portion of the Land relating to such Facility or any Capital Additions with respect thereto.

Laredo Facility: That certain sixty (60)-licensed bed LTCH located in Laredo, Webb County, Texas.

Late Payment Penalty Rate: Shall mean on any date a rate equal to Five Percent (5%).

Lease: As defined in the Preamble.

Lease Base: As to each of the Facilities, as defined on Schedule 3.1(a) attached hereto and made a part hereof by reference and incorporation.

Lease Rate: A per annum rate equal to Eight Percent (8.0%), subject to the Escalator as set forth in Section 3.1(b).

Leased Improvements: With respect to each portion of the Land relating to a particular Facility, those items described in Article II(b) relating to such portion of the Land.

Leased Property: With respect to each Facility, those items described in Article II, as well as all Capital Additions thereto.

Legal Requirements: With respect to each Facility and the portion of the Leased Property relating thereto, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting such Leased

Property, Lessee's operation of the Business on such portion of the Leased Property, or the construction, use or alteration of such Leased Property (including, without limitation, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973), whether now or hereafter enacted and in force, including any which may (a) require repairs, modifications, or alterations in or to such portion of the Leased Property, or (b) in any way adversely affect the use and enjoyment thereof, and all permits, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Lessee, at any time in force affecting such portion of the Leased Property.

Lessee: Each of the entities listed on **Schedule 1-B** attached hereto, jointly and severally, together with their respective successors and permitted assigns.

Lessee's Personal Property: With respect to each Facility, all of Lessee's consumable inventory and supplies, machinery, equipment, furniture, furnishings, trailers, movable walls or partitions, computers, trade fixtures and other personal property (including all such items not permanently affixed to the portion of the Leased Property relating to such Facility), currently owned and acquired after the execution of this Lease, and necessary, used, or useful in the operation of such Facility, but excluding any items within the definition of Fixtures.

Lessor: Each of the entities listed on **Schedule 1-A** attached hereto, and their respective successors and assigns.

Lessor Parties: As defined in **Section 31.7**.

Loveland Facility: That certain MHC Facility with forty (40)-licensed IRF beds and twenty (20)-licensed LTCH beds, all located in Johnstown, Larimer County, Colorado.

LTCH: A long-term acute care hospital facility operated on the Leased Property, or a portion thereof, licensed in the State of its location.

LTCH Facilities: Collectively, the Post Falls Facility, the Laredo Facility, the Provo Facility, the Billings Facility and the Boise Facility.

Major Repairs: All repairs to the Leased Property of every kind and nature, whether interior or exterior, structural or non-structural (including, without limitation, all parking decks and parking lots), which extend the life of the Leased Property (as opposed to being routine maintenance and repair expenditures), as shall be necessary or appropriate from time to time during the Term.

Mesquite Facility: That certain MHC Facility with forty (40)-licensed IRF beds and twenty (20)-licensed LTCH beds, all located in Mesquite, Dallas County, Texas.

MHC: A multi-hospital campus consisting of an IRF and an LTCH, operated on the Leased Property, or a portion thereof, all licensed in the state of their location.

MHC Facilities: Collectively, the Loveland Facility and the Mesquite Facility.

New Braunfels Facility: That certain forty (40)-licensed bed IRF located in New Braunfels, Comal County, Texas.

Overdue Rate: On any date, the Lease Rate plus Four Percent (4%).

Owned Land: As defined in the Recitals.

Patriot Act: The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended or modified from time to time, and the regulations promulgated thereunder.

Permitted Exceptions: As defined in Article II.

Person: An individual, a corporation, a limited liability company, a general or limited partnership, an unincorporated association, a joint venture, a Governmental Body or another entity or group.

Post Falls Facility: That certain forty (40)-licensed bed LTCH located in Post Falls, Kootenai County, Idaho.

Primary Intended Use: As defined in Section 6.3.

Property Substitution: As defined in Article XXVIII.

Provo Facility: That certain forty (40)-licensed bed LTCH located in Provo, Utah County, Utah.

Real Estate Taxes: With respect to each Facility, all real estate taxes, assessments and special assessments, and dues which are levied or imposed during the Term upon the portion of the Leased Property relating to such Facility.

Rent: Collectively, the Base Rent (as increased in accordance with the provisions of Section 3.1(b)) and the Additional Charges.

Reserve: As defined in Section 7.2.

Severance Date: As defined in Section 25.2.

Severance Notice: As defined in Section 25.2.

Severed Lease: As defined in Section 25.2.

Severed Property: As defined in Section 25.2.

Sublease: As defined in the Recitals.

Sublessee: As defined in the Recitals.

Taking: With respect to each Facility, a taking or voluntary conveyance during the Term of all or part of the portion of the Leased Property relating to such Facility, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any Condemnation or other eminent domain proceeding affecting such portion of the Leased Property whether or not the same shall have actually been commenced.

Term: The actual duration of this Lease, including the Fixed Term and the Extension Terms (if extended by Lessee).

Terminated Facility: As defined in Section 14.2(a).

Unsuitable for Its Use or Unsuitable for Its Primary Intended Use: As used anywhere in this Lease, the terms “Unsuitable for Its Use” or “Unsuitable for Its Primary Intended Use” shall mean that, with respect to the portion of the Leased Property relating to any Facility, by reason of damage or destruction or a partial Taking by Condemnation, such Facility cannot be operated on a commercially practicable basis for its Primary Intended Use, taking into account, all relevant factors, and the effect of such damage or destruction or partial Taking.

Wyoming Facility Improvements: As defined in the Recitals.

Wyoming Ground Leased Property: As defined in the Recitals.

Wyoming Ground Lease Lessor: As defined in the Recitals.

Wyoming Ground Lease: As defined in the Recitals.

## ARTICLE II LEASED PROPERTY; TERM

Upon and subject to the terms and conditions hereinafter set forth, Lessor leases to Lessee and Lessee rents from Lessor all of Lessor’s rights and interest in and to the following property (collectively, the “Leased Property”):

- (a) the Land; and

(b) all buildings, structures, Fixtures and other improvements of every kind, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site), parking areas and roadways appurtenant to such buildings and structures presently or hereafter situated upon the Land, Capital Additions financed by Lessor and all hereditaments, easements, rights of way and other appurtenances related thereto (collectively, the "Leased Improvements").

SUBJECT, HOWEVER, to all applicable matters of record and any other matters as set forth on Exhibits B-1 through B-10 (the "Permitted Exceptions"), and further subject to the terms and provisions of the Wyoming Ground Lease, Lessee shall have and hold the Leased Property for a fixed term (the "Fixed Term") commencing on the Commencement Date and ending at midnight on the last day of the two hundred fortieth (240th) full month after the Commencement Date, unless sooner terminated as herein provided.

So long as no Event of Default then exists, and no event has then occurred which with the giving of notice or the passage of time or both would constitute an Event of Default, Lessee shall have the option to extend the Fixed Term for on the same terms and conditions set forth herein for three (3) additional periods of five (5) years each (each an "Extension Term"); it being understood and agreed that Lessee's exercise of any such extension option must apply to the entire Leased Property. Lessee may exercise each such option by giving written notice to Lessor at least ninety (90) days prior to the expiration of the Fixed Term or Extension Term, as applicable (the "Extension Notice"). If, during the period following the delivery of the Extension Notice to Lessor and prior to the effective date of such extension, an Event of Default shall occur under this Lease, at Lessor's option, the Term shall not be so extended and Lessee shall be deemed to have forfeited all subsequent options to extend the Fixed Term of this Lease. If Lessee elects not to exercise its option to extend, all subsequent options to extend herein shall be deemed to have lapsed and be of no further force or effect.

Notwithstanding the foregoing, Lessor acknowledges and consents to the terms and provisions of the Sublease and Sublessee's rights as sublessee of the Leased Property, including, without limitation, Sublessee's options to purchase the Leased Property as provided therein. Lessor agrees to cooperate with Lessee and Sublessee and to perform such acts and execute such agreements and instruments as shall be necessary to effect the terms and provisions of the Sublease.

### ARTICLE III RENT

3.1 **Rent.** During the Term, Lessee shall pay to Lessor, in advance and without notice, demand, set off or counterclaim, in lawful money of the United States of America, at Lessor's



address set forth herein or at such other place or to such other person, firm or entity as Lessor may designate from time to time in writing, the Rent as provided in this Lease. Lessor has the sole discretion to determine the method of payment of Rent. With respect to each Facility, Rent shall be calculated and payable as follows:

(a) **Allocated Base Rent.** With respect to each Facility, subject to adjustment as provided herein (including adjustments set forth in Section 3.1(b) below), Lessee shall pay to Lessor in advance on the first (1st) day of each calendar month during the Term base rent allocated thereto (the "Allocated Base Rent") in an amount equal to the product of (i) the Lease Base as of the last day of the immediately preceding month (or as of the Commencement Date with respect to the amount payable for the first month of the Term), multiplied by (B) the Lease Rate, divided by (C) twelve (12). Allocated Base Rent for any partial month shall be prorated based upon a three hundred sixty (360) day year.

(b) **Adjustment of Allocated Base Rent.** With respect to each Facility, commencing on January 1, 20\_\_\_\_, and continuing on each January 1 thereafter (each an "Adjustment Date") during the Term, the Lease Rate applicable to the portion of the Leased Property relating to such Facility shall be increased (and in no event decreased) and shall be equal to the sum of (i) the Lease Rate previously in effect, and (ii) the product of such previous Lease Rate multiplied by the percentage by which the CPI published for the month which is two months prior to the applicable Adjustment Date shall have increased over the CPI figure published for the month which is two months prior to the previous Adjustment Date, with such sum being the new Lease Rate used for calculating Allocated Base Rent with respect thereto (such escalator used in calculating the adjusted Lease Rate being referred to herein as the "Escalator"); provided, however, that in no event shall the Escalator be less than Two Percent (2%) or more than Five Percent (5%) on any Adjustment Date. For any monetary increases or adjustments that cannot be determined as of the applicable Adjustment Date due to then unknown variables (such as CPI), such amounts shall become due (and calculated retroactively to the Adjustment Date) and payable as of the time of determination.

3.2 **Additional Charges.** In addition to the Base Rent, (a) Lessee will also pay, and discharge as and when due and payable all amounts, liabilities and obligations under the Ground Lease, in addition to the Impositions that Lessee assumes or agrees to pay under this Lease, and all other amounts, liabilities, obligations and Impositions related to the ownership, use, possession and operation of the Leased Property, including, without limitation, all costs of owning and operating each Facility, all Real Estate Taxes, Insurance Premiums, maintenance and capital improvements, all violations of and defaults under any of the Permitted Exceptions, and all licensure violations, civil monetary penalties and fines, and (b) in the event of any failure on the part of Lessee to pay any of those items referred to in clause (a) above, Lessee will also promptly pay and reimburse Lessor and/or its Affiliates for all such amounts paid by Lessor

and/or its Affiliates and promptly pay and discharge every fine, penalty, interest and cost which may be added for non-payment or late payment of such items (the items referred to in clauses (a) and (b) above being referred to herein collectively as the "Additional Charges"), and Lessor shall have all legal, equitable and contractual rights, powers and remedies provided in this Lease, by statute, or otherwise, in the case of non-payment of the Additional Charges, as in the case of the Base Rent. If any installment of Base Rent or Additional Charges shall not be paid within five (5) Business Days after the applicable due date, Lessee, in addition to all other obligations hereunder, will pay Lessor on demand, as Additional Charges, a late charge computed at the Overdue Rate and a late payment penalty computed at the Late Payment Penalty Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that Lessee pays any Additional Charges to Lessor pursuant to clause (a) above or pursuant to any other requirement of this Lease, Lessee shall be relieved of its obligation to pay such Additional Charges to the entity to which they would otherwise be due. If any provision of any Facility Instrument requires payment into escrow or making of deposits to be made with such Facility Lender relating to any part of the Additional Charges (including, without limitation, the Impositions, Real Estate Taxes and/or some or all Insurance Premiums), then Lessee shall either pay to Lessor such required Additional Charges and Lessor shall transfer such amounts to such Facility Lender or, pursuant to written direction by Lessor, Lessee shall pay such Additional Charges directly to such Facility Lender. Additionally, at Lessor's option during the Term, Lessor may require Lessee to pay into escrow or make deposits to Lessor relating to any part of the Additional Charges (including, without limitation, the Impositions, Real Estate Taxes and/or some or all Insurance Premiums), which deposits or installments shall be payable after delivery of at least thirty (30) days' prior written notice to Lessee (unless an Event of Default shall occur or be continuing, in which event, such deposits shall be payable to Lessor upon demand). Upon such request, Lessee shall pay to Lessor (or directly to a Facility Lender, if requested by Lessor), such amounts as and when required by Lessor (or the Facility Lender). Any such part of the Additional Charges paid into escrow or deposits in accordance herewith shall not bear interest, may be commingled with Lessor's (or Facility Lender's) books and accounts and, upon an Event of Default by Lessee hereunder, may be applied by Lessor (or Facility Lender) to all sums owed by Lessee to Lessor and any of its Affiliates (or to sums owed to Facility Lender or otherwise owed by Lessee); provided, however, that, if Lessor collects any deposits for Additional Charges in accordance with this Section 3.2, (i) Lessor shall use such deposited amounts to pay, or cause such deposited amounts to be used to pay, such Additional Charges prior to delinquency, and (ii) Lessor shall refund to Lessee, on an annual basis, any such remaining amounts collected in excess of the amounts ultimately required to pay the applicable Additional Charges.

**3.3 Rent and Payments under the Wyoming Ground Lease.** Lessee shall pay all Ground Lease Rent and all other charges and amounts due and payable under the Wyoming Ground Lease directly to the Wyoming Ground Lease Lessor as and when the same becomes due and payable as required under the Wyoming Ground Lease, and Lessee shall provide Lessor with reasonable evidence of payment each month confirming that the Ground Lease Rent has been timely paid or, at Lessor's request, Lessee shall pay the Ground Lease Rent to Lessor at least five (5) days prior to its due date under the Wyoming Ground Lease.

ARTICLE IV  
IMPOSITIONS

4.1 **Payment of Impositions.** Subject to Article X relating to permitted contests, Lessee will pay, or cause to be paid, all Impositions before any fine, penalty, interest or cost may be added for non-payment, with such payments to be made directly to the taxing or assessing authorities, unless, in the case of escrows and deposits, such Impositions are required to be paid to Lessor or Facility Lender as provided in Section 3.2, and Lessee will promptly furnish to Lessor, upon request, copies of official receipts or other satisfactory proof evidencing such payments. Lessee's obligation to pay such Impositions shall be deemed absolutely fixed upon the date that any such Imposition becomes a lien upon the Leased Property or any part thereof. If any such Imposition may lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may, with Lessor's consent, not to be unreasonably withheld, conditioned or delayed, exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments during the Term (subject to Lessee's right of contest pursuant to the provisions of Article X, and subject to the requirement to pay escrows and deposits as required in Section 3.2) as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto. Lessor, at its expense, shall, to the extent permitted by applicable law, prepare and file all tax returns and reports as may be required by governmental authorities in respect of Lessor's net income, gross receipts, franchise taxes and taxes on its capital stock, and Lessee, at its expense, shall, to the extent permitted by applicable laws and regulations, prepare and file all other tax returns and reports in respect of any Imposition as may be required by governmental authorities. If any refund shall be due from any taxing authority with respect to any Imposition paid by Lessee, the same shall be paid over to, or retained by, Lessee if no Event of Default shall have occurred and be continuing. Any such funds retained by Lessor due to an Event of Default shall be applied as provided in Section 14.7. Lessor and Lessee shall, upon request of the other, provide any data (i) that is maintained by the party to whom the request is made, and (ii) that pertains to the Leased Property, as may be necessary to prepare any required returns and reports. In the event that any Governmental Body classifies any property covered by this Lease as personal property, Lessee shall file all personal property tax returns in such jurisdictions where it may legally so file. Lessor, to the extent it possesses the same, and Lessee, to the extent it possesses the same, will provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. In the event that Lessor is legally required to file personal property tax returns, Lessee will be provided with copies of assessment notices indicating a value in excess of the reported value in sufficient time for Lessee to file a protest. After obtaining written approval from Lessor, Lessee may, at Lessee's sole cost and expense, protest, appeal, or institute such other proceedings

as Lessee may deem appropriate to effect a reduction of real estate or personal property assessments, and Lessor, at Lessee's expense as aforesaid, shall fully cooperate with Lessee in such protest, appeal, or other action. Billings for reimbursement by Lessee to Lessor of personal property taxes shall be accompanied by copies of a bill therefor and payments thereof which identify the personal property with respect to which such payments are made.

4.2 **Adjustment of Impositions.** Impositions that are levied or assessed with respect to the tax-fiscal period during which the Term terminates, unless Lessee purchases the Leased Property pursuant to purchase options expressly provided herein, if any, shall be adjusted and prorated between Lessor and Lessee, whether or not such Imposition is imposed before or after such termination, and Lessee's obligation to pay its prorated share thereof shall survive such termination.

4.3 **Utility Charges.** Lessee will contract for, in its own name, and will pay or cause to be paid all charges for electricity, power, gas, oil, sewer, water and other utilities used in connection with the Leased Property during the Term, including, without limitation, all impact and tap fees necessary for the operation of the Facilities, except to the extent that such impact and tap fees were paid by Lessor as part of the cost of a Capital Addition.

4.4 **Insurance Premiums.** Subject to Section 4.5 below, Lessee will contract for, in its own name, and will pay or cause to be paid all premiums for the insurance coverage required to be maintained pursuant to Article XI during the Term (the "Insurance Premiums"); provided, however, if required by Lessor pursuant to Section 3.2, such premiums shall be paid as required under Section 3.2.

4.5 **Sublease.** Notwithstanding anything to the contrary herein, Lessor and Lessee acknowledge that some or all of the foregoing obligations set forth in this Article IV may be passed directly through to Sublessee pursuant to the Sublease. To the extent any such obligations hereunder are satisfied by Sublessee, the same shall be deemed satisfied by Lessee hereunder.

ARTICLE V  
ABSOLUTE NET LEASE; NO TERMINATION; TERMINATION WITH RESPECT TO  
FEWER THAN ALL FACILITIES

5.1 **Absolute Net Lease; No Termination.** The parties understand, acknowledge and agree that this is an absolute net lease and this Lease shall yield to Lessor the full amount of the installments of Base Rent and the payments of Additional Charges throughout the Term, but subject to any other provisions of this Lease which expressly provide for adjustment of Rent or other charges. Lessee further acknowledges and agrees that all charges, assessments or payments of any kind are due and payable without notice, demand, set off or counterclaim and

shall be paid by Lessee as they become due and payable. Lessee shall remain bound by this Lease in accordance with its terms and shall neither take any action without the consent of Lessor to modify, surrender or terminate the same, nor seek nor be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent, nor shall the respective obligations of Lessor and Lessee be otherwise affected by reason of (a) any damage to, or destruction of, any Leased Property or any portion thereof from whatever cause or any Taking of the Leased Property or any portion thereof; (b) the lawful or unlawful prohibition of, or restriction upon, Lessee's use of the Leased Property, or any portion thereof, or the interference with such use by any person, corporation, partnership or other entity, or by reason of eviction by paramount title; (c) any claim which Lessee has or might have against Lessor or by reason of any default or breach of any warranty by Lessor under this Lease or any other agreement between Lessor and Lessee, or to which Lessor and Lessee are parties; (d) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings affecting Lessor or any assignee or transferee of Lessor; or (e) any other cause whether similar or dissimilar to any of the foregoing other than a discharge of Lessee from any such obligations as a matter of law. Lessee hereby specifically waives all rights, arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law to (i) modify, surrender or terminate this Lease or quit or surrender the Leased Property or any portion thereof; or (ii) entitle Lessee to any abatement, reduction, suspension or deferment of the Rent or other sums payable by Lessee hereunder, except as otherwise specifically provided in this Lease. The obligations of Lessor and Lessee hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Lessee hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or by termination of this Lease other than by reason of an Event of Default.

**5.2 Termination with Respect to Fewer than All Facilities.** Wherever in this Lease the action of terminating this Lease with respect to the portion of the Leased Property relating to a particular Facility (or action of similar import) is described or permitted, such action shall mean the termination of Lessee's rights in and to the portion of the Leased Property relating to such Facility. Notwithstanding anything in this Lease to the contrary, if this Lease shall be terminated by Lessor or Lessee pursuant to rights granted hereunder with respect to any portion of the Leased Property relating to a particular Facility, such termination shall not affect the Term of this Lease with respect to the balance of the Leased Property relating to Facilities not so terminated and this Lease shall continue in full force and effect with respect to such portion of the Leased Property, except that the total Base Rent payable hereunder shall be reduced by the amount of Allocated Base Rent with respect to the Facility as to which this Lease has been so terminated; subject, however, to Lessor's right, in the event of any such termination because of an Event of Default, to recover damages with respect to any Terminated Facility. Notwithstanding anything contained herein to the contrary, Lessee shall not have the right to terminate this Lease as it relates to the Casper Wyoming Facility as long as the Wyoming Ground Lease remains in full force and effect; or, alternatively, unless Lessee assumes the Wyoming Ground Lease and Lessor is released in full.

ARTICLE VI  
OWNERSHIP OF LEASED PROPERTY; CONDITION AND USE

6.1 **Ownership of the Leased Property.** Lessee acknowledges that the Leased Property is the property of Lessor (except that the Wyoming Facility Improvements will revert to the Wyoming Ground Lease Lessor upon the expiration of the Wyoming Ground Lease) and that Lessee has only the right to the possession and use of the Leased Property as a tenant of Lessor upon and subject to the terms, provisions and conditions of this Lease, the Wyoming Ground Lease and the Existing Subleases.

6.2 **Condition of the Leased Property.** Lessee acknowledges receipt and delivery of possession of the Leased Property and that Lessee has examined and otherwise has acquired knowledge of the condition of the Leased Property prior to the execution and delivery of this Lease and has found the same to be in good order and repair and satisfactory for its purpose hereunder. Lessee is leasing the Leased Property “as is” and “where is” in its present condition. Lessee has not relied on any representation or warranty by Lessor and hereby waives any claim or action against Lessor in respect of the condition of the Leased Property. LESSOR 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, SUITABILITY, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. LESSEE ACKNOWLEDGES THAT THE LEASED PROPERTY HAS BEEN INSPECTED BY LESSEE AND IS SATISFACTORY TO IT. ACCORDINGLY, LESSEE HEREBY ACKNOWLEDGES THAT LESSOR HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LESSOR BE DEEMED TO HAVE MADE ANY WARRANTY OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES THAT THE LEASED PROPERTY IS FREE FROM VICES, DEFECTS AND DEFICIENCIES, WHETHER HIDDEN OR APPARENT OR ANY WARRANTY AS TO THE FITNESS, DESIGN OR CONDITION OF THE LEASED PROPERTY FOR ANY PARTICULAR USE OR PURPOSE OF SUCH LEASED PREMISES. THE PROVISIONS OF THIS SECTION 6.2 HAVE BEEN NEGOTIATED, AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES BY LESSOR, EXPRESS, IMPLIED OR CREATED BY APPLICABLE LAW, WITH RESPECT TO THE CONDITION OF THE LEASED PROPERTY.

6.3 **Use of the Leased Property.**

(a) The Leased Property shall be utilized as follows:

(i) The Greenwood Facility shall be operated as a thirty-four (34)-licensed bed IRF (with twelve (12)-licensed bed skilled nursing facility beds), and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(ii) The Casper Wyoming Facility shall be operated as a forty (40)-licensed bed IRF, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(iii) The New Braunfels Facility shall be operated as a forty (40)-licensed bed IRF, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(iv) The Loveland Facility shall be operated as a MHC with forty (40)-licensed beds as a IRF and twenty (20)-licensed beds as an LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(v) The Mesquite Facility shall be operated as a MHC with twenty (20)-licensed beds as a IRF and forty (40)-licensed beds as an LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(vi) The Post Falls Facility shall be operated as a forty (40)-licensed bed LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(vii) The Laredo Facility shall be operated as a sixty (60)-licensed bed LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(viii) The Provo Facility shall be operated as a forty (40)-licensed bed LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

(ix) The Billings Facility shall be operated as a forty (40)-licensed bed LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses; and

(x) The Boise Facility shall be operated as a forty (40)-licensed bed LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

and in each case subject to all covenants, restrictions, easements and all other matters of record (including those set forth in the Permitted Exceptions) relating to the applicable Facility (the

“Primary Intended Use”). Lessee shall comply with all Insurance Requirements and Legal Requirements (including, as applicable, the HWH Requirements), that are necessary for the operation of the applicable Facility consistent with the Primary Intended Use and shall indemnify and hold Lessor harmless for any claims, causes of action, damages, liabilities, costs or expenses (including reasonable attorneys’ fees) asserted against or incurred by Lessor as a result of any violation of Legal Requirements in connection with the operation of the applicable Facility.

(b) No use shall be made or permitted to be made of the Leased Property and no acts shall be done which will cause the cancellation of any insurance policy covering the Leased Property or any part thereof, nor shall Lessee sell or otherwise provide to residents or patients therein, or permit to be kept, used or sold in or about the Leased Property any article which may be prohibited by law or by the standard form of fire insurance policies, any other insurance policies required to be carried hereunder, or fire underwriters regulations. Lessee shall, at its sole cost, comply with all of the requirements, covenants and restrictions pertaining to the Leased Property, including, without limitation, all of the Permitted Exceptions, and other requirements of any insurance board, association, organization or company necessary for the maintenance of the insurance, as herein provided, covering the Leased Property and Lessee’s Personal Property. Lessee shall not commit or suffer to be committed any waste on the Leased Property or in the Facilities, nor shall Lessee cause or permit any nuisance thereon.

(c) With respect to each Facility, Lessor shall have the right and option to erect a sign on such portion of the Leased Property relating to such Facility stating that such Leased Property is owned by Lessor. Such sign shall be in a size, and shall be erected in a location acceptable to Lessor and approved by Lessee, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Notwithstanding anything to the contrary herein, Lessor and Lessee acknowledge that some or all of the foregoing obligations set forth in this Section 6.3 may be passed directly through to Sublessee pursuant to the Sublease. To the extent any such obligations hereunder are satisfied by Sublessee, the same shall be deemed satisfied by Lessee hereunder.

**6.4 Lessor to Grant Easements.** From time to time during the Term, so long as no Event of Default exists and no event has then occurred which with the giving of notice or the passage of time or both would constitute an Event of Default, Lessor may, in its reasonable discretion, subject to the terms of the Wyoming Ground Lease, at the request of Lessee and at Lessee’s cost and expense, (a) grant easements and other rights in the nature of easements, (b) release existing easements or other rights in the nature of easements which are for the benefit of the Leased Property, (c) dedicate or transfer unimproved portions of the Leased Property for road, highway or other public purposes, (d) execute petitions to have the Leased Property annexed to any municipal corporation or utility district, (e) execute amendments to any covenants and restrictions affecting the Leased Property and (f) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers (to the



extent of its interest in the Leased Property), but only upon delivery to Lessor of such information as Lessor may reasonably require confirming that such grant, release, dedication, transfer, petition or amendment is required for, and not detrimental to, the proper conduct of the Primary Intended Use on the Leased Property and does not reduce the value of the Leased Property.

ARTICLE VII  
REPAIRS; RESERVES; RESTRICTIONS

**7.1 Maintenance and Repair.**

(a) Lessee, at its expense, will keep the Leased Property and all private roadways, sidewalks and curbs appurtenant thereto (and Lessee's Personal Property) in good first class order and repair (whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements, the age of the Leased Property or any portion thereof) and, except as otherwise provided in Article XII and Article XIII, with reasonable promptness, will make all necessary and appropriate repairs thereto of every kind and nature (including any such repairs required to be made by Lessor) whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, or arising by reason of a condition existing prior to the commencement of the Term (concealed or otherwise). All repairs shall, to the extent reasonably achievable, be at least equivalent in quality to the original work. Lessee will not take or omit to take any action the taking or omission of which might materially impair the value or the usefulness of the Leased Property or any part thereof for the Primary Intended Use. Lessee shall notify Lessor of any and all repairs, improvements, additions, modifications and remodeling made to the Leased Property in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00) and obtain consent from Lessor (which consent shall not be unreasonably withheld, conditioned or delayed) prior to making such repairs, improvements, additions, modifications or remodeling.

(b) Lessor shall not under any circumstances be required to build or rebuild any improvements on the Leased Property, or to make any repairs, replacements, alterations, restorations, or renewals of any nature or description to the Leased Property, whether ordinary or extraordinary or capital in nature, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto in connection with this Lease, or to maintain the Leased Property in any way.

(c) Nothing contained in this Lease and no action or inaction by Lessor shall be construed as (i) constituting the consent or request of Lessor, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor for the provision or performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Leased Property or any part thereof, or (ii) giving Lessee any right, power or permission to contract for, or permit the performance of, any

labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Lessor in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, lien, claim or other encumbrance upon the estate of Lessor in the Leased Property or any portion thereof.

(d) Unless Lessor conveys any of the Leased Property to Lessee pursuant to the provisions of this Lease (or to Sublessee pursuant to the provisions of the Sublease), Lessee will, upon the expiration or prior termination of the Term, vacate and surrender the Leased Property to Lessor in the condition in which the Leased Property was originally received from Lessor, except as improved, constructed, repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease and except for (i) ordinary wear and tear (subject to the obligation of Lessee to maintain the Leased Property in good order and repair during the entire Term), (ii) damage caused by the gross negligence or willful acts of Lessor, and (iii) damage or destruction as described in Article XII or resulting from a Taking as described in Article XIII, which Lessee is not required by the terms of this Lease to repair or restore.

#### **7.2 Reserves for Major Repairs.**

(a) Beginning on January 1, 2013, and on the first (1st) day of each calendar quarter thereafter during the Term, Lessee shall deliver to Lessor quarterly deposits in an amount equal to the product of (i) Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Dollar Amount"), multiplied by (ii) the number of beds placed in service or use at the Leased Property divided by (iii) four (4) (the "Reserve"). For the period commencing on the date hereof and ending December 31, 2013, the initial number of beds currently placed in service or placed in use at each of the Facilities shall be assumed to be forty (40); except (i) for the Laredo Facility which shall be assumed to be sixty (60), (ii) the Loveland Facility which shall be assumed to be sixty (60), (iii) the Mesquite Facility which shall be assumed to be sixty (60), (iv) the Greenwood Facility which shall be assumed to be forty-six (46), with the total beds placed in service or in use at all of the Facilities as of the Commencement Date is four hundred sixty-six (466). The Reserve shall be held by Lessor for the purpose of making Major Repairs to the applicable portions of the Leased Property. Beginning on January 1, 2014, the number of beds shall be determined by the actual number of beds placed in service or certified to be available for use in connection with the Facilities, which shall not be reduced without the prior written consent of Lessor. Lessor shall advance to or reimburse Lessee for Major Repairs, limited to the amount of the Reserve, upon Lessor's receipt from Lessee of documentation of such costs that is sufficient in Lessor's reasonable judgment. Beginning on the first Adjustment Date and on each Adjustment Date thereafter during the Term, the Dollar Amount to be multiplied by the number of beds as provided above shall be increased by the percentage by which the CPI published for the month which is two months prior to the applicable Adjustment Date shall have increased over the CPI figure published for the month which is two months prior to the previous Adjustment Date; provided, however, that in no event shall the increase in the

Dollar Amount be less than Two Percent (2%) or more than Five Percent (5%) on any Adjustment Date. The amounts in the Reserve shall be used as described above to pay for Major Repairs, or, in the event Lessee fails to make any required non-Major Repairs hereunder, Lessor may use funds in the Reserve for that purpose.

(b) Lessee hereby grants to Lessor a first priority security interest in all monies deposited into the Reserve. At Lessor's request, Lessee shall, as soon as practicable, execute all documents necessary to effect such security interest in all monies deposited into the Reserve. So long as no Event of Default has occurred, and no event has occurred which, with the giving of notice or passage of time or both, would constitute such an Event of Default hereunder, any amounts remaining in the Reserve at the expiration of this Lease shall be returned to Lessee; provided, however, if such an Event of Default has occurred, or any event which, with the giving of notice or passage of time or both, would constitute such a default hereunder, Lessor may retain all amounts remaining in the Reserve and shall apply such amounts to any damages incurred by Lessor or used to pay outstanding obligations owed by Lessee to Lessor. Lessee consents to Lessor's pledge of the Reserve to any Facility Lender.

7.3 **Encroachments; Restrictions.** If any of the Leased Improvements shall, at any time, encroach upon any property, street or right-of-way adjacent to any portion of the Leased Property, or shall violate the agreements or conditions contained in any federal, state or local law, restrictive covenant or other agreement affecting the Leased Property, or any part thereof, or shall impair the rights of others under any easement or right-of-way to which the Leased Property or any portion thereof is subject, then, promptly upon the request of Lessor, Lessee shall, at its expense, subject to its right to contest the existence of any encroachment, violation or impairment, (a) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Lessor or Lessee or (b) make such changes in the Leased Improvements, and take such other actions, as Lessor reasonably determines, to remove such encroachment, or to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements, and, in any event, take all such actions as may be necessary to continue the operation of the applicable Facility without such violation, encroachment or impairment.

7.4 **Sublease.** Notwithstanding anything to the contrary herein, Lessor and Lessee acknowledge that some or all of the obligations set forth in this Article VII may be passed directly through to Sublessee pursuant to the Sublease. To the extent any such obligations hereunder are satisfied by Sublessee, the same shall be deemed satisfied by Lessee hereunder.

#### ARTICLE VIII CAPITAL ADDITIONS

Except as provided in the Sublease or as approved by Lessor in its sole discretion, Lessee shall have no right to construct any Capital Addition to the Leased Property. To the extent

Sublessee is permitted to construct or install a Capital Addition pursuant to the term of the Sublease, Lessor agrees to cooperate with Lessee and Sublessee with respect thereto, including providing funding for any such Capital Additions to be financed by Lessee as sublandlord under the Sublease, and such Capital Additions shall be constructed or installed in accordance with the terms of the Sublease. In the event that Lessor finances a Capital Addition as contemplated by this Article VIII, the parties shall amend this Lease to provide for an increase of the Base Rent in an amount equal to the additional rent received by Lessee under the Sublease with respect to such Capital Addition.

ARTICLE IX  
LIENS

Subject to the provisions of Article X relating to permitted contests, Lessee will not directly or indirectly create or allow to remain and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim upon any portion of the Leased Property or any attachment, levy, claim or encumbrance in respect of the Rent, any amounts held in the Reserve, or any funds or amounts that are or will be provided by Lessor or its Affiliates to Lessee at any time during the Term in accordance with this Lease; excluding, however, (a) this Lease and the Sublease; (b) the Wyoming Ground Lease; (c) the matters, if any, set forth in Exhibits B-1 through B-10; (d) restrictions, liens and other encumbrances which are consented to in writing by Lessor, or any easements granted pursuant to the provisions of Section 6.4; (e) liens for those taxes of Lessor which Lessee is not required to pay hereunder; (f) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as (1) the same are not yet payable or are payable without the addition of any fine or penalty or (2) such liens are in the process of being contested as permitted by Article X; and (g) any liens which are the responsibility of Lessor pursuant to the provisions of Article XXIX of this Lease.

ARTICLE X  
PERMITTED CONTESTS

After obtaining prior written approval from Lessor, Lessee, at Lessee's expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance, charge or claim not otherwise permitted by Article IX, provided that (a) in the case of an unpaid Imposition, lien, attachment, levy, encumbrance, charge or claim, the commencement and continuation of such proceedings shall suspend the collection thereof from Lessor and from the Leased Property; (b) neither the Leased Property nor any Rent therefrom nor any part thereof or interest therein would, as determined in Lessor's sole and absolute discretion, be in any immediate danger of being sold, forfeited, attached or lost; (c) in the case of a Legal Requirement, Lessor would not be in any danger whatsoever of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings; (d) in the case of a Legal Requirement and/or an Imposition, lien,

encumbrance or charge, Lessee shall give such reasonable security as may be demanded by Lessor to insure ultimate payment of the same and to prevent any sale or forfeiture of the affected portion of the Leased Property or the Rent by reason of such non-payment or non-compliance; provided, however, the provisions of this Article X shall not be construed to permit Lessee to contest the payment of Rent (except as to contests concerning the method of computation or the basis of levy of any Imposition or the basis for the assertion of any other claim) or any other sums payable by Lessee to Lessor hereunder; (e) in the case of an Insurance Requirement, the coverage required by Article XI shall be maintained; and (f) if such contest be finally resolved against Lessor or Lessee, Lessee shall, as Additional Charges due hereunder, promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirement or Insurance Requirement. Lessor, at Lessee's expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in any such contest and, if reasonably requested by Lessee or if Lessor so desires, Lessor shall join as a party therein. Lessee shall indemnify and save Lessor harmless against any liability, cost or expense of any kind that may be imposed upon Lessor in connection with any such contest and any loss resulting therefrom. Lessor and Lessee acknowledge and agree that Lessee may delegate the foregoing rights to contest to Sublessee as provided in the Sublease.

#### ARTICLE XI INSURANCE

During the Term, Lessee shall at all times maintain insurance coverages with respect to the Leased Property as are required in the reasonable discretion of Lessor; it being understood that Sublessee's provision of the insurance coverages reflected in the Sublease shall satisfy this requirement during any period Sublessee maintains such coverages.

#### ARTICLE XII FIRE AND CASUALTY

With respect to any Facility, if during the Term the portion of the Leased Property relating thereto is totally or partially destroyed from a risk covered by the insurance described in Article XI (an "Impacted Facility"), Lessee shall restore such portion of the Leased Property to substantially the same condition as existed immediately before the damage or destruction such portion of the Leased Property unless Lessor and Lessee agree to terminate this Lease with respect to such Impacted Facility in lieu of such restoration. All insurance proceeds payable by reason of any loss or damage to the Leased Property, or any portion thereof, including any proceeds payable in such events under the Sublease and received by Lessee thereunder, shall be paid to Lessor and held by Lessor in trust and shall be made available for reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof, and shall be paid out by Lessor from time to time for the reasonable cost of such reconstruction or repair. Any excess proceeds of insurance remaining after the completion of the

restoration or reconstruction of the Leased Property, or any portion thereof, or in the event this Lease is terminated with respect to an Impacted Facility in connection with such loss or damage, shall be paid over and retained by Lessee; provided, however, that if Sublessee exercises its option to purchase the Leased Property under the terms of the Sublease, then any such insurance proceeds shall be assigned to or remain the property of Sublessee.

ARTICLE XIII  
CONDEMNATION

With respect to any Facility, if there is a total or partial Taking of the portion of the Leased Property relating thereto, or any portion thereof, by Condemnation which renders such portion of the Leased Property Unsuitable for the Primary Intended Use, then, unless otherwise agreed to by Lessor and Lessee, this Lease shall terminate with respect to such portion of the Leased Property on the Date of Taking. Any Condemnation Award shall be the exclusive property of Lessor, unless in connection with such Taking the Sublessee exercises any permitted option to purchase the Leased Property in which event the Award shall be paid to Sublessee as provided in the Sublease.

ARTICLE XIV  
DEFAULT

14.1 **Events of Default.** The occurrence of any one or more of the following events (individually, an “Event of Default”) shall constitute Events of Default hereunder:

(a) if Lessee shall fail to make a payment of the Rent or any other monetary obligation when the same becomes due and payable by Lessee under this Lease when the same becomes due and payable (including, but not limited to, any failure to make Reserve deposits the failure to pay Insurance Premiums on Impositions) and the same shall remain unpaid for more than five (5) days following receipt by Lessee of written notice thereof from Lessor, provided, however, in no event shall Lessor be required to give more than two (2) such written notices hereunder during any calendar year); or

(b) if Lessee shall fail to observe or perform any other term, covenant or condition of this Lease and such failure is not cured by Lessee within a period of thirty (30) days after receipt by Lessee of written notice thereof from Lessor, unless such failure cannot with due diligence be cured within a period of thirty (30) days (in Lessor’s reasonable discretion), in which case such failure shall not be deemed to continue so long as Lessee commences to cure such failure within the thirty (30) day period and proceeds with due diligence to complete the curing thereof within sixty (60) days after receipt by Lessee of Lessor’s notice of default (it being understood and agreed that in no event shall any cure period exceed sixty (60) days); provided however, in no event shall Lessor be required to give more than one (1) notice and cure period for Lessee’s failure to observe or perform the same (or repetitive) covenant or condition in any consecutive twelve (12) month period; or

(c) if (i) any Facility Lessee shall admit in writing its inability to pay its debts as they become due; or (ii) any Facility Lessee shall file a petition in bankruptcy as a petition to take advantage of any insolvency act; or (iii) any Facility Lessee shall be declared insolvent according to any law; or (iv) any Facility Lessee shall make any general assignment for the benefit of its creditors; or (v) if the estate or interest of any Facility Lessee in the Leased Property or any part thereof shall be levied upon or attached in any proceeding and the same shall not be vacated or discharged within the later of ninety (90) days after commencement thereof or thirty (30) days after receipt by Lessee of written notice thereof from Lessor (unless Lessee shall be contesting such lien or attachment in good faith in accordance with Article X); or (vi) any petition shall be filed against any Facility Lessee to declare such Facility Lessee bankrupt, to take advantage of any insolvency act, or to delay, reduce or modify such Facility Lessee's capital structure and the same shall not be removed or vacated within ninety (90) days from the date of its creation, service or attachment; or (vii) any Facility Lessee shall, after a petition in bankruptcy is filed against it, be adjudicated a bankrupt, or a court of competent jurisdiction shall enter an order or decree, with or without the consent of such Facility Lessee, as the case may be, appointing a trustee, examiner or receiver of such Facility Lessee or the whole or substantially all of its property, or approving a petition filed against such Facility Lessee seeking reorganization or arrangement of such Facility Lessee under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof; or

(d) if, with respect to each portion of the Leased property relating to a Facility, the applicable Facility Lessee abandons or vacates the applicable Facility (such Facility Lessee's absence from the applicable Facility for thirty (30) consecutive days shall constitute abandonment), or the applicable Facility Lessee fails to continuously operate its Facility in accordance with the terms of this Lease; or

(e) unless consented to in writing by Lessor, if any Facility Lessee shall be liquidated or dissolved, or shall begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the sale or divestiture of substantially all of its assets, or any such Facility Lessee shall enter into an agreement respecting same; or

(f) if any of the MHC Facilities shall fail to comply with the HWH Requirements.

14.2 **Remedies.** If an Event of Default has occurred, Lessor shall have the right at its election, then or at any time thereafter:

(a) to terminate this Lease with respect to any portion or portions of the Leased Property of any one or more (including all, if so elected by Lessor) of the Facilities (whether one or more, the "Terminated Facility"), regardless of whether such Event of Default emanated from or related primarily to a single Facility, by written notice to Lessee, in which event Lessee shall immediately surrender to Lessor such portion of the Leased Property relating to each such Terminated Facility;

(b) to exercise any and all other rights and/or remedies granted or allowed to landlords by any existing or future statute or other law of the applicable state where the applicable portion of the Leased Property is located; and

(c) to pursue all available remedies against Lessee (or any one or more Facility Lessees) at law or in equity.

No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or at any time existing. The failure of Lessor to insist upon the strict performance of any provision or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future. Receipt by Lessor of any Rent or any other sum payable hereunder with knowledge of the breach of any provision contained in this Lease shall not constitute a waiver of such breach, and no waiver by Lessor of any provision of this Lease shall be deemed to have been made unless made under signature of an authorized representative of Lessor.

14.3 **Waivers.** If this Lease is terminated pursuant to Section 14.2, Lessee waives, to the extent permitted by applicable law, (a) any right of redemption, re-entry or repossession; (b) any right to a trial by jury in the event of summary proceedings to enforce the remedies set forth in this Article XIV; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any statutory requirement of prior written notice for filing eviction or damage suits for nonpayment of Rent or any other payments under this Lease. Lessee acknowledges and agrees that no waiver by Lessor of any provision of this Lease shall be deemed to have been made unless made under signature of an authorized representative of Lessor.

14.4 **Mitigation.** In the event, and only in the event, that applicable law requires Lessor to attempt to mitigate damages following the termination of Lessee's rights under this Lease with respect to any portion of the Leased Property relating to any one or more of the Facilities, Lessor shall use reasonable efforts to the extent required by applicable law such portion or portions of Leased Property on such terms and conditions as Lessor, in its sole good faith judgment, may determine (including, without limitation, a lease term different than the Term, rental concessions, alterations and repair any such portion of the Leased Property); provided, however, that, with



respect to any such portion of the Leased Property (a) Lessor shall not be obligated to relet such portion of the Leased Property before leasing other vacant space owned or operated by Lessor; (b) Lessor reserves the right to refuse to lease such portion of the Leased Property to any potential tenant that does not meet Lessor's reasonable standards and criteria for leasing any other comparable space owned or operated by Lessor (it being understood and agreed that it shall be deemed reasonable for Lessor to refuse to lease to a prospective tenant who owns, leases or operates a facility similar to such Facility in the same county); and (c) Lessor shall not be obligated to undertake any greater efforts to relet such portion of the Leased Property than Lessor utilizes to lease any other vacant space owned or operated by Lessor. In any proceeding in which Lessor's efforts to mitigate damages and/or its compliance with this subsection is at issue, Lessor shall be presumed to have used reasonable efforts to mitigate damages and Lessee shall bear the burden of proof to establish that such reasonable efforts were not used.

14.5 **No Reinstatement.** No receipt of moneys by Lessor from Lessee after a termination of this Lease with respect to any portion of the Leased Property relating to any one or more of the Facilities or of Lessee's rights under this Lease by Lessor with respect to any such portion of the Leased Property shall reinstate, continue or extend the Term of this Lease with respect to such portion of the Leased Property or affect any notice theretofore given to Lessee, or operate as a waiver of the right of Lessor to enforce the payment of Rent and any related amounts to be paid by Lessee to Lessor then due or thereafter falling due, it being agreed that after the commencement of suit for possession of such portion of the Leased Property, or after final order or judgment for the possession of such portion of the Leased Property, Lessor may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such suit, order or judgment, all such money collected being deemed payments on account of the use and occupation of such portion of the Leased Property or, at the election of Lessor, on account of Lessee's liability hereunder. Lessee hereby waives any and all rights of redemption provided by any law, statute or ordinance now in effect or which may hereafter be enacted.

14.6 **Additional Expenses.** It is further agreed that, in addition to payments required pursuant to the provisions of Section 31.3, Lessee shall compensate Lessor and its Affiliates for (a) all expenses incurred by Lessor and its Affiliates in enforcing the provisions of this Lease and in repossessing the Leased Property or any portion thereof (including among other expenses, any increase in insurance premiums caused by the vacancy of all or any portion of the Leased Property); (b) all expenses incurred by Lessor and its Affiliates in reletting (including among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees); (c) all concessions granted to a new Tenant or Tenants upon reletting (including among other concessions, renewal options); (d) Lessor's and its Affiliates' reasonable attorneys' fees and expenses; and (e) all losses incurred by Lessor and its Affiliates as a direct or indirect result of such Event of Default (including, among other losses, any adverse action by Facility Lenders); and (f) a reasonable allowance for Lessor's administrative efforts, salaries and overhead attributable directly or indirectly to such Event of Default and Lessor's pursuing the rights and remedies provided herein and under applicable law.

14.7 **Application of Funds.** Any payments otherwise payable to Lessee which are received by Lessor under any of the provisions of this Lease during the existence or continuance of any Event of Default shall be applied to Lessee's obligations in the order which Lessor may reasonably determine.

14.8 **Notices by Lessor.** The provisions of this Article XIV concerning notices shall be liberally construed insofar as the contents of such notices are concerned, and any such notice shall be sufficient if reasonably designed to apprise Lessee of the nature and approximate extent of any default, it being agreed that Lessee is in as good or a better position than Lessor to ascertain the exact extent of any default by Lessee hereunder.

14.9 **Lessor's Contractual Security Interest.** In order to secure the payment of all Rent due and to become due hereunder, Lessee's faithful performance of this Lease and to secure all other obligations, indebtedness and liabilities of Lessee to Lessor, now existing or hereafter incurred, contemporaneously with the execution of this Lease, Lessee has assigned to Lessor the various security interests granted by Sublessee to Lessee in connection with the Sublease.

ARTICLE XV  
PURCHASE OF THE LEASED PROPERTY

Lessor and Lessee acknowledge that the Sublease grants Sublessee the option to purchase the Leased Property upon the terms and conditions of the Sublease. Lessor agrees that, in the event Sublessee exercises any such option in accordance with the terms of the Sublease, Lessor shall take such actions and execute such documents as shall be necessary to consummate such purchase option, it being understood and agreed that (i) such transaction may be consummated by Lessor first conveying the Leased Property to Lessee or, alternatively, by Lessor conveying the Leased Property directly to Sublessee, and (ii) the purchase price to be received by Lessee in connection with such conveyance shall be assigned to Lessor.

Notwithstanding anything contained herein to the contrary, Lessee understands, acknowledges and agrees that the purchase of the Casper Wyoming Facility will only be a purchase of Lessor's leasehold interest in the Casper Wyoming Facility and shall be subject to all of the terms, provisions and conditions of the Wyoming Ground Lease.

ARTICLE XVI  
HOLDING OVER

If Lessee shall for any reason remain in possession of any portion of the Leased Property relating to any Facility after the expiration of the Term or any earlier termination of the Term

with respect to such portion of the Leased Property, such possession shall be as a tenancy at will, during which time Lessee shall pay, as rental each month, one and one-half (1.5) times the aggregate of (a) one-twelfth (1/12) of the aggregate Allocated Base Rent relating to such Facility payable with respect to the last complete twelve (12) month period prior to the expiration of the Term; (b) all Additional Charges relating to such Facility accruing during the month; and (c) all other sums, if any, payable by Lessee pursuant to the provisions of this Lease with respect to such Facility. During such period of tenancy, Lessee shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenancies at will, to continue its occupancy and use of such portion of the Leased Property. Nothing contained herein shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease.

ARTICLE XVII  
RISK OF LOSS

During the Term, the risk of loss of, or decrease in, the enjoyment and beneficial use of the Leased Property in consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by Lessor and those claiming from, through or under Lessor) is assumed by Lessee and, Lessor shall in no event be answerable or accountable therefor nor shall any of the events mentioned in this Article XVII entitle Lessee to any abatement of Rent except as specifically provided in this Lease.

ARTICLE XVIII  
INDEMNIFICATION

**IN ADDITION TO ANY INDEMNIFICATION PROVIDED ELSEWHERE IN THIS LEASE NOTWITHSTANDING THE EXISTENCE OF ANY INSURANCE PROVIDED FOR IN ARTICLE XI, AND WITHOUT REGARD TO THE POLICY LIMITS OF ANY SUCH INSURANCE, LESSEE WILL PROTECT, INDEMNIFY, SAVE HARMLESS AND DEFEND LESSOR FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, CLAIMS, DAMAGES, PENALTIES, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) TO THE EXTENT PERMITTED BY LAW), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LESSOR BY REASON OF: (A) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF PERSONAL PROPERTY OCCURRING ON OR ABOUT THE LEASED PROPERTY OR ADJOINING SIDEWALKS, INCLUDING WITHOUT LIMITATION ANY CLAIMS OF MALPRACTICE; (B) ANY USE, MISUSE, NO USE, CONDITION, MAINTENANCE OR REPAIR BY LESSEE OF THE LEASED PROPERTY; (C) ANY IMPOSITIONS (WHICH ARE THE OBLIGATIONS OF LESSEE TO PAY PURSUANT**

TO THE APPLICABLE PROVISIONS OF THIS LEASE); (D) ANY FAILURE ON THE PART OF LESSEE TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS LEASE; (E) THE NON-PERFORMANCE OF ANY OF THE TERMS AND PROVISIONS OF ANY AND ALL EXISTING AND FUTURE SUBLEASES OF THE LEASED PROPERTY TO BE PERFORMED BY THE LANDLORD (LESSEE) THEREUNDER; (F) ANY AND ALL LAWFUL ACTION THAT MAY BE TAKEN BY LESSOR IN CONNECTION WITH THE ENFORCEMENT OF THE PROVISIONS OF THIS LEASE, WHETHER OR NOT SUIT IS FILED IN CONNECTION WITH SAME, OR IN CONNECTION WITH LESSEE OR GUARANTOR AND/OR ANY PARTNER, JOINT VENTURER, MEMBER OR SHAREHOLDER THEREOF BECOMING A PARTY TO A VOLUNTARY OR INVOLUNTARY FEDERAL OR STATE BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING; AND (G) ANY FAILURE ON THE PART OF LESSEE TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THE WYOMING GROUND LEASE. ANY AMOUNTS WHICH BECOME PAYABLE BY LESSEE UNDER THIS ARTICLE XVIII SHALL BE PAID WITHIN THIRTY (30) DAYS AFTER LIABILITY THEREFOR ON THE PART OF LESSOR IS DETERMINED BY LITIGATION OR OTHERWISE AND, IF NOT TIMELY PAID, SHALL BEAR A LATE CHARGE (TO THE EXTENT PERMITTED BY LAW) AT THE OVERDUE RATE AND A LATE PAYMENT PENALTY COMPUTED AT THE LATE PAYMENT PENALTY RATE FROM THE DATE OF SUCH DETERMINATION TO THE DATE OF PAYMENT. LESSEE, AT ITS EXPENSE, SHALL CONTEST, RESIST AND DEFEND ANY SUCH CLAIM, ACTION OR PROCEEDING ASSERTED OR INSTITUTED AGAINST LESSOR OR MAY COMPROMISE OR OTHERWISE DISPOSE OF THE SAME AS LESSOR SEES FIT. NOTHING HEREIN SHALL BE CONSTRUED AS INDEMNIFYING LESSOR AGAINST ITS OWN GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT.

ARTICLE XIX  
ASSIGNMENT, SUBLETTING AND SUBLEASE SUBORDINATION

19.1 **Assignment and Subletting.** Lessee shall not assign this Lease or sublease any portion of the Leased Property without Lessor's prior written consent. Notwithstanding the forgoing, Lessor acknowledges and consents to Sublessee's rights to assign the Sublease or sublease any portion of the Leased Property under and in accordance with the Sublease. Lessor agrees to cooperate with Lessee and Sublessee and to perform such acts and execute such agreements and instruments as shall be necessary to effect any such assignment or sublease pursuant to the terms and conditions of the Sublease.

19.2 **Sublease Limitations.** Notwithstanding anything contained in this Lease to the contrary, Lessee shall not sublet the Leased Property on any basis such that the rental to be paid by the Tenant thereunder would be based, in whole or in part, on either (a) the income or profits derived

by the business activities of the Tenant; or (b) any other formula such that any portion of the sublease rental received by Lessor would fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto. Moreover, Lessee shall not sublet any portion of the Leased Property for a term extending beyond the Fixed Term without the express consent of Lessor. In addition, all subleases shall comply with the Healthcare Laws.

### 19.3 **Sublease Subordination and Non-Disturbance.**

(a) Within ten (10) days after request by Lessor, Lessee shall cause the Sublessee or any other sublessee to execute and deliver to Lessor a subordination agreement relating to the Sublease or any other sublease, which subordination agreement shall be in such form and content as is acceptable to Lessor and shall provide, among other things, that all of Sublessee’s (or such other sublessee’s) rights and estate thereunder is and shall at all times be subject and subordinate in all respects to this Lease and the rights of Lessor hereunder (including, without limitation, all extensions, renewals, modifications thereof, replacements and supplements thereto). Within ten (10) days from the date of request of Lessor or a Facility Lender, Lessee shall cause Sublessee or any other sublessee of the Leased Property to execute and deliver within such ten (10) day period, a written agreement in a form reasonably acceptable to such Facility Lender whereby such Person subordinates the Sublease, or any other sublease relating to the Leased Property, and all of its rights and estate thereunder to each such mortgage or deed of trust that encumbers the Leased Property or any part thereof, and agree with each such Facility Lender that such Person will attorn to and recognize such Facility Lender or the purchaser at any foreclosure sale or any sale under a power of sale contained in any such mortgage or deed of trust, as the case may be, as Lessor under this Lease for the balance of the Term then remaining, subject to all of the terms and provisions of the Sublease or such other sublease.

(b) Lessor agrees that in the event this Lease is terminated before the expiration or termination of the Sublease, the Sublease shall not be terminated, Sublessee’s use, possession and enjoyment of the Leased Property pursuant to the Sublease shall not be disturbed, nor shall any of the rights of Sublessee granted under the Sublease be affected in the exercise of any rights by Lessor or its assignee hereunder so long as (a) no “Event of Default” shall have occurred under the Sublease, and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default under the terms of the Sublease, and (b) after receipt of written notice from Lessor or its assigns stating that an Event of Default has occurred under this Lease, Sublessee shall pay all rentals accruing under the Sublease directly to Lessor, or as Lessor may direct.

19.4 **Existing Subleases.** Notwithstanding anything contained herein to the contrary, Lessor and Lessee acknowledge that there currently exist certain leases or subleases on the Leased Property as described on **Exhibit C** (collectively the “Existing Subleases”). Any modifications, amendments and restatements of the Existing Subleases and any subleases hereafter entered into

must be approved by Lessor in accordance with this Article XIX. Notwithstanding anything contained herein to the contrary, any proposed assignee of Lessee and any proposed Tenant must each have credit, financial, and operating characteristics that are equal to or stronger than Lessee.

ARTICLE XX  
INSPECTION

Lessee shall permit Lessor, or its designated Affiliate, and their respective authorized representatives to inspect the Leased Property during usual business hours subject to any security, health, safety or confidentiality requirements of Lessee, any governmental agency, any Insurance Requirements relating to the Leased Property, or imposed by law or applicable regulations, except that, in the event of an emergency, Lessor shall have the right to inspect the Leased Property upon reasonable notice (which in this circumstance may be verbal) under the circumstances to Lessee.

ARTICLE XXI  
NO WAIVER

No failure by Lessor or Lessee to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent or any other payment due under the terms of this Lease during the continuance of any such breach, shall constitute a waiver of any such breach or any such term. To the extent permitted by law, no waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach. Lessor and Lessee agree that no waiver shall be effective hereunder unless it is in writing.

ARTICLE XXII  
REMEDIES CUMULATIVE

To the extent permitted by law, each legal, equitable or contractual right, power and remedy of Lessor or Lessee now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Lessor or Lessee of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Lessor or Lessee of any or all of such other rights, powers and remedies.

ARTICLE XXIII  
SURRENDER

No surrender to Lessor of this Lease or of the Leased Property, or of any part thereof or interest therein, shall be valid or effective unless agreed to and accepted in writing by Lessor, and no act by Lessor or any representative or agent of Lessor, other than such a written acceptance by Lessor, shall constitute an acceptance of any such surrender.

ARTICLE XXIV  
NO MERGER OF TITLE

There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same person, firm, corporation or other entity may acquire, own or hold, directly or indirectly, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (b) the fee estate in the Leased Property.

ARTICLE XXV  
TRANSFERS BY LESSOR; SEVERANCE RIGHTS

25.1 **Transfers by Lessor.** Lessee acknowledges and agrees that Lessor may sell its interest in the Leased Property in whole or in part, and that Lessor may assign its interest in this Lease in whole or in part. If Lessor or any successor owner of any portion of the Leased Property relating to a Facility shall convey such portion of the Leased Property in accordance with the terms hereof, other than as security for a debt, and the grantee or transferee of such portion of the Leased Property shall expressly assume all obligations of Lessor hereunder arising or accruing from and after the date of such conveyance or transfer, Lessor or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Lessor under this Lease relating to such portion of the Leased Property arising or accruing from and after the date of such conveyance or other transfer and all such future liabilities and obligations shall thereupon be binding upon the new owner. Lessee agrees that any successor purchaser may exercise any and all rights of Lessor; provided, however, such successor purchaser shall be subject to the same restrictions imposed upon Lessor hereunder. Lessor may divulge to any such prospective purchaser all information, reports, financial statements, certificates and documents obtained by it from Lessee. Lessee shall have no right of consent or approval relating to any such sale, transfer or assignment by Lessor.

25.2 **Severance Rights.** Notwithstanding the unitary nature of this Lease, Lessor may at any time and from time to time cause this Lease to be severed with respect to the portion or portions of Leased Property relating to any one or more Facilities (each, a "Severed Property"). If Lessor shall desire to sever this Lease pursuant to this Section 25.2, Lessor shall deliver written notice (each, a "Severance Notice") to Lessee not less than ten (10) days prior to the date that this Lease

shall be severed with respect to the Severed Property or Severed Properties identified in the Severance Notice (such date identified in a Severance Notice, a "Severance Date"). The Severance Notice shall specify the Severed Property and the Severance Date. Effective upon a Severance Date, the applicable Severed Property shall no longer be part of the Leased Property under this Lease and such Severed Property shall be deemed to be and shall be leased by Lessor to Lessee for the amount of Rent allocable to such Severed Property pursuant to a separate lease (a "Severed Lease") upon the same terms and conditions as provided in this Lease (except for such provisions as by their terms are not applicable to such Severed Property); it being agreed, however, that the liability of the applicable lessor under the Severed Lease shall be limited to such lessor's interest in the Severed Property. Effective upon the Severance Date, the Rent payable with respect to each Severed Property shall no longer be payable by Lessee under this Lease and shall instead be payable under the Severed Lease applicable to such Severed Property. Effective on the Severance Date, the parties shall enter into the Severed Lease and an amendment of this Lease to reflect such property severance. For so long as Lessor under this Lease shall be the lessor under a Severed Lease, any Event of Default under such Severed Lease shall constitute an Event of Default under this Lease, and any Event of Default under this Lease shall constitute an Event of Default under such Severed Lease. Lessor will prepare the Severed Lease and an amendment to this Lease with respect to each Severed Property consistent with the provisions of this Section 25.2 and the parties agree to execute and deliver or cause to be executed and delivered. Contemporaneous with the execution of the Severed Lease and amendment to this Lease, the Sublease shall be amended accordingly to reflect any such property severance and to include such Severed Property, subject to the Severed Lease, as a portion of the "Leased Property" under the Sublease.

ARTICLE XXVI  
QUIET ENJOYMENT

So long as Lessee shall pay all Rent as the same becomes due and shall fully comply with all of the terms of this Lease and fully perform its obligations hereunder, Lessee shall peaceably and quietly have, hold and enjoy the Leased Property for the Term hereof, free of any claim or other action by Lessor or anyone claiming by, through or under Lessor, but subject to the Permitted Exceptions, any Facility Loan and all liens and encumbrances of record as of the date hereof or hereafter consented to by Lessee. No failure by Lessor to comply with the foregoing covenant shall give Lessee any right to cancel or terminate this Lease, or to fail to pay any other sum payable under this Lease, or to fail to perform any other obligation of Lessee hereunder. Notwithstanding the foregoing, Lessee shall have the right by separate and independent action to pursue any claim it may have against Lessor as a result of a breach by Lessor of the covenant of quiet enjoyment contained in this Article XXVI.



ARTICLE XXVII  
NOTICES

All notices, demands, consents, approvals, requests and other communications under this Lease shall be in writing (except where specifically stated otherwise) and shall be either (a) delivered in person, (b) sent by certified mail, return receipt requested, (c) delivered by a recognized delivery service, or (d) sent by facsimile transmission and addressed as follows:

if to Lessor: c/o MPT Operating Partnership, L.P.  
1000 Urban Center Drive, Suite 501  
Birmingham, Alabama 35242  
Attn: Legal Department  
Phone: (205) 969-3755  
Fax: (205) 969-3756

with a copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
1600 Wells Fargo Tower  
Birmingham, Alabama 35203  
Attn: Thomas O. Kolb, Esq.  
Phone: (205) 250-8321  
Fax (205) 322-8007

if to Lessee: c/o MPT Development Services, Inc.  
1000 Urban Center Drive, Suite 501  
Birmingham, Alabama 35242  
Attn: Legal Department  
Phone: (205) 969-3755  
Fax: (205) 969-3756

with a copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
1600 Wells Fargo Tower  
Birmingham, Alabama 35203  
Attn: Thomas O. Kolb, Esq.  
Phone: (205) 250-8321  
Fax: (205) 322-8007

or to such other address as either party may hereafter designate in writing, and shall be effective upon receipt. A notice, demand, consent, approval, request and other communication shall be deemed to be duly received if delivered in person or by a recognized delivery service, when left at the address of the recipient and if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was

sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; provided that if a notice, demand, consent, approval, request or other communication is served by hand or is received by facsimile on a day which is not a Business Day, or after 5:00 p.m. on any Business Day at the addressee's location, such notice or communication shall be deemed to be duly received by the recipient at 9:00 a.m. (based upon Birmingham, Alabama time) on the first Business Day thereafter.

ARTICLE XXVIII  
SUBSTITUTION RIGHTS

Lessor acknowledges and consents to Sublessee's rights to effect a Property Substitution under and in accordance with the Sublease. Lessor agrees to cooperate with Lessee and Sublessee and to perform such acts and execute such agreements and instruments as shall be necessary to effect a Property Substitution pursuant to the terms, provisions and procedures of the Sublease. As used herein, the term "Property Substitution" shall have the meaning ascribed thereto in the Sublease.

ARTICLE XXIX  
FINANCING OF THE LEASED PROPERTY

Lessor agrees that, if it grants or creates any mortgage, lien, encumbrance or other title retention agreement ("Encumbrances") upon any portion of the Leased Property relating to any particular Facility after the Commencement Date, Lessor will request an agreement from the holder of each such Encumbrance whereby such holder agrees (a) to give the Facility Lessee which operates the Facility on such portion of the Leased Property the same notice, if any, given to Lessor of any default or acceleration of any obligation underlying any such Encumbrance or any sale in foreclosure of such Encumbrance; (b) to permit such Facility Lessee, after twenty (20) days' prior written notice, to cure any such default on Lessor's behalf within any applicable cure period; (c) to permit such Facility Lessee to appear with its representatives and to bid at any foreclosure sale with respect to any such Encumbrance; and (d) that, if subordination by such Facility Lessee is requested by the holder of each such Encumbrance, to enter into an agreement with such Facility Lessee containing the provisions described in Article XXX. Notwithstanding anything contained herein to the contrary, Lessor shall be under no obligation to obtain such agreements and Lessor's failure to obtain such agreements shall have no effect on any provision of this Lease.

ARTICLE XXX  
SUBORDINATION AND NON-DISTURBANCE

At the request from time to time by one or more Facility Lenders with respect to any Facility Lessee, within ten (10) days from the date of request, such Facility Lessee shall execute and deliver within such ten (10)-day period, to such Facility Lender, an estoppel certificate along

with a written agreement in form and content reasonably acceptable to such Facility Lender whereby such Facility Lessee subordinates this Lease and all of its rights and estate hereunder to each Facility Instrument that encumbers the portion of the Leased Property utilized by such Facility Lessee or any part thereof and agrees with each such Facility Lender that such Facility Lessee will attorn to and recognize such Facility Lender or the purchaser at any foreclosure sale or any sale under a power of sale contained in any such Facility Instrument, as the case may be, as Lessor under this Lease for the balance of the Term then remaining, subject to all of the terms and provisions of this Lease; provided, however, that each such Facility Lender simultaneously executes and delivers to such Facility Lessee a written agreement consenting to this Lease and agreeing that, notwithstanding any such other mortgage, deed of trust, right, title or interest, or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting any of the foregoing, such Facility Lessee shall not be disturbed in peaceful enjoyment of such portion of the Leased Property nor shall this Lease be terminated or canceled at any time, except in the Event of Default under the terms of this Lease.

ARTICLE XXXI  
MISCELLANEOUS

31.1 **General.** Notwithstanding anything in this Lease to the contrary, all claims against, and liabilities of, Lessee or Lessor arising prior to any date of expiration or termination of this Lease shall survive such expiration or termination. If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby. If any late charges provided for in any provision of this Lease are based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate. All the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns (subject to Article XIX). The headings in this Lease are for convenience of reference only and shall not limit or otherwise affect its meaning.

31.2 **Bankruptcy Waivers.**

(a) **Unitary and Non-Severable Lease.** The parties agree that for the purposes of any assumption, rejection or assignment of this Lease under 11 U.S.C. Section 365 or any amendment or successor section thereof, this is one indivisible and non-severable lease dealing with and covering one legal and economic unit which must be assumed, rejected or assigned as a whole with respect to all (and only all) the Leased Property covered hereby.

(b) **Relief from Stay.** Lessee acknowledges and agrees that in the event any Lessee or any Leased Property relating to any Facility shall become the subject of any bankruptcy or insolvency estate, then (i) Lessee shall not oppose any request by Lessor to obtain an order from the court granting relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code

so as to permit the exercise of all rights and remedies pursuant to this Lease, and (ii) the occurrence or existence of any Event of Default under this Lease shall, in and of itself, constitute "cause" for relief from the automatic stay pursuant to the provisions of Section 362(d)(1) of the Bankruptcy Code, based on the fact that the non-existence of a bankruptcy proceeding was a material inducement for the entry by Lessor into this Lease.

(c) Automatic Stay. Lessee hereby waives the stay imposed by 11 U.S.C. Section 362(a) as to actions by the Lessor against each Facility. Lessee acknowledges and agrees that in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against Lessee, it shall not assert or request that any other party assert that the automatic stay provided by Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lessor to enforce any rights or remedies held by virtue of the Lease or applicable law.

(d) Patient Care Ombudsman. Lessee hereby agrees (i) to use its best efforts to contest the necessity of the appointment of a Patient Care Ombudsman for such Facility as that term is defined in 11 U.S.C. Section 333, and/or (ii) to join with Lessor in requesting a waiver of or contesting the appointment of such a Patient Care Ombudsman.

31.3 Lessor's Expenses. In addition to the other provisions of this Lease, Lessee agrees and shall pay and/or reimburse Lessor's reasonable costs and expenses, including, without limitation, the costs and expenses of reports and investigations and legal fees and expenses, as well as a reasonable allowance for Lessor's and its Affiliates' administrative efforts, salaries and overhead attributable directly to any Event of Default and Lessor's and its Affiliates' pursuing the rights and remedies provided herein and under applicable law, incurred or resulting from or relating to (a) requests by Lessee for approval or consent under this Lease (including any consents relating to management, the placing of liens on Lessee's Personal Property and any intercreditor issues which arise in connection with any Material Obligation); (b) requests by Lessor for approval or consent under this Lease and all other documents executed between Lessor and Lessee in connection herewith; (c) any circumstances or developments which give rise to Lessor's right of consent or approval under this Lease or Other Agreement; (d) circumstances resulting from any action or inaction by Lessee contrary to the lease provisions; (e) any Property Substitution; (f) a request for changes, including, but not limited to, (i) the permitted use of the Leased Property; (ii) alterations and improvements to the Leased Improvements; (iii) subletting or assignment (except for the Sublease which is hereby approved by Lessor); and (iv) any other changes in the terms, conditions or provisions of this Lease or Other Agreement; and (g) enforcement by Lessor or its Affiliates of any of the provisions of this Lease or the Other Agreements. Such expenses and fees shall be paid by Lessee within thirty (30) days of the submission of a statement for the same or such amount(s) shall become Additional Charges and subject to the Overdue Rate and the Late Payment Penalty Fee after that thirty (30)-day period.

31.4 **Entire Agreement; Modifications.** This Lease, together with all exhibits, schedules and the other documents referred to herein, embody and constitute the entire understanding between the parties with respect to the transactions contemplated herein, and all prior to contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Lease. Neither this Lease, any exhibit or schedule attached hereto, nor any provision hereof or thereof may be modified or amended except by an instrument in writing signed by Lessor and Lessee.

31.5 **Joint Drafting.** The parties hereto and their respective counsel have participated in the drafting and redrafting of this Lease and the general rules of construction which would construe any provisions of this Lease in favor of or to the advantage of one party as opposed to the other as a result of one party drafting this Lease as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Lease are hereby expressly waived by all parties to this Lease.

#### 31.6 **Reserved.**

31.7 **Non-Recourse as to Lessor.** Anything contained herein to the contrary notwithstanding, any claim based on, or in respect of, any liability of Lessor under this Lease shall be enforced only against the Leased Property and not against any other assets, properties or funds of (i) Lessor; (ii) any director, officer, general partner, member, shareholder, limited partner, beneficiary, employee, representative, contractor or agent of Lessor or any of its Affiliates (collectively, the "Lessor Parties") (or any legal representative, heir, estate, successor or assign of Lessor or any of the Lessor Parties); (iii) any predecessor or successor partnership or corporation (or other entity) of Lessor or any of the Lessor Parties, either directly or through Lessor or the Lessor Parties; or (iv) any person or entity affiliated with any of the foregoing. In no event shall Lessor or any of the Lessor Parties be liable for indirect, incidental, consequential, special, punitive or exemplary damages, regardless of the form of action, whether in contract, tort or otherwise, and even if such party has been advised of the possibility of such damages.

31.8 **Covenants, Restrictions and Reciprocal Easements.** Subject to the Wyoming Ground Lease (if applicable), and, notwithstanding anything herein to the contrary, Lessor shall also have the right, but not the obligation, to place of record all covenants, restrictions and reciprocal easements on all or any portion of the Land (collectively, the "Declarations") which Lessor deems reasonably necessary for the ownership of any Facility, with such Declarations to be in form and content acceptable to Lessor in its reasonable discretion.

31.9 **Force Majeure.** Except for Rent and other monetary obligations payable pursuant to the terms of this Lease (which shall not be extended or excused), in the event that Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, unavailability of any utility service, restrictive governmental laws or regulations, riots,

insurrections, the failure to act, or default of another party, war, or other reason beyond Lessor's or Lessee's control (individually "Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay. Within ten (10) Business Days following the occurrence of Force Majeure, the party claiming a delay due to such event shall give written notice to the other setting forth a reasonable estimate of such delay.

**31.10 Governing Law.** THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS EXECUTED AND PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES. NOTWITHSTANDING THE FOREGOING, ALL PROVISIONS OF THIS LEASE RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND ALL REMEDIES SET FORTH IN ARTICLE XIV RELATING TO THE RECOVERY OF POSSESSION OF THE LEASED PROPERTY (SUCH AS AN ACTION FOR UNLAWFUL DETAINER OR OTHER SIMILAR ACTION) SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH SUCH PORTION OF THE LEASED PROPERTY IS LOCATED.

**31.11 Jurisdiction and Venue.** LESSOR AND LESSEE CONSENT TO PERSONAL JURISDICTION IN THE STATE OF ALABAMA. LESSOR AND LESSEE AGREE THAT ANY ACTION OR PROCEEDING ARISING FROM OR RELATED TO THIS LEASE SHALL BE BROUGHT AND TRIED EXCLUSIVELY IN THE STATE OR FEDERAL COURTS OF ALABAMA. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. LESSEE EXPRESSLY ACKNOWLEDGES THAT ALABAMA IS A FAIR, JUST AND REASONABLE FORUM AND LESSEE AGREES NOT TO SEEK REMOVAL OR TRANSFER OF ANY ACTION FILED BY LESSOR IN SAID COURTS. FURTHER, LESSOR AND LESSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY CERTIFIED MAIL ADDRESSED TO A PARTY AT THE ADDRESS DESIGNATED PURSUANT TO ARTICLE XXVII SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PARTY FOR ANY ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT MAY BE ENFORCED IN ANY OTHER COURT TO WHOSE JURISDICTION ANY OF THE PARTIES IS OR MAY BE SUBJECT.

**31.12 True Lease.** Lessor and Lessee agree that this Lease is intended as, and shall for all purposes constitute, a lease under the laws of the state in which each portion of the Leased Property is located, and nothing herein shall be construed as conveying to the Lessee any right,

title or interest in or to the Leased Property or to any remainder or reversionary estates in the Leased Property held by any Person, except, in each instance, as a lessee. Under no circumstances shall this Lease be regarded as an assignment of all of Lessor's interest in and to the Leased Property; instead, Lessor and Lessee shall have the relationship between them of Lessor and Lessee, pursuant to the terms and provisions of this Lease. In no event shall Lessee or any Affiliate of Lessee claim depreciation, amortization or interest deductions as owner of any portion of the Leased Property for United States federal, state or local income tax purposes (except as to alterations not financed by Lessor).

31.13 **Representations, Agreements and Covenants relating to Certain Facilities.** Further representations, agreements and covenants regarding certain of the Facilities are set forth on Schedule 31.13 attached hereto and are hereby incorporated herein by reference.

31.14 **Wyoming Ground Lease.** By the Assignment of Ground Lease executed simultaneously herewith, the Wyoming Facility Lessee has assigned to Lessor all of its right, title and interest in and to the Wyoming Ground Lease and the Ground Leased Property and Lessor has subleased the Ground Leased Property to Lessee subject to the terms of the Wyoming Ground Lease and solely for the purpose of using the Ground Leased Property in connection with the operation of the Casper Wyoming Facility. Lessee shall perform and fulfill all of Lessor's obligations and responsibilities under the Wyoming Ground Lease from and after the date hereof and Lessee accepts, assumes and agrees to comply with, perform and observe all of the terms, conditions, provisions, limitations and obligations contained in the Wyoming Ground Lease to be performed on the part of the Lessor as lessee therein, including the payment of rent required under the Wyoming Ground Lease. Lessor and Lessee acknowledge and agree that in the event this Lease is terminated or canceled for any reason (i) the Wyoming Ground Lease and all right, title and interest thereunder shall automatically revert to Lessor (provided, however, in the event Lessee has failed to perform and pay all obligations under the Wyoming Ground Lease, Lessee shall indemnify and hold Lessor harmless for all such obligations as provided in Article XVIII hereof); and (ii) Lessee shall, immediately upon request by Lessor, sign, acknowledge, provide and deliver to Lessor (and if Lessee fails to do so upon request of Lessor, Lessee hereby irrevocably appoints Lessor as agent of Lessee for such express purposes) any and all documents, instruments or other writings (all in recordable form) which are or may become necessary, proper and/or advisable to cause the Wyoming Ground Lease to revert to Lessor as provided herein. Lessee shall not, without Lessor's prior written consent, which consent may be granted or denied in Lessor's sole discretion (a) assign, transfer or convey any interest, right or obligation in, to or under the Wyoming Ground Lease; (b) sublease any portion of the Wyoming Ground Leased Property; (c) terminate, modify, amend, restate or change in any way the Wyoming Ground Lease; or (d) exercise any option to purchase the Wyoming Ground Leased Property. Lessee agrees that it will immediately upon receipt forward to Lessor copies of all notices, requests, demands and other correspondence and documents directed to and/or received from the Wyoming Ground Lease Lessor. Notwithstanding the foregoing, Lessor acknowledges

and agrees that Lessee has subleased its rights and obligations under the Wyoming Ground Lease pursuant to the terms and conditions of the Sublease.

31.15 **Electronically Transmitted Signatures.** In order to expedite the execution of this Lease, telecopied signatures or signatures sent by electronic mail may be used in the place of original signatures on this Lease. The parties intend to be bound by the signatures of the telecopied or electronically mailed signatures, and hereby waive any defenses to the enforcement of the terms of this Lease based on the form of the signature. Following any facsimile or electronic mail transmittal, the party shall promptly deliver the original instrument by reputable overnight courier in accordance with the notice provisions of this Lease.

31.16 **WAIVER OF JURY TRIAL.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, LESSOR AND LESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE OF ANY PARTY OF THEIR RESPECTIVE RIGHTS HEREUNDER OR IN ANY WAY RELATING TO THIS LEASE OR THE LEASED PROPERTY (INCLUDING ANY CLAIM OR DEFENSE ASSERTING THAT THIS LEASE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR LESSOR TO ENTER INTO THIS LEASE.

31.17 **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

31.18 **Survival.** Notwithstanding any provision of this Lease to the contrary, the parties acknowledge and agree that, all claims against, and liabilities of, Lessee or Lessor arising prior to any date of expiration or termination of this Lease, and the covenants and obligations under this Lease which relate to periods after the expiration or earlier termination of Lessee's tenancy under this Lease, including, without limitation, those covenants and obligations described in Sections 14.6 and 31.3, and Article XVIII, shall survive such expiration or earlier termination.

31.19 **Continuation of Defaults.** Notwithstanding any provision hereof to the contrary, whenever in this Lease the phrases "continuing," "continuation of" or similar words or phrases are used in connection with Events of Default, defaults, or events which with notice or passage of time would constitute Events of Default, such phrases or words shall not be construed to create any right in the Lessee to have additional periods of time to cure such defaults or Events of Default other than those specific cure periods provided in this Lease.

31.20 **Specific Performance.** In addition to any rights and remedies available to the parties hereunder or at law, each party shall be entitled to bring an action for specific performance and to seek other equitable relief in connection with any breach or violation of the provisions of this Lease.



31.21 **Joint and Several Obligations.** Each Facility Lessee shall be jointly and severally liable for all of the liabilities and obligations of Lessee under this Lease. Additionally, each Facility Lessee acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Lease shall be applicable to and shall be binding upon and enforceable against any one or more Facility Lessees.

ARTICLE XXXII  
MEMORANDUM OF LEASE

Lessor and Lessee shall, promptly upon the request of either, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of the state in which the Leased Property is located in which reference to this Lease, and all options contained herein, shall be made. Lessee shall pay all recording taxes and other costs in connection therewith.

**[Signatures appear on following pages.]**

**FORM OF REAL ESTATE LOAN AGREEMENT**

**BY AND AMONG**

**MPT OF PRESCOTT VALLEY HOSPITAL, LLC,  
MPT OF BROWNSVILLE HOSPITAL, LLC, and  
MPT OF LAS CRUCES HOSPITAL, LLC**

**(collectively, "MPT")**

**AND**

**MOUNTAIN VALLEY REGIONAL REHABILITATION HOSPITAL, INC.,  
REHABILITATION HOSPITAL OF SOUTHERN NEW MEXICO, INC.,  
ADVANCED CARE HOSPITAL OF SOUTHERN NEW MEXICO, LLC, and  
SOUTH TEXAS REHABILITATION HOSPITAL, LP**

**(jointly, severally and collectively, the "Borrower Parties")**

**Dated as of January 31, 2012**

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**REAL ESTATE LOAN AGREEMENT**

THIS REAL ESTATE LOAN AGREEMENT (this "Agreement") is made and entered into as of this 31st day of January, 2012, by and among MPT OF PRESCOTT VALLEY HOSPITAL, LLC, MPT OF BROWNSVILLE HOSPITAL, LLC, and MPT OF LAS CRUCES HOSPITAL, LLC, each a Delaware limited liability company (each, an "MPT Party" and collectively, "MPT"); and MOUNTAIN VALLEY REGIONAL REHABILITATION HOSPITAL, INC., and REHABILITATION HOSPITAL OF SOUTHERN NEW MEXICO, INC., each a Delaware corporation, ADVANCED CARE HOSPITAL OF SOUTHERN NEW MEXICO, LLC, a Delaware limited liability company, and SOUTH TEXAS REHABILITATION HOSPITAL, LP, a Delaware limited partnership (each, a "Facility Borrower" and, collectively, the "Borrower Parties").

**W I T N E S S E T H:**

WHEREAS, contemporaneously herewith and pursuant to the Real Estate Contract (as herein defined), MPT has made a term loan to the Borrower Parties in the principal amount of One Hundred Million and No/100 Dollars (\$100,000,000.00) (the "Loan"), as evidenced by the Note (as herein defined).

WHEREAS, the Loan is secured by, among other things, a first lien on the Real Property and the Las Cruces Leasehold (as such terms are herein defined) and other collateral relating to the Brownsville Facility, the Las Cruces Facility and the Prescott Valley Facility (as each term is herein defined).

WHEREAS, the Guarantors (as herein defined) have agreed to guaranty the obligations of the Borrower Parties to MPT.

WHEREAS, to induce MPT to make the Loan, the Borrower Parties desire to make certain covenants and agreements in favor of MPT as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

**ARTICLE I**

**DEFINED TERMS**

**Section 1.1. Certain Defined Terms.** Capitalized terms used herein shall have the respective meanings ascribed to them in this Section 1.1.

ACH Network: The Automated Clearing House Network, an electronic payment system operated by The Federal Reserve Banking System.

Acquisition Note: That certain Promissory Note, dated of even date herewith, in the original principal amount of Ninety-Three Million Two Hundred Thousand and No/100 Dollars

(\$93,200,000.00), executed by Ernest Health Acquisition Sub, Inc. in favor of MPT Aztec Opco, LLC, which has become the obligation of Ernest Health, Inc. as successor by merger and operation of law, as the same may be modified, amended and/or restated from time to time.

Additional Charges: As defined in Section 3.1.

Adjustment Date: January 1 of each year during the Loan Term (as hereinafter defined), commencing on January 1, 2013.

Affiliate: With respect to any Person, (i) any Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, (ii) any other Person that owns, beneficially, directly or indirectly, 10% or more of the outstanding capital stock, shares or equity interests of such Person, or (iii) any officer, director, employee, partner, member, manager or trustee of such Person or any Person controlling, controlled by or under common control with such Person (excluding trustees and persons serving in similar capacities who are not otherwise an Affiliate of such Person). For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities or otherwise. Notwithstanding the foregoing, in no event shall the term "Affiliate" mean or refer to any MPT Party or any other Person that, directly or indirectly, controls or is under common control with any such MPT Party.

Agreement: As defined in the preamble of this Agreement.

AIREA: The American Institute of Real Estate Appraisers, or any successor organization.

Anti-Terrorism Laws: Any laws, statutes and regulations relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the Patriot Act, the laws, statutes and regulations comprising or implementing the Bank Secrecy Act, and the laws, statutes and regulations administered by OFAC.

Assignment of Rents and Leases: Those certain Assignment of Rents and Leases, dated of even date herewith, executed by each Facility Borrower in favor of MPT, as the same may be modified, amended or restated from time to time.

Award: All compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation of any of the Collateral.

Bankruptcy Code: Chapter 11 U.S.C. § 101, *et. seq.*

Base Interest: As defined in the Note.

Blocked Person: Any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or

otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

Borrower Parties: As defined in the preamble to this Agreement.

Brownsville Facility: That certain forty (40)-licensed bed IRF located in Brownsville, Cameron County, Texas.

Business: As applicable, the operation of each IRF Facility as an IRF, the operation of each MHC Facility as a MHC, and the operation of each LTCH Facility as a LTCH, and, in each case, the engagement in and pursuit and conduct of any business venture or activity incident thereto.

Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which money centers in the City of New York, New York are authorized or obligated by law or executive order to close.

Capital Additions: With respect to each Facility, (a) extraordinary renovations or expansions of buildings, structures or other improvements currently located on that portion of the Real Property where such Facility is located (or on additional parcels added to such Real Property), (b) the addition of one or more parcels of land to such portion of the Real Property (whether by purchase or ground lease), or (c) the addition of one or more new buildings or additional structures placed on such portion of the Real Property or any such additional parcels of land, including, without limitation, the construction of a new wing or new story.

Cash Collections: Any and all payments received for patient related services that are posted to Borrower Parties’ accounting system for a Facility, including, without limitation, any such payments received from patients, insurance companies, managed care and preferred provider organizations, Medicaid, Medicare, or other payors.

CERCLA: As defined in the definition of “Hazardous Materials Laws.”

Change of Control Transaction: (i) Ernest Health Holdings, LLC ceasing to own One Hundred Percent (100%) of Ernest Health, (ii) Ernest Health ceasing to own One Hundred Percent (100%) of each of Facility Borrower, (iii) the current owners of Guiding Health Management Group, LLC ceasing to own at least fifty percent (50%) of the Guiding Health Management Group, LLC, each without the prior written consent of MPT, which consent shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, the entering into an agreement or granting of an option to acquire Equity Interests or the issuance of debt convertible into Equity Interests shall be deemed to be the issuance of Equity Interests for purposes of determining whether a Change of Control Transaction has occurred.

CMS: The Centers for Medicare and Medicaid Services.



Code: The United States Internal Revenue Code of 1986, as amended through the date hereof, and all regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

Collateral: Collectively, the Real Property, the Personal Property, and all other properties or assets of the Borrower Parties that are subject or shall be subject to any lien, security interest, or other encumbrance pursuant to the Security Documents.

Combined Fixed Charges: The sum of combined payments of principal and interest payable by Ernest Health and its subsidiaries pursuant to the Note and the combined payments of Base Rent (as defined in the Sublease) payable by Ernest Health and its subsidiaries pursuant to the Sublease.

Competing Business: As defined in Section 12.3.

Condemnation: (i) The exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor or (ii) a voluntary sale or transfer by any of the Borrower Parties to any Condemnor, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

Condemnor: Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

Consumer Price Index or CPI: All urban consumers, all items, U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics, in which 1982-1984 equals one hundred (100). If the Consumer Price Index is discontinued or revised during the Loan Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

Credit Enhancements: All security deposits, security interests, letters of credit, pledges, guaranties, prepaid rent or other sums, deposits or interests held by any Borrower Party, if any, with respect to the Collateral, the Tenant Leases or the tenants or subtenants thereunder.

Date of Taking: The date the Condemnor has the right to possession of the property being condemned.

Default Rate: The current Base Interest plus Six Percent (6%) per annum.

Defaulted Facility: As defined in Section 13.2(a).

DHHS: The United States Department of Health and Human Services.

Dollar Amount: As defined in Section 8.2.

EBITDAR: Earnings, as determined in accordance with GAAP, before the deduction of interest, taxes, depreciation, amortization and rent.

Environmental Indemnity Agreement: That certain Environmental Indemnity Agreement, dated of even date herewith, executed by the Lessee Affiliates, the Borrower Parties and the Guarantors, as the same may be modified, amended or restated from time to time.

Equity Constituents: With respect to any Person, as applicable, the members, general or limited partners, shareholders, stockholders or other Persons, however designated, who are the owners of the issued and outstanding equity or ownership interests of such Person.

Equity Interests: With respect to any Person, the voting power, ownership, or other equitable interests of such Person, including any interest represented by any capital stock, convertible or participating debt instruments, membership interest, partnership interest, or any similar interest therein.

Ernest Health: Ernest Health, Inc., a Delaware corporation.

Existing Subleases: As defined in Section 11(a).

Event of Default: As defined in Section 13.1.

Existing Management Company: As defined in the definition of "Management Company."

Facility: Each of the Brownsville Facility, the Las Cruces Facility and the Prescott Valley Facility, sometimes collectively referred to as the "Facilities."

Facility Borrower: As defined in the preamble to this Agreement.

Facility Instrument: A note (whether secured or unsecured), loan agreement, credit agreement, guaranty, security agreement, mortgage, deed of trust or other agreement pursuant to which a Facility Lender has provided financing to MPT in connection with the Real Property or any part thereof, or financing provided to the Borrower Parties, if such financing is provided by MPT or any Affiliate of MPT (other than the Borrower Parties), or in connection with a Capital Addition, and any and all renewals, replacements, modifications, supplements, consolidations, spreaders and extensions thereof.

Facility Lender: A holder of any Facility Instrument.

Fair Market Value: With respect to each Facility, the Fair Market Value of the portion of the Real Property relating to such Facility, including all Capital Additions with respect thereto, (a) as shall be determined in accordance with the appraisal procedures set forth in Article XV or in such other manner as shall be mutually acceptable to MPT and the Borrower Parties, and (b) which shall not take into account any reduction in value resulting from any damage, destruction or condemnation of any part of such portion of the Real Property or any indebtedness to which such portion of the Real Property is subject and which encumbrance the Borrower Parties or MPT is otherwise required to remove pursuant to any provision of this Agreement or agrees to remove at or prior to the closing of the transaction as to which such Fair Market Value determination is being made. With respect to each Facility, the positive or negative effect on the value of the portion of the Real Property relating thereto attributable to the interest rate,

amortization schedule, maturity date, prepayment penalty, and other terms and conditions of any Encumbrance on such portion of the Real Property, which is not so required or agreed to be removed, shall be taken into account in determining such Fair Market Value.

**Financial Statements:** For any fiscal year or other accounting period for each Facility Borrower or Ernest Health, balance sheets, statements of operations and capital accounts, and of cash flows setting forth in comparative form the corresponding figures for the year-earlier fiscal period, all prepared in accordance with GAAP.

**Financing Statements:** All of the financing statements perfecting MPT's security interests in the Collateral, as the same may be modified, amended or restated from time to time.

**Fixtures:** All equipment, machinery, fixtures, and other items of real property, including all components thereof, now and hereafter located in, on, or used in connection with, and that are in each case permanently affixed to or incorporated into the buildings and structures on, the Land, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, and built-in oxygen and vacuum systems, all of which, to the greatest extent permitted by law, are hereby deemed by the parties to constitute real estate, together with all replacements, modifications, alterations and additions thereto.

**Force Majeure:** As defined in [Section 21.7](#).

**Full Replacement Cost:** As defined in [Section 6.1\(a\)](#).

**GAAP:** Generally accepted accounting principles in the United States. All accounting terms used herein and not expressly and otherwise defined herein shall be construed in accordance with, and have the meanings ascribed or imputed to them under, GAAP.

**Governing Documents:** With respect to any Person, as applicable, such Person's charter, articles or certificate of incorporation, formation or organization, bylaws or other documents or instruments which establish and/or set forth the rules, procedures and rights with respect to such Person's governance, including, without limitation, any stockholders, limited liability company, operating or partnership agreement related to such Person, in each case as amended, restated, supplemented and/or modified and in effect as of the relevant date.

**Governmental Body:** Any United States federal, state or local, or any supra national or non U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self regulatory organization, court, tribunal or judicial or arbitral body, including the Securities and Exchange Commission.

**Guarantors:** Ernest Health, Ernest Health Holdings, LLC, the Lessee Affiliates, and all other Persons who may be guarantors under the Guaranties at any time during the Loan Term, but not including any Person who has ceased to be a guarantor under any Guaranty or any Person after such Person's Guaranty has terminated.

**Guaranties:** Those certain Guaranties, dated of even date herewith, executed and delivered by the Guarantors in favor of MPT and certain Affiliates of MPT, as the same may be amended, modified and/or restated from time to time.

**Hazardous Materials Law:** Each federal, state, local and foreign law and regulation relating to pollution, protection, or preservation of human health or the environment, including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources, and including each law and regulation relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacturing, processing, distribution, use, treatment, generation, storage, containment (whether above ground or underground), disposal, transport or handling of Hazardous Materials, or the preservation of the environment or mitigation of adverse effects thereon and each law and regulation with regard to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials, including, without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and all similar federal, state and local environmental statutes and ordinances, and the regulations, orders, and decrees now or hereafter promulgated thereunder, in each case as amended from time to time.

**Hazardous Materials:** Any substance, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Materials Law, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, infectious wastes, biomedical and medical wastes, chemicals known to cause cancer or reproductive toxicity, radon gas, pollutants, effluents, contaminants, emissions or related materials, and any items included in the definition of hazardous or toxic wastes, materials or substances under any Hazardous Materials Laws.

**Health Benefit Laws:** Laws relating to the licensure, certification, qualification or authority to transact business relating to the provision of, or payment for, or both the provision of and payment for, health benefits, health care or insurance coverage, including ERISA, COBRA, HIPAA, SCHIP, Medicare, Medicaid, CHAMPUS/TriCare, and laws relating to the regulation of workers compensation, utilization review, third party administrative services, case management, and coordination of benefits.

**Health Compliance Laws:** All applicable laws pertaining to billing, kickbacks, false claims, self-referral, claims processing, marketing, HIPAA security standards for the storage, maintenance, transmission, utilization and access to and privacy of patient information, and HIPAA and state standards for electronic transactions and data code sets, including, without limitation, the False Claims Act (31 U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section 51 et seq.), the Federal Health Care Programs Anti-Kickback Statute (42 U.S.C. Section 1320a-7a(b)), the Stark Law, the Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a), or the Truth in Negotiations (10 U.S.C. Section 2304 et seq.), Health Care Fraud (18 U.S.C. Section 1347), Mail Fraud (18 U.S.C. Section 1341), Wire Fraud (18 U.S.C. Section 1343), Theft or Embezzlement (18 U.S.C. Section 669), Fraud and False Statements (18

U.S.C. Section 1001), False Statements Relating to Health Care Matters (18 U.S.C. Section 1035), and any other applicable federal health care law or equivalent state statutes or any rule or regulation promulgated by a Governmental Body with respect to any of the foregoing, as any of the same may be amended, modified and/or restated from time to time.

Healthcare Laws: Health Benefit Laws, Health Compliance Laws and Information Privacy and Security Laws.

HIPAA: The Health Insurance Portability and Accountability Act of 1996, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

HWH Requirements: The requirements set forth in C.F.R. Title 42, Part 412, as applicable, and any state laws and regulations applicable to hospitals located in the same building or on the same campus as another hospital.

Impositions: Collectively, with respect to each Facility, all civil monetary penalties, fines and overpayments imposed by state and federal regulatory authorities, all Real Estate Taxes, all state and local sales and use taxes, single business, gross receipts, transaction privilege, rent or similar taxes, franchise (including but not limited to taxes based on capital, net worth or assets), license, business entity, annual report fees and other taxes imposed on any business entities, including limited partnerships, limited liability companies and other "pass through" entities, and any such taxes and statutory representation fees imposed on any MPT Party or their respective Affiliates (including each MPT Party's parent organizations but excluding the Borrower Parties), sales and use taxes, all single business, gross receipts, transaction privilege, rent or similar taxes and assessments (including, without limitation, all assessments, charges and costs imposed under the Permitted Exceptions (including, without limitation, all penalties, fines, damages, costs and expenses for any violation of or a default under any of the Permitted Exceptions)), all assessments for utilities, public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Loan Term), ground rents, water, wastewater, sewer, sanitary sewer or other rents and charges, excises, tax levies, fees (including, without limitation, impact, development, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the portion of the Real Property relating to such Facility, the Loan Obligations relating thereto (including all interest and penalties thereon due to any failure in payment by Borrower Parties), and all other fees, costs and expenses which at any time prior to, during or in respect of the Loan Term may be charged, assessed or imposed on or in respect of or be a lien upon (a) any MPT Party or such MPT Party's lien or interest in the portion of the Real Property relating to such Facility, (b) such portion of the Real Property or any part thereof or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, sales from, or activity conducted on, or in connection with, such portion of the Real Property or the leasing or use of such portion of the Real Property or any part thereof. Notwithstanding any provision hereof to the contrary, nothing contained in this Agreement shall be construed to require the Borrower Parties to pay (1) any tax based on net income (whether denominated as a financial institutions or other tax) imposed on a MPT Party, or (2) any transfer tax of a MPT Party, or (3) any tax imposed with respect to the sale, exchange or other disposition by an MPT

Party of any portion of the Real Property or the proceeds thereof, or (4) except as expressly provided elsewhere in this Agreement, any principal or interest on any Encumbrance on any portion of the Real Property, except to the extent that any tax, assessment, tax levy or charge which the Borrower Parties are obligated to pay pursuant to the first sentence of this definition and which is in effect at any time during the Loan Term is totally or partially repealed, and a tax, assessment, tax levy or charge set forth in clause (1) or (2) is levied, assessed or imposed expressly in lieu thereof, in which case the substitute tax, assessment, tax levy or charge shall be deemed to be an Imposition.

Improvements: All buildings, structures, Fixtures and other improvements of every kind, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site), parking areas and roadways appurtenant to such buildings and structures presently or hereafter situated upon the Land, Capital Additions financed by an MPT Party and all hereditaments, easements, rights of way and other appurtenances related thereto.

Information Privacy or Security Laws: The HIPAA Laws and any other laws concerning the privacy and/or security of Personal Information, including but not limited to the Gramm-Leach-Bliley Act, state data breach notification laws, state health information privacy laws, the Federal Trade Commission Act and state consumer protection laws.

Inspection Fee: As defined in Section 12.1(j).

Insurance Premiums: As defined in Section 3.4.

Insurance Requirements: All terms of any insurance policy required by this Agreement and all requirements of the issuer of any such policy and such additional insurance which MPT may reasonably require.

IRF: An in-patient rehabilitation facility operated on the Real Property, or a portion thereof, licensed in the state of its location.

Joint Commission: As defined in Section 12.1(c)(ix).

Land: The parcels of land described on Exhibit A attached hereto and incorporated herein by reference, together with all hereditaments, easements, mineral rights, rights of way and other appurtenances related thereto, and any other parcel of land acquired or leased and made subject to this Agreement. With respect to each Facility, "Land" shall mean the portion of the Land relating to such Facility or any Capital Additions with respect thereto.

Las Cruces Facility: That certain MHC consisting of (i) a forty (40)-licensed bed IRF operated by the New Mexico Land Owner Borrower, and (ii) a twenty (20)-licensed bed LTCH operated by the New Mexico Tenant Borrower, located in Las Cruces, Dona Ana County, New Mexico.

Las Cruces Leasehold: All right, title and interest of the New Mexico Tenant Borrower, as tenant, under that certain Hospital Facility Land Lease dated as of July 1, 2007 between the New Mexico Tenant Borrower and the New Mexico Land Owner Borrower relating to the portion of the Real Property operated by the New Mexico Tenant Borrower, as the same may be modified, amended or restated from time to time.

Late Payment Penalty Rate: Shall mean on any date a rate equal to Five Percent (5%).

Law: Any federal, state or local statute, rule, regulation, ordinance, order, code, policy or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof by a Governmental Body or otherwise, including, without limitation, any judicial or administrative order, consent, decree or judgment.

Legal Requirements: With respect to each Facility and the portion of the Real Property relating thereto, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the operation of the Business on the Real Property, and the Real Property and the Collateral, including, without limitation, the construction, use or alteration thereof (including, without limitation, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973), whether now or hereafter enacted and in force, including any which may (a) require repairs, modifications, or alterations in or to the Real Property, or (b) in any way adversely affect the use and enjoyment thereof, and all permits, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to any of the Borrower Parties, at any time in force affecting the Real Property.

Lessee Affiliates: Collectively, Northern Colorado Rehabilitation Hospital, Inc., a Colorado corporation; Southwest Idaho Advanced Care Hospital, Inc.; Northern Idaho Advanced Care Hospital, Inc.; Advanced Care Hospital of Montana, Inc.; New Braunfels Regional Rehabilitation Hospital, Inc.; and Utah Valley Specialty Hospital, Inc., each a Delaware corporation; Greenwood Regional Rehabilitation Hospital, LLC, a South Carolina limited liability company; Elkhorn Valley Rehabilitation Hospital, LLC; Advanced Care Hospital of Northern Colorado, LLC; and Rehabilitation Hospital of Mesquite, LLC, each a Delaware limited liability company; Mesquite Specialty Hospital, LP; and Laredo Specialty Hospital, LP, each a Delaware limited partnership.

Licenses: As defined in Section 7.2.

LLC Agreement: As defined in Section 21.11.

Loan: As defined in the recitals to this Agreement.

Loan Documents: Collectively, this Agreement, the Note, the Security Documents, the Guaranties, the Pledge Agreements, the Environmental Indemnity Agreement, and all the other documents, instruments, certificates and agreements executed by any Facility Borrower, any Guarantor, or their respective Affiliates, in connection with the Loan or otherwise to evidence or secure the Loan, as each of the foregoing documents and agreements may be modified, amended or restated from time to time.

Loan Obligations: All present and future debts, obligations and liabilities of the Borrower Parties and the Guarantors to MPT arising pursuant to or on account of the provisions

of this Agreement, the Note, and all other Loan Documents, including, without limitation, the obligations and liabilities of the Borrower Parties (a) to pay the principal of and interest on the Note in accordance with the terms thereof, including any and all extensions, modifications, and renewals thereof and substitutions therefor; (b) to pay, repay or reimburse MPT for all amounts owing hereunder and/or under any of the other Loan Documents, including any reimbursement obligations; and (c) to perform their respective obligations under this Agreement and the other Loan Documents.

Loan Term: The period during which any of the Loan Obligations shall remain outstanding.

LTCH: A long-term acute care hospital facility operated on the Real Property, or a portion thereof, licensed in the state of its location.

Major Event of Default: The occurrence of (i) an Event of Default under clause (a), (i) or (j) of Section 13.1; (ii) an Event of Default by Ernest Health under clause (c) or (g) of Section 13.1; (iii) Events of Default under clauses (b) through (h) of Section 13.1 with respect to more than one (1) of the Facility Borrowers; or (iv) a "Major Event of Default" under and within the meaning of the Sublease. It is understood and agreed that a monetary default under the Acquisition Note or an Event of Default under Section 13.1(e) shall be deemed to be a default with respect to all Facility Lessees.

Management Agreement: Any contract or agreement for the management of the operations of a Facility.

Management Company: Any person, firm, corporation or other entity or individual who or which will manage the operations of a Facility, which as of the date hereof, the Parties acknowledge is Guiding Health Management Group, LLC, a Delaware limited liability company (the "Existing Management Company").

Material Obligation: Any obligation of any of the Guarantors or any Facility Borrower which is in excess of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_).

Maturity Date: As defined in the Note.

Medicaid: The medical assistance program established by Title XIX of the Social Security Act (42 U.S.C. Sections 1396 et seq.) and any statute succeeding thereto.

Medicare: The health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. Sections 1395 et seq.) and any statute succeeding thereto.

Medicare IRF Certification: Certification that any Facility Borrower operating an IRF is or are qualified as an inpatient rehabilitation facility under 42 C.F.R. 412.23(b).

Medicare LTCH Certification: Certification that any Facility Borrower operating an LTCH is qualified as a long term care hospital under 42 C.F.R. 412.23(e), including, without limitation, that such Facility Borrower maintains the required average length of stay.



**Merger Agreement:** That certain Agreement and Plan of Merger dated January 31, 2012, by and among Ernest Health Holdings, LLC, Ernest Health Acquisition Sub, Inc., Ernest Health, FFC Partners II, L.P., FFC Executive Partners II, L.P., FFC Partners III, L.P., and FFC Executive Partners III, L.P., as the same may be amended, modified and/or restated from time to time.

**MHC:** A multi-hospital campus consisting of an IRF and an LTCH, operated on the Real Property, or a portion thereof, all licensed in the state of their location.

**Mortgages:** Collectively, (i) those three (3) Deeds of Trust, dated of even date herewith, executed by each Facility Borrower in favor of MPT, granting MPT a first priority lien on the Real Property owned by such Facility Borrower, including a first priority lien on the Las Cruces Leasehold, as any of the same may be modified, amended or restated from time to time.

**MPT:** As defined in the preamble to this Agreement.

**MPT Lessor Affiliates:** Collectively, MPT of Johnstown Hospital, LLC, MPT of Post Falls Hospital, LLC, MPT of Boise Hospital, LLC, MPT of Billings Hospital, LLC, MPT of Greenwood Hospital, LLC, MPT of Comal County Hospital, LLC, MPT of Mesquite Hospital, LLC, MPT of Laredo Hospital, LLC, MPT of Provo Hospital, LLC, and MPT of Casper Hospital, LLC, each a Delaware limited liability company.

**MPT's Notice Address:** As defined in Section 6.4.

**New Mexico Tenant Borrower:** Advanced Care Hospital of Southern New Mexico, Inc., a Delaware corporation.

**New Mexico Land Owner Borrower:** Rehabilitation Hospital of Southern New Mexico, Inc., a Delaware corporation.

**New Tenant Leases:** As defined in Section 11.1(b).

**Non-Competition Agreements:** Those certain Non-Competition Agreements, dated of even date herewith, executed by Ernest Health, Ernest Health Holdings, LLC and the Existing Management Company, as the same may be amended, modified and/or restated from time to time.

**Noncompete Period:** As defined in Section 12.3(a).

**Note:** That certain Promissory Note, dated of even date herewith, in the original principal amount of One Hundred Million and No/100 Dollars (\$100,000,000.00), made jointly and severally by the Borrower Parties in favor of MPT, as the same may be amended, modified, restated and/or supplemented from time to time.

**OFAC List:** The list of specially designated nationals and blocked persons subject to financial sanctions that is maintained and published by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained and published by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Law, including, without

limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

Operating Agreements: With respect to each Facility Borrower, means all agreements to which such Facility Borrower is a party with respect to the ownership, operation or management of the Business, including, without limitation, any and all service and maintenance contracts, employment contracts, management agreements, equipment leases, consulting agreements, laboratory servicing agreements, pharmaceutical contracts and physician, other clinician or other professional services provider contracts, as the same may from time to time be amended, restated, supplemented, renewed or modified.

Option: As defined in [Section 14.1](#).

Option Closing Date: As defined in [Section 14.4](#).

Option Notice: As defined in [Section 14.1](#).

Option Period: As defined in [Section 14.1](#).

Option Price: As defined in [Section 14.1](#).

Option Property: As defined in [Section 14.1](#).

Organizational Documents: As defined in [Section 7.6](#).

Other Agreements: All other leases, loans, and agreements, including the Loan Documents other than this Agreement, entered into between MPT or any Affiliate of MPT (excluding the Borrower Parties and Ernest Health), on the one hand, and any of the Borrower Parties, the Guarantors, or any of their respective Affiliates (excluding MPT and MPT Affiliates other than Borrower Parties and Ernest Health), on the other hand, relating to the transactions contemplated under this Agreement, including, without limitation, and the Merger Agreement, the Real Estate Contract, the Acquisition Note, the Sublease, the Guaranties, the Non-Competition Agreements, and the Subordination Agreement, as any of the same may be modified, amended or restated from time to time.

Parties: Collectively, the Borrower Parties and MPT.

Partial Taking: As defined in [Section 10.1\(c\)](#).

Participation Agreements: With respect to each Facility Borrower, all third-party payor participation or reimbursement agreements, and provider numbers and provider agreements, to which such Facility Borrower is a party relating to rights to payment or reimbursement from, and claims against, private insurers, managed care plans, employee assistance programs, Blue Cross and/or Blue Shield, governmental authorities, Medicare, Medicaid and TRICARE, and other third-party payors, as the same may from time to time be amended, restated, extended, supplemented or modified, together with all rights, privileges and entitlements thereunder.

Patriot Act: The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as the same may be amended, modified or restated from time to time.

Permitted Exceptions: As defined in Article V.

Person: An individual, a corporation, a limited liability company, a partnership, an unincorporated association, a joint venture, a Governmental Body or another entity or group.

Personal Property: With respect to each Facility Borrower, the "Collateral" as defined in Section 2(a) of the Security Agreement.

Pledge Agreements: Collectively, (a) that certain Pledge Agreement, dated of even date herewith, executed by Ernest Health Holdings, LLC in favor of MPT, the MPT Lessor Affiliates and MPT Aztec Opco, LLC, (b) that certain Pledge Agreement, dated of even date herewith, executed by Ernest Health, Inc. in favor of MPT, the MPT Lessor Affiliates and MPT Aztec Opco, LLC, and (c) that certain Pledge Agreement, dated of even date herewith, executed by the Existing Management Company in favor of MPT, the MPT Lessor Affiliates and MPT Aztec Opco, LLC, as any of the same may be modified, amended or restated from time to time.

Prescott Valley Facility: That certain forty (40)-licensed bed IRF located in Prescott Valley, Yavapai County, Arizona.

Primary Intended Use: As defined in Section 4.2.

Purchaser: As defined in Section 14.1.

RCRA: As defined in the definition of "Hazardous Materials Laws."

Real Estate Contract: That certain Real Property Asset Purchase Agreement dated January 31, 2012, by and among Ernest Health, Lessee, Borrowers, MPT Real Estate Owner, Lessor, Lenders, FFC Partners II, L.P., FFC Executive Partners II, L.P., FFC Partners III, L.P., and FFC Executive Partners III, L.P., as the same may be amended, modified and/or restated from time to time.

Real Estate Taxes: All taxes due and payable as a result of a Party's interest in the Real Property.

Real Property: The Land and the Improvements.

Reserve: As defined in Section 8.2.

RFFE Loans: As defined in Article XVII.

SARA: As defined in the definition of "Hazardous Materials Laws."

Security Agreement: That certain Security Agreement, dated of even date herewith, by and among the Borrower Parties, the Lessee Affiliates and Ernest Health, in favor of MPT, the MPT Lessor Affiliates and MPT Aztec Opco, LLC, as the same may be amended, modified, restated and/or supplemented from time to time.

**Security Documents:** Collectively, the Mortgages, the Security Agreement, the Pledge Agreements, the Guaranties, the Environmental Indemnity Agreement, the Assignments of Rents and Leases, the Subordination Agreement and the Financing Statements, as each of the foregoing instruments and agreements may be modified, amended or restated from time to time.

**Single Purpose Entity:** With respect to each Facility, an entity which (i) exists solely for the purpose of owning and/or leasing all or any portion of the Real Property relating to such Facility and conducting the operation of the Business thereon, (ii) conducts business only in its own name, (iii) does not engage in any business other than the ownership and/or leasing of all or any portion of the Real Property relating to such Facility and the operation of the Business thereon, (iv) does not hold, directly or indirectly, any ownership interest (legal or equitable) in any entity or any real or personal property other than the interest in the Real Property and the other assets incident to the operation of the Business, (v) does not have any debt other than as permitted by this Agreement or arising in the ordinary course of the Business and does not guarantee or otherwise obligate itself with respect to the debts of any other person or entity, other than as contemplated by this Agreement approved by MPT in writing, (vi) has its own separate books, records, accounts, financial statements and tax returns, (vii) holds itself out as being a company separate and apart from any other entity, and (viii) maintains all entity formalities independent of any other entity.

**Special Option:** As defined in [Section 14.1\(b\)](#).

**Special Option Notice:** As defined in [Section 14.1\(b\)](#).

**Special Option Period:** As defined in [Section 14.1\(b\)](#).

**Special Option Price:** As defined in [Section 14.1\(b\)](#).

**State Regulatory Authorities:** As applicable to each Facility, the state licensing and certification agencies, together with all applicable statutes and regulations, related to healthcare facilities in each respective state.

**Sublease:** That certain Lease Agreement, dated of even date herewith, by and among the Lessee Affiliates and the MPT Lessor Affiliates, whereby the MPT Lessor Affiliates are subleasing to the Lessee Affiliates certain real property consisting of ten (10) parcels of land, the improvements now or hereafter located thereon (including any improvements consisting of hospital facilities), all as more particularly described therein, as the same may be modified, amended or restated from time to time.

**Subordination Agreement:** As defined in [Section 12.2](#).

**Taking:** With a taking or voluntary conveyance during the Loan Term of all or part of the Collateral, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any Condemnation or other eminent domain proceeding affecting the Collateral.

Tenant: The Borrower Parties, tenants or subtenants under the Tenant Leases, if any.

Tenant Leases: All leases, subleases, pharmacy leases and other rental agreements (written or verbal, now or hereafter in effect), if any, including any Existing Subleases as described in Section 11.1(a), pursuant to which any Facility Borrower has granted or will grant a possessory interest in and to any space in or any part of the Real Property, or that otherwise have rights with regard to any parties of the Real Property, and all Credit Enhancements, if any, held in connection therewith.

Terminated Facility: As defined in Section 13.2(f).

Total Debt: All indebtedness which, in accordance with GAAP, will be included in determining total liabilities of the applicable Person, as shown on the liability side of a balance sheet, including any such indebtedness represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Total Taking: As defined in Section 10.1(b).

Unsuitable for Its Use or Unsuitable for Its Primary Intended Use: As used anywhere in this Agreement, the terms “Unsuitable for Its Use” or “Unsuitable for Its Primary Intended Use” shall mean that, with respect to the portion of the Collateral relating to any Facility, by reason of damage or destruction, or a partial Taking by Condemnation, such Facility cannot be operated on a commercially practicable basis for its Primary Intended Use, taking into account all relevant factors (including, without limitation, anticipated repairs and/or restorations), and the effect of such damage or destruction or partial Taking.

USPAP: The Uniform Standards of Professional Appraisal Practice, as amended from time to time.

**Section 1.2 Interpretation; Terms Generally.** The definitions set forth in Section 1.1 and elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless otherwise indicated, the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “herein”, “hereof” and “hereunder” and words of similar import shall be deemed to refer to this Agreement (including the Schedules and Exhibits) in its entirety and not to any part hereof, unless the context shall otherwise require. All references herein to Articles, Sections,

Schedules and Exhibits shall be deemed to refer to Articles, Sections and Schedules of, and Exhibits to, this Agreement, unless the context shall otherwise require. Unless the context shall otherwise require, any references to any agreement or other instrument or statute or regulation are to it as amended and supplemented from time to time (and, in the case of a statute or regulation, to any corresponding provisions of successor statutes or regulations). Any reference in this Agreement to a “day” or number of “days” that does not refer explicitly to a “Business Day” or “Business Days” shall be interpreted as a reference to a calendar day or number of calendar days. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or notice shall be deferred until, or may be taken or given on, the next Business Day.

## ARTICLE II

### THE LOAN

**Section 2.1. The Loan.** Contemporaneously herewith, MPT has loaned and advanced to the Borrower Parties, who are responsible for the Loan Obligations on a joint and several basis, the principal amount of One Hundred Million and No/100 Dollars (\$100,000,000.00) and, at the instruction of Borrower Parties, such proceeds have been distributed among the Borrowing Parties as set forth on Schedule 2.1.

**Section 2.2. The Note.** In addition to being subject to all the terms and conditions of this Agreement, the Loan is evidenced by, and shall bear interest, be repaid and be subject to such other terms and conditions as are set forth in, the Note. All payments due under the Note and under this Agreement shall be sent to MPT utilizing the ACH Network. The Borrower Parties shall take all necessary steps and bear any and all costs associated with utilizing the ACH Network to timely deliver payments to MPT. All payments made through the ACH Network remain payments as required under the Note and this Agreement and, as such, are subject to all terms and conditions of the Note and this Agreement, including, but not limited to, the default provisions thereof and hereof.

**Section 2.3. Credit Enhancement.** The Loan Obligations are fully guaranteed by the Guaranties and secured pursuant to the Security Documents.

## ARTICLE III

### ADDITIONAL CHARGES AND IMPOSITIONS

**Section 3.1. Additional Charges.**

(a) In addition to the payments owed on the Note, each of the Borrower Parties shall also pay and discharge as and when due and payable (or, in the case of Impositions, prior to delinquency) (i) all other amounts, liabilities, obligations and Impositions which such Borrower Party assumes or agrees to pay under the Loan Documents, and all other amounts, liabilities, obligations and Impositions for which the Borrower Parties are responsible related to the ownership, use, possession and operation of the Collateral or the Business, including, without limitation, all costs of owning and operating the Facilities, all Real Estate Taxes, insurance

premiums, maintenance and capital improvements, all licensure violations, violations of and defaults under any of the Permitted Exceptions, and civil monetary penalties and fines, and (ii) in the event of any failure on the part of the Borrower Parties to pay any of those items referred to in clause (i) above, the Borrower Parties, jointly and severally, will also promptly pay and reimburse MPT for all such amounts paid by MPT and promptly pay and discharge every fine, penalty, interest and cost which may be added for non-payment or late payment of such items (the items referred to in clauses (i) and (ii) above being referred to herein collectively as the “Additional Charges”), and MPT shall have all legal, equitable and contractual rights, powers and remedies provided in the Loan Documents, by statute or otherwise, in the case of non-payment of the Additional Charges, as in the case of the other Loan Obligations. If any installment of Additional Charges shall not be paid within five (5) Business Days after the date required to be paid hereunder (subject to any applicable notice and cure period pursuant to Section 13.1(a)), the Borrower Parties, jointly and severally, will pay to MPT on demand, as Additional Charges, a late charge computed at the Default Rate and a late payment penalty computed at the Late Payment Penalty Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that the Borrower Parties pay any Additional Charges to MPT pursuant to any requirement of the Loan Documents, the Borrower Parties shall be relieved of their obligation to pay such Additional Charges to the Person to which they would otherwise be due.

(b) If any provision of any Facility Instrument requires payment into escrow or making of deposits to be made with such Facility Lender relating to any part of the Additional Charges (including, without limitation, the Impositions, Real Estate Taxes and/or some or all Insurance Premiums), then the Borrower Parties shall either pay to MPT such required Additional Charges and MPT shall transfer such amounts to such Facility Lender or, pursuant to written direction by MPT, the Borrower Parties shall pay such Additional Charges directly to such Facility Lender. Additionally, at MPT’s option during the Loan Term, MPT may require the Borrower Parties to pay into escrow or make deposits to MPT relating to any part of the Additional Charges (including, without limitation, the Impositions, Real Estate Taxes and/or some or all Insurance Premiums), which deposits or installments shall be payable after delivery of at least thirty (30) days’ prior written notice to the Borrower Parties (unless an Event of Default shall occur or be continuing, in which event, such deposits shall be payable to MPT upon demand). Upon such request, the Borrower Parties shall pay to MPT (or directly to a Facility Lender, if requested by MPT), such amounts as and when required by MPT (or the Facility Lender). Any such part of the Additional Charges paid into escrow or deposits in accordance herewith shall not bear interest, may be commingled with MPT’s (or Facility Lender’s) books and accounts and, upon an Event of Default hereunder, may be applied by MPT (or Facility Lender) to all sums owed by the Borrower Parties to MPT and any of its respective Affiliates (or to sums owed to Facility Lender or otherwise owed by the Borrower Parties); provided, however, that, if MPT collects any deposits for Additional Charges in accordance with this Section 3.1, (i) MPT shall use such deposited amounts to pay, or cause such deposited amounts to be used to pay, such Additional Charges prior to delinquency, and (ii) MPT shall refund to the Borrower Parties, on an annual basis, any such remaining amounts collected in excess of the amounts ultimately required to pay the applicable Additional Charges.

**Section 3.2. Payment of Impositions.** Subject to Article V relating to permitted contests, the Borrower Parties, jointly and severally, will pay, or cause to be paid, all Impositions prior to delinquency and before any fine, penalty, interest or cost may be added for non-payment, such payments to be made directly to the taxing or assessing authorities (except in the case of escrows and deposits required to be paid to MPT as provided in this Agreement), and the Borrower Parties will promptly, upon request, furnish to MPT copies of official receipts or other satisfactory proof evidencing such payments. The Borrower Parties' obligation to pay such Impositions shall be deemed absolutely fixed upon the date such Impositions become a lien (other than inchoate liens) upon the Collateral or any part thereof. If any such Imposition may lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), the Borrower Parties may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments during the Loan Term (subject to the Borrower Parties' right of contest pursuant to Article V). The Borrower Parties, at their sole, joint and several expense, shall, to the extent permitted by applicable laws and regulations, prepare and file all other tax returns and reports in respect of any Imposition as may be required by Governmental Entities. If any refund shall be due from any taxing authority in respect of any Imposition paid by the Borrower Parties, the same shall be paid over to or retained by the Borrower Parties if no Event of Default shall have occurred hereunder and be continuing. Any such funds retained by MPT due to an Event of Default shall be applied as provided in Section 13.5. MPT and the Borrower Parties shall, upon request of the other, provide such data as is maintained by the parties to whom the request is made with respect to the Collateral as may be necessary to prepare any required returns and reports. After obtaining written approval from MPT, which approval shall not be unreasonable withheld, the Borrower Parties may, at the Borrower Parties' sole cost and expense, protest, appeal, or institute such other proceedings as the Borrower Parties may deem appropriate to effect a reduction of real estate or personal property assessments and MPT, at the Borrower Parties' expense as aforesaid, shall fully cooperate with the Borrower Parties in such protest, appeal, or other action.

**Section 3.3. Utility Charges.** The Borrower Parties will contract for, in their respective names, and will pay or cause to be paid when due all charges for electricity, power, gas, oil, water and other utilities used in connection with the Collateral during the Loan Term, including, without limitation, all impact and tap fees necessary for the operation of the Facilities.

**Section 3.4. Insurance Premiums.** The Borrower Parties shall contract for, in their own name, and will pay or cause to be paid all premiums for the insurance coverage required to be maintained pursuant to Article VI during the Loan Term (the "Insurance Premiums"); provided, however, if required by MPT pursuant to Section 3.1, all or a portion of the Insurance Premiums shall be paid as required under Section 3.1.

**ARTICLE IV**  
**GENERAL COVENANTS**

During the Loan Term, the Borrower Parties shall observe the following covenants:

**Section 4.1. Borrower Parties' Personal Property.** The Borrower Parties, at their expense, shall install, affix, assemble and place on the Real Property the Borrower Parties' Personal



Property, which Borrower Parties' Personal Property shall be subject to any security interests and liens as provided in Section 13.8. Except for inventory or for removal because of damage, obsolescence, upgrade or replacement, the Borrower Parties shall not, without the prior written consent of MPT (such consent not to be unreasonably withheld, conditioned or delayed provided that no Major Event of Default then exists hereunder), remove any of the Borrower Parties' Personal Property from the Real Property. The Borrower Parties shall provide and maintain during the Loan Term all such Borrower Parties' Personal Property as shall be necessary to operate each Facility in compliance with all licensure and certification requirements, in compliance with all applicable Legal Requirements and Insurance Requirements, and otherwise in accordance with customary practice in the industry for the Primary Intended Use. Following the expiration or earlier termination of this Agreement respect to the portion of the Real Property relating to any one or more of the Facilities and subject to MPT's option to purchase such Borrower Parties Personal Property as provided in Section 14.2, the Borrower Parties agree that all of the Borrower Parties' Personal Property relating to such portion of the Real Property (for which MPT has authorized removal as provided above) not removed by the Borrower Parties within seven (7) Business Days (subject to extension upon approval of MPT, which approval shall not be unreasonably withheld, conditioned or delayed) following the expiration or earlier termination of this Agreement with respect thereto shall be considered abandoned by Borrower Parties and may be appropriated, sold, destroyed or otherwise disposed of by MPT (at Borrower Parties' cost) with prior written notice thereof to the Borrower Parties, without any payment to Borrower Parties and without any obligation to the Borrower Parties to account therefor. Borrower Parties will, at its expense, restore the Real Property and repair all damage to the Real Property caused by the installation or removal of the Borrower Parties' Personal Property, whether affected by the Borrower Parties, MPT, any of the Borrower Parties lender, or any Facility Lender.

**Section 4.2. Primary Intended Use.** Throughout the Loan Term, the Borrower Parties shall utilize the Real Property to operate the Facilities as follows:

- (a) The Brownsville Facility shall be operated as a forty (40)-licensed bed IRF, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;
- (b) The Las Cruces Facility shall be operated as a MHC with forty (40)-licensed beds as an IRF and twenty (20)-licensed beds as an LTCH, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses; and
- (c) The Prescott Valley Facility shall be operated as a forty (40)-licensed bed IRF, and for such other legal ancillary uses as may be necessary in connection with or incidental to such uses;

and in each case subject to all covenants, restrictions, easements and all other matters of record (including those set forth in the Permitted Exceptions) relating to the applicable Facility (the "Primary Intended Use"). The Borrower Parties shall comply with all Legal Requirements (including, as applicable, the HWH Requirements) and shall maintain all Licenses, including, but not limited to, Medicare and/or Medicaid certifications (including, as applicable, its Medicare

IRF Certification or Medicare LTCH Certification), provider numbers and agreements, certificates of need, governmental approvals, and full accreditation from all applicable governmental authorities, if any, that are necessary for the operation of the applicable Facility consistent with the Primary Intended Use.

**Section 4.3. No Changes.** Except as expressly authorized herein, the Borrower Parties shall not use any of the Real Property for any use other than the Primary Intended Use, without the prior written consent of MPT, not to be unreasonably withheld, conditioned or delayed.

**Section 4.4. No Interference with Insurance.** No use shall be made or permitted to be made of any portion of the Real Property and no acts shall be done which will cause the cancellation of any insurance policy covering any portion of the Real Property or any part thereof, nor shall the Borrower Parties sell or otherwise provide to residents or patients therein, or permit to be kept, used or sold in or about any portion of the Real Property any article which may be prohibited by law or by the standard form of fire insurance policies, any other insurance policies required to be carried hereunder, or fire underwriters regulations. The Borrower Parties shall, at their sole cost, comply with all of the requirements, covenants and restrictions pertaining to the Real Property, including, without limitation, all of the Permitted Exceptions, and other requirements of any insurance board, association, organization or company necessary for the maintenance of the insurance, as herein provided, covering the Real Property and the Personal Property.

**Section 4.5. Waste; Nuisance.** The Borrower Parties shall not commit or suffer to be committed any waste on any portion of the Real Property, or in any Facility, nor shall the Borrower Parties cause or permit any nuisance thereon.

**Section 4.6. Maintenance of Security Interests.** The Borrower Parties shall neither suffer nor permit the Collateral (including, without limitation, the Real Property) or any portion thereof, including any Capital Addition whether or not financed by MPT, or the Personal Property, to be used in such a manner as (i) might reasonably tend to impair MPT's (or the Borrower Parties', as the case may be) title thereto or to any portion thereof, or (ii) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Collateral (including, without limitation, the Real Property) or any portion thereof.

**Section 4.7. Publicity Signs.** During the Loan Term, MPT and its Affiliates shall have the right and option to erect a sign on each parcel of the Real Property stating that such parcel is financed by MPT. Such sign shall be in a size, and shall be erected in a location acceptable to MPT and approved by the Borrower Parties, which approval shall not be unreasonably withheld, conditioned or delayed.

**Section 4.8. No Conveyance of Real Property.** The Borrower Parties shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, sell, transfer or assign any or all of their respective interests in any portion of the Real Property.

## ARTICLE V

### LIENS

Subject to the provisions of Article XVIII relating to permitted contests, Borrower Parties will not directly or indirectly create or allow to remain and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim upon any portion of the Real Property or any attachment, levy, claim or encumbrance in respect of the Loan Obligations, any amounts held in the Reserve, or any funds or amounts that are or will be provided by MPT or its Affiliates to Borrower Parties at any time during the Loan Term in accordance with this Agreement; excluding, however, (a) the Mortgages; (b) the matters, if any, set forth in Exhibit B (the “Permitted Exceptions”); (c) restrictions, liens and other encumbrances which are consented to in writing by MPT; (d) liens for those taxes of MPT which Borrower Parties is not required to pay hereunder; (e) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as (1) the same are not yet payable or are payable without the addition of any fine or penalty or (2) such liens are in the process of being contested as permitted by Article XVIII; and (f) the Encumbrances which are permitted in accordance with Section 8.3(b). Unless otherwise expressly provided herein, the Borrower Parties shall not mortgage or grant any interest or security interest in, or otherwise assign, any part of Borrower Parties’ rights and interests in this Agreement, any portion of the Real Property or Borrower Parties’ Personal Property during the Loan Term, except as provided in Section 13.9 of this Agreement.

## ARTICLE VI

### INSURANCE

#### **Section 6.1. Insurance Covenants.**

(a) During the Loan Term, Borrower Parties shall at all times keep the Real Property and all Personal Property, insured against loss or damage from such causes as are customarily insured against, by prudent owners of similar facilities. Without limiting the generality of the foregoing, and subject to the provisions of Section 6.1(b) below, Borrower Parties shall obtain and maintain in effect throughout the Loan Term with respect to each Facility the kinds and amounts of insurance deemed necessary by MPT and as described below. This insurance shall be written by insurance companies (i) acceptable to MPT, (ii) that are rated at least an “A-VIII” or better by Best’s Insurance Guide, and (iii) unless otherwise approved by MPT, authorized, licensed and qualified to do insurance business in the state in which the Real Property is located. The aggregate amount of coverage by a single company must not exceed Five Percent (5%) of the insurance company’s policyholders’ surplus. Borrower Parties will pay or cause to be paid all Insurance Premiums for the insurance coverage required to be maintained pursuant to this Article VI during the Loan Term. The commercial property, rental value and business interruption policies shall name MPT (and any other entity that MPT may deem necessary) as additional insureds and loss payees as respects coverage afforded the Real Property under standard Insurance Services Offices (ISO) commercial property insurance endorsements CP1219 and CP1503, or manuscript equivalents, and as additional insureds and loss payees under boiler and machinery and any other property insurance policy. Except as provided below with respect to commercial general liability, professional liability and excess or umbrella liability policies, all

other coverage policies shall name MPT (and any other entity that MPT may deem necessary) as additional insureds as respects liability arising from Borrower Parties' use, occupancy or maintenance of the Real Property. The commercial general liability, professional liability and the excess or umbrella liability policies shall name MPT (and any other entity that MPT may deem necessary) as named insureds. All property, business interruption and boiler and machinery losses shall be payable to MPT and/or Borrower Parties as provided in Article IX. Each insurance policy required hereunder must, unless otherwise expressly provided herein (i) provide primary insurance without right of contribution from any other insurance carried by MPT, (ii) contain express permission for Borrower Parties to enter into a waiver of subrogation rights in favor of MPT, or any right of setoff or counterclaim against any insured party thereunder including MPT, (iii) permit MPT to pay premiums at MPT's discretion, and (iv) as respects any third party liability claim brought against MPT, obligate the insurer to defend MPT as a named insured thereunder. In addition, the property, business interruption and boiler and machinery policies shall name as an additional insured all Facility Lenders, if any, by way of a standard or other acceptable form of mortgagee's loss payable endorsement. Any loss adjustment shall require the written consent of MPT and each affected Facility Lender. Evidence or verification (as defined in Section 6.4 below) of insurance and/or Impositions shall be deposited with MPT and, if requested, with any Facility Lender. If insurance premiums are required to be deposited or escrowed in accordance with Section 3.1, then Borrower Parties shall or deposit the amount of such insurance premiums in accordance with Section 3.1. With respect to each Facility, the policies required hereunder relating to Borrower Parties, the portion of the Real Property relating thereto, including the Improvements and the Personal Property relating to such Facility, shall insure against the following risks:

(i) Commercial Property insurance written on a broad "all risk" or "special perils" policy form covering physical loss or damage to such portion of the Real Property including building and improvements and betterments. Insured perils shall include, but not be limited to, fire, lightning, windstorm, water damage from plumbing systems or back-up of drains, back-up of sewers, hail, aircraft, riot, vehicle collision, explosion, smoke, vandalism, malicious mischief, flood, earth movement (including earthquake), theft, collapse, terrorism (only if such portion of the Real Property located inside metropolitan city limits with population exceeding 5,000,000), equipment breakdown, boiler and machinery, plate glass breakage, and perils typically provided under an Extended Coverage Endorsement, and other forms of broadened risk unless otherwise approved in writing by MPT. Unless otherwise provided such coverage shall be in an amount equal to the full replacement cost (as herein defined) value basis to the extent of the full insurable replacement value of such portion of the Real Property to be determined by MPT. The policy shall include coverage for subsidence. The policy exclusion applicable to faulty or defective design, workmanship or materials shall not apply to resultant damage to otherwise sound property. The policy must provide a sublimit of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) to cover reasonable expenses incurred by the insured or loss payee for professional services necessary to measure, quantify or determine the amount of any loss covered by this subparagraph (i), such as appraisers, auditors, accountants, architects, and engineers (such expenses shall not include the insured's or loss payee's own employees or public adjusters). Unless otherwise provided hereunder, all policy deductibles shall be borne in full by Borrower Parties and must not exceed, per occurrence, an amount in excess of Three Percent (3%),

of the insurable value of such portion of the Real Property as determined by MPT. Further, in the event of a loss, Borrower Parties shall abide by all provisions of the insurance contract, including proper and timely notice of the loss to the insurer. Borrower Parties further agrees that it will notify MPT of any loss in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) or greater and that no claim at or in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) shall be settled without the prior written consent of MPT, which consent shall not be unreasonably withheld, conditioned or delayed.

(ii) Flood and earthquake insurance shall be required at a minimum amount equal to Twenty Percent (20%) of the Full Replacement Cost, but not to exceed a coverage amount of Ten Million and No/100 Dollars (\$10,000,000.00) unless such portion of the Real Property is located in a flood plain or earthquake zone in which event higher coverages may be required by MPT in its reasonable discretion. The deductible for any such insurance shall not exceed Three Percent (3%) of the insured values.

(iii) Rental Value insurance using standard ISO endorsement CP 1503, or its equivalent, as respects rental value coverage on such portion of the Real Property. Such endorsement shall require property insurer to send notice of cancellation or non-renewal to MPT per Section 6.4.

(iv) Business interruption insurance covering lost earnings and continuing expenses, less rents due MPT to the extent covered under subparagraph (iii) above, in an amount sufficient to cover not less than the aggregate amount of Borrower Parties' earnings during (1) the actual time required to rebuild such portion of the Real Property following loss or damage, or (2) twelve (12) months, whichever is longer, plus an additional extended period of indemnity of not less than ninety (90) days shall be provided. Coverage shall be written on an "actual loss sustained" form, for the same perils and other events as described in subparagraph (v) below.

(v) Commercial General Liability in a primary amount of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence, bodily injury for injury or death of any one person and for Property Damage for damage to or loss of the property of others, subject to a Two Million and No/100 Dollars (\$2,000,000.00) annual aggregate policy limit applicable separately to such portion of the Real Property for all bodily injury and property damage claims, occurring on or about such portion of the Real Property or in any way related to such portion of the Real Property, including but not limited to, any swimming pools or other rehabilitation and recreational facilities or areas that are located on such portion of the Real Property otherwise related to such portion of the Real Property. All allocated loss adjustment expenses, including defense costs, shall be in addition to the policy limits required above. Such policy shall include coverages found on the ISO Commercial General Liability Policy form CG 0001, occurrence policy form, current edition, with deductible amounts acceptable to MPT. Borrower Parties shall be responsible for funding all deductibles and retentions, including those which may be applicable to MPT as an additional insured thereunder.

(vi) Automobile and vehicle liability insurance coverage for all owned, non-owned, leased or hired automobiles and vehicles in a primary limit amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. All allocated loss adjustment expenses, including defense costs, shall be in addition to the policy limits required above.

(vii) Umbrella liability insurance in the minimum amount of Ten Million and No/100 Dollars (\$10,000,000.00) for each occurrence and aggregate combined single limit for all liability. The umbrella shall follow form with the primary commercial general liability with respect to providing primary and non-contributory coverage to MPT as an additional insured when required by written contract or agreement. The umbrella liability policy shall name in its underlying schedule the policies of commercial general liability, automobile/vehicle liability, professional liability and employer's liability under the workers compensation policy. In the event that MPT, in its reasonable determination, shall conclude that the required amount of umbrella/excess liability coverage is inadequate, whether as a result of claims made against such coverage, the addition of new parcels of property to the Real Property hereunder or otherwise, within thirty (30) days after request from MPT, Borrower Parties shall increase the amount of such umbrella/excess coverage to [            Million Dollars (\$            )].

(viii) Professional liability insurance for Borrower Parties and all employed professionals (including any physicians) with respect to each Facility of in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) per individual claim and Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate. All contractors, agents and other persons (including physicians) who perform professional services for Borrower Parties shall meet such required minimum insurance requirements of One Million and No/100 Dollars (\$1,000,000.00) per individual claim and Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate.

(ix) Employee Dishonesty coverage covering all employees with a limit of insurance, with respect to each Facility, of not less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per claim.

The term "Full Replacement Cost" as used herein, shall mean the actual replacement cost thereof from time to time (not to be less than One Hundred Million Dollars (\$100,000,000.00) in the aggregate for the Facilities, with a per Facility Full Replacement Cost as set forth on Schedule 2.1), including increased cost of construction endorsement, less exclusions provided in the normal fire insurance policy. In the event either MPT or Borrower Parties believes that the Full Replacement Cost has increased or decreased at any time during the Loan Term, it shall have the right to have such Full Replacement Cost re-determined by an impartial third party, hereinafter referred to as the "Impartial Appraiser." If the MPT and Borrower Parties are unable to agree on the selection of an Impartial Appraiser, each party shall select one appraiser, and the two appraisers so selected shall jointly select the Impartial Appraiser. The party desiring to have the Full Replacement Cost so re-determined shall forthwith, on receipt of such determination by such Impartial Appraiser, give written notice thereof to the other party. The determination of such Impartial Appraiser shall be final and binding on the parties, and Borrower Parties shall forthwith increase, or may decrease, the amount of the insurance carried pursuant to this Section 6.1, as the case may be, to the amount so determined by the Impartial Appraiser. Borrower Parties shall pay the fee, if any, of the Impartial Appraiser.

(b) At MPT's option, and provided that the costs of such coverages collectively do not exceed the costs of such insurance to be obtained by Borrower Parties, MPT may obtain the insurance coverages as required herein in its own name and, in such event, Borrower Parties shall reimburse MPT for the costs of such coverages, including any required deductibles or retention payments, immediately upon request by MPT. If any reimbursement of such insurance costs shall not be paid within five (5) days after demand from MPT (subject to any applicable notice and cure period pursuant to Section 13.1(a)), Borrower Parties, in addition to all other obligations hereunder, will pay MPT, as Additional Charges, a late charge computed at the Overdue Rate and a late payment penalty computed at the Late Payment Penalty Rate on such amount, from the due date of such payment until MPT's receipt thereof. Notwithstanding the foregoing, if required by MPT pursuant to Section 6.4, all or a portion of the Insurance Premiums shall be paid as required under Section 3.1.

**Section 6.2. Additional Insurance.** In addition to the insurance described above, with respect to each Facility, Borrower Parties shall maintain such additional insurance, including, without limitation, adequate loss of rents insurance with respect to casualty or condemnation events to the extent the coverages set forth in Sections 6(a)(iii) and 6(a)(iv) are not adequate, as may be reasonably required from time to time by any Facility Lender, and shall further at all times maintain adequate worker's compensation insurance coverage for all persons employed by Borrower Parties or their Affiliate on the portion of the Real Property relating to such Facility, to the extent required by all applicable local, state and federal laws. Notwithstanding anything contained herein to the contrary, MPT shall not be prohibited from purchasing and maintaining such additional insurance as it may determine, in its sole discretion, to be necessary to protect its interest in all or any portion of the Real Property

**Section 6.3. Waiver of Subrogation.** Borrower Parties hereby waive any and all rights of recovery against MPT, its officers, agents and employees, for all injury, loss of or damage to persons or property, howsoever caused, including loss of use, to the extent such injury, loss or damage is covered or should be covered by required insurance or any other insurance maintained by Borrower Parties, including sums within deductibles, retentions or self-insurance applicable thereto. This waiver applies to all first party property, business interruption, equipment, vehicle and workers compensation claims (unless prohibited under applicable state statutes), as well as third party liability claims. This waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this agreement with respect to loss of, or damage to, property of the parties hereto. In as much as the above mutual waivers preclude the assignment of any aforesaid claim by way of subrogation to an insurance company, Borrower Parties agrees immediately to give to each insurance company providing coverage under this Agreement, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers. Borrower Parties shall indemnify MPT against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver from the insurer, if required

**Section 6.4. Form of Insurance.** All of the policies of insurance referred to herein shall be written in form satisfactory to MPT and by insurance companies satisfactory to MPT. Borrower Parties shall pay all of the premiums therefor (except as otherwise provided herein), and shall deliver “verification” of insurance to MPT as set forth below. All binders and policies delivered to MPT as required in this Section 6.4 shall also include a statement of insured values or locations for all properties under such blanket policies that share coverage limits. Verification of insurance as used herein is defined as follows:

(a) Contemporaneously herewith and thereafter, at least ten (10) Business Days prior to any insurance policy expiration date, Borrower Parties shall provide verification of required insurance coverage for the following year which shall include the following:

- (i) an ACORD 75 insurance binder, or similar type of insurance binder acceptable to MPT, for each policy providing evidence of insurance coverage of the types and in the amounts required hereunder and naming MPT (and any other entity that MPT may deem necessary) as additional insureds and loss payees with respect to property, rental value and business interruption insurance, naming MPT (and any other entity that MPT may deem necessary) as named insureds with respect to commercial general liability, professional liability and excess or umbrella insurance, and naming MPT (and any other entity that MPT may deem necessary) as additional insureds with respect to all other required policies, together with a sample or pro forma of each policy (if required by MPT), together with written confirmation of each insurer’s obligation to provide notice of cancellation or non-renewal of each;
- (ii) a copy of property statement of values if Borrower Parties maintain blanket insurance covering facilities other than the Real Property; and
- (iii) a summary of insurance program showing significant coverage limits, sublimits, deductibles and retentions.

(b) Thereafter, no later than the date that is forty-five (45) days after the date hereof and any such insurance policy expiration date, Borrower Parties shall provide further verification of insurance, which verification shall include (i) true and certified copies of the required insurance policies including blanket or specific endorsements reflecting the appropriate status of MPT (and any other entities that MPT deems necessary) as additional insureds, loss payees and/or named insureds, as the case may be, and providing notice of cancellation or non-renewal under the required insurance; and (ii) a copy of the property statement of values if Borrower Parties maintains blanket insurance covering facilities other than the Real Property.

(c) In the event Borrower Parties do not provide timely or proper verification, or does not maintain the insurance required hereunder or pay the premiums as required hereunder, MPT shall be entitled, but shall have no obligation, to obtain such insurance and pay the premiums therefor, which premiums shall be repayable to MPT as provided in this Agreement, and failure



to adhere to those repayment provisions shall constitute an Event of Default within the meaning of [Section 13.1\(a\)](#). Borrower Parties acknowledge and agree that any insurance policies, endorsements and/or binders or certificates that provide that the insurer will “endeavor to” give notice before same may be altered, allowed to expire, or canceled will not be acceptable to MPT. Notwithstanding anything contained herein to the contrary, all policies of insurance required to be obtained by Borrower Parties hereunder shall provide (i) that such policies will not lapse, terminate, be canceled, or be amended or modified to reduce limits or coverage terms unless and until MPT has received not less than thirty (30) days’ prior written notice at MPT’s notice address as specified in this Agreement (the “MPT’s Notice Address”), with a simultaneous copy to (A) MPT Operating Partnership, L.P., Attention: Its President, 1000 Urban Center Drive, Suite 501, Birmingham, Alabama 35242, and (B) McGriff, Seibels & Williams, Inc., Attention: John F. Carter, 2211 7th Avenue South, Birmingham, Alabama 35233, and (ii) that in the event of cancellation due to non-payment of premium, the insurer will provide not less than ten (10) days’ prior written notice to MPT at MPT’s Notice Address, with a simultaneous copy to (A) MPT Operating Partnership, L.P., Attention: Its President, 1000 Urban Center Drive, Suite 501, Birmingham, Alabama 35242, and (B) McGriff, Seibels & Williams, Inc., Attention: John F. Carter, 2211 7th Avenue South, Birmingham, Alabama 35233.

**Section 6.5. Increase in Limits.** In the event that MPT shall at any time in its reasonable discretion deem the limits of the personal injury, property damage or general public liability insurance then carried to be insufficient, the parties shall endeavor to agree on the proper and reasonable limits for such insurance to be carried and such insurance shall thereafter be carried with the limits thus agreed on until further change pursuant to the provisions of this [Section 6.5](#). If the parties shall be unable to agree thereon, the proper and reasonable limits for such insurance to be carried shall be determined by an impartial third party selected by the parties. Nothing herein shall permit the amount of insurance to be reduced below the amount or amounts required by any of the Facility Instruments.

**Section 6.6. Blanket Policy.** Notwithstanding anything to the contrary contained in this [Article VI](#), Borrower Parties’ obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Borrower Parties provided that:

- (a) Any such blanket policy or policies are acceptable to and have been approved by MPT, which approval shall not be unreasonably withheld;
- (b) Any such blanket policy or policies shall not be changed, altered or modified without the prior written consent of MPT, which consent shall not be unreasonably withheld, conditioned or delayed; and
- (c) Any such blanket policy or policies shall otherwise satisfy the insurance requirements of this [Article VI](#) (including the requirement of thirty (30) days’ written notice before the expiration or cancellation of such policies as required by [Section 6.4](#)) and shall provide for deductibles in amounts acceptable to MPT. Any aggregate policy limits within such blanket insurance policies shall apply separately to the Real Property of each Facility

**Section 6.7. No Separate Insurance.** Borrower Parties shall not, on Borrower Parties' own initiative or pursuant to the request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article VI to be furnished by, or which may reasonably be required to be furnished by, Borrower Parties, or increase the amounts of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases MPT and all Facility Lenders, are included therein as additional insureds and the loss is payable under said insurance in the same manner as losses are required to be payable under this Agreement. Borrower Parties shall immediately notify MPT of the taking out of any such separate insurance or of the increasing of any of the amounts of the then existing insurance by securing an additional policy or additional policies.

## ARTICLE VII

### LEGAL COMPLIANCE

**Section 7.1. Compliance with Legal and Insurance Requirements.** Subject to Article XVIII relating to permitted contests, the Borrower Parties, at their expense, (a) shall comply with all Legal Requirements and Insurance Requirements applicable to the Borrower Parties and the use, operation, maintenance, repair and restoration of the Facilities and the Real Property, whether or not compliance therewith shall require structural change in any of the Improvements or interfere with the use and enjoyment of the Real Property; (b) shall not use the Real Property and the Personal Property for any unlawful purpose; (c) shall procure, maintain and comply with all Licenses and other governmental approvals and authorizations required for any use of the Real Property and the Personal Property then being made, and for the proper erection, installation, operation and maintenance of the Real Property or any part thereof, including, without limitation, any Capital Additions; and (d) shall use its commercially reasonable efforts to cause all Tenants to acquire and maintain all licenses, certificates, permits, provider agreements and other authorizations and approvals, as well as all personal property needed to operate any portion of the Real Property to them for the Primary Intended Uses and any other uses conducted on the Real Property as may be permitted from time to time hereunder, it being acknowledged by MPT that any failure by the a Tenant under this clause (d) shall not cause (or be deemed to cause) a breach by the Borrower Parties of this Section 7.1 unless the Borrower Parties have so failed to use commercially reasonable efforts. The Borrower Parties' use of the Real Property, the use of all of the Borrower Parties' Personal Property used in connection with the Real Property, and the maintenance, alteration, and operation of the same, and all parts thereof, shall at all times conform to all Legal Requirements. Upon MPT's request, the Borrower Parties shall deliver to MPT copies of all such Licenses and other approvals and authorizations. The Borrower Parties shall indemnify and defend, at Borrower Parties' sole cost and expense, and hold MPT and its successors and assigns harmless from and against and agrees to reimburse MPT and its successors and assigns with respect to any and all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by MPT, and its successors and assigns, at any time and from time to time by reason or arising out of any breach by the Borrower Parties of any of the provisions of this Article VII or any breach or violation of any Legal Requirements.

**Section 7.2. Maintenance of Licenses.**

(a) With respect to each Facility, each Facility Borrower (a) shall maintain at all times during the Loan Term, the Operating Agreements, Participation Agreements and all applicable federal, state and local governmental licenses, approvals, qualifications, variances, certificates of need, franchises, accreditations, certificates, certifications, consents, permits and other authorizations and contracts, including provider numbers and provider agreements with governmental or quasi-governmental entities and other third parties, which may be necessary for the operation of the Facility operated by such Facility Borrower for the Primary Intended Use, or required for certification and participation under Medicare and Medicaid legislation and regulations, the provider programs of the State Regulatory Authorities, the DHHS, and the CMS, and/or state or federal Title XVIII and/or Title XIX provider programs applicable for each such Facility (collectively, the “Licenses”); (b) shall remain in compliance with all state and federal laws, rules, regulations and procedures with regard to the operation of the Facility operated by such Facility Borrower, including, without limitation, HIPAA and the State Regulatory Authorities, as applicable for each such Facility, as they may from time to time exist; and (c) shall operate the Facility operated by such Facility Borrower in a manner consistent with high quality care services and sound reimbursement principles under the Medicare and/or Medicaid programs and as required under state and federal law. The provisions of this Section 7.2 are in addition to the other provisions of this Agreement.

(b) Each Facility Borrower covenants and agrees that it shall not, without the prior written consent of MPT, which may be granted or withheld in MPT’s sole discretion, whether before, during or after the Loan Term, (i) sell, move, modify (including, without limitation, the establishment of a “provider-based” network or similar arrangement), cancel, surrender, transfer, assign, sell, relocate, pledge, secure, convey or in any manner encumber any License; or (ii) effect or attempt to effect any change in the license category or status of any Facility or any part thereof.

(c) Each Facility Borrower shall notify MPT in writing within two (2) Business Days after such Facility Borrower’s receipt of any notice, action, proceeding or inquiry of any governmental agency, bureau or other authority, whether federal, state or local, of any kind, nature or description, which could adversely affect any material License for the Facility operated by such Facility Borrower, or the ability of such Facility Borrower to maintain its status as the licensed and accredited operator of such Facility, or which alleges noncompliance with any law. At the time of delivery of such notification to MPT, such Facility Borrower shall furnish MPT with a copy of any and all such notices or inquiries, and MPT shall have the right, but not the obligation, to attend and/or participate, in MPT’s sole discretion, in any such actions or proceedings. Each of the Borrower Parties shall act diligently to correct any deficiency or deal effectively with any “adverse action” or other proceedings, inquiries or other governmental actions, so as to maintain the Licenses and Medicare and/or Medicaid certification (including, without limitation, as applicable, Medicare IRF Certification and Medicare LTCH Certification), status for the Facility operated by such Facility Borrower in good standing at all times. No Borrower Party shall agree to any settlement or other action with respect to such proceedings or

inquiries which affects the use of all or any portion of the Real Property or any part thereof for the Primary Intended Use without the prior written consent of MPT, which consent may be withheld or conditioned in MPT's sole discretion. Each Borrower Party agrees to sign, acknowledge, provide and deliver to MPT (and if such Facility Borrower fails to do so upon request of MPT, such Facility Borrower shall be deemed to have appointed MPT as agent of such Facility Borrower for such purposes pursuant to that certain Special Power of Attorney attached hereto as **Exhibit C** (the "Power of Attorney") executed simultaneously with this Agreement) any and all documents, instruments or other writings which are or may become necessary, proper and/or advisable to cause any and all Licenses, including all Medicare and Medicaid provider numbers and provider agreements, to be obtained or issued (either in total or individually) in the name of MPT or its designee in the event that MPT reasonably determines in good faith that (irrespective of any claim, dispute or other contention or challenge of such Facility Borrower) there is any breach, default or other lapse in any representation, warranty, covenant or other delegation of duty to such Facility Borrower (beyond any applicable grace or cure period) and the issuing government agency has threatened or asserted that such License will terminate or has lapsed or that such License or certification or accreditation status is in jeopardy.

**Section 7.3. Compliance with Healthcare Laws.** The Borrower Parties will assure that during the Loan Term, the Borrower Parties shall comply with all Healthcare Laws. The Borrower Parties shall add to all of its leases relating to the Real Property that, in the event it is determined that such lease is in violation of the Healthcare Laws, such sublease shall be renegotiated so that same are in compliance with all Healthcare Laws. The Borrower Parties shall promptly to notify MPT in writing of the receipt of any notice of investigation of any alleged Healthcare Law violations. The Borrower Parties shall indemnify and defend, at the Borrower Parties' sole cost and expense, and hold MPT and its successors and assigns, harmless from and against, and shall reimburse MPT and its successors and assigns with respect to, any and all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by MPT and its successors and assigns, at any time and from time to time by reason, or arising out, of any breach by the Borrower Parties of any of the provisions set forth in this **Section 7.3** or any violation of any Healthcare Laws by the Borrower Parties.

**Section 7.4. Single Purpose Entity.** Each Facility Borrower has been since its formation and shall remain at all times during the Loan Term a Single Purpose Entity created for the sole purpose of operating the portion of the Real Property relating to its Facility in accordance with the terms of this Agreement. Simultaneously with the execution of this Agreement, and as requested by MPT at other times during the Loan Term, each Facility Borrower shall provide MPT with evidence that such Facility Borrower is a Single Purpose Entity and is in good standing in the state of its organization or incorporation and in the state in which the portion of the Real Property relating to such Facility Borrower is located.

**Section 7.5. Hazardous Materials.** The Borrower Parties shall ensure that the Real Property and the operation of the Facilities comply with all Hazardous Materials Laws. Except for Hazardous Materials generated in the normal course of business regarding the Primary Intended Use (which Hazardous Materials shall be handled and disposed of in compliance with all Hazardous Materials Laws), no Hazardous Materials shall be installed, used, generated,

manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Real Property or in connection with the operation of any Facility. No activity shall be undertaken on any portion of the Real Property or in connection with the operation of any Facility which would cause (a) such portion of the Real Property to become a treatment, storage or disposal facility of hazardous waste, infectious waste, biomedical or medical waste, within the meaning of, or otherwise bring the Real Property within the ambit of RCRA or any Hazardous Materials Laws; (b) a release or threatened release of Hazardous Materials from the Real Property within the meaning of, or otherwise bring the Real Property within the ambit of, CERCLA or SARA or any Hazardous Materials Laws; or (c) the discharge of Hazardous Materials into any watercourse, surface or subsurface of body of water or wetland, or the discharge into the atmosphere of any Hazardous Materials which would require a permit under any Hazardous Materials Laws. No activity shall be undertaken with respect to any portion of the Real Property or the operation of any Facility which would cause a violation or support a claim under RCRA, CERCLA, SARA or any Hazardous Materials Laws. The Borrower Parties shall, at its sole cost, expense, risk and liability, remove or cause to be removed from the Real Property all Hazardous Materials generated in connection with the Primary Intended Use and as found in hospital and healthcare facilities, including, without limitation, all infectious waste materials, syringes, needles and any materials contaminated with bodily fluids of any type, character or description of whatsoever nature in accordance with all Hazardous Materials Laws. The Borrower Parties shall not dispose of any such infectious waste and Hazardous Materials in any receptacles used for the disposal of normal refuse. The Borrower Parties shall indemnify and defend, at their sole cost and expense, and hold each MPT Party and their respective successors and assigns, harmless from and against and to reimburse the MPT Parties and their respective successors and assigns with respect to any and all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by the MPT Parties and their respective successors and assigns at any time and from time to time by reason or arising out of any breach by the Borrower Parties of this [Section 7.5](#) or any violation of any Hazardous Materials Laws by any Person other than MPT, any of MPT's Affiliates or any of their respective agents or representatives relating to the Real Property.

**Section 7.6. Organizational Covenants.** The Borrower Parties shall not permit or suffer, without the prior written consent of MPT, (a) any material amendment or modification of any Facility Borrower's Organizational Documents (as defined below) or any material amendment or modification of any organizational documents of any constituent entity within such Facility Borrower, including, without limitation, any such amendment that changes such Facility Borrower's status as a Single Purpose Entity or any amendment changing or modifying the governance or structure of, or changing the manager or managing member of, such Facility Borrower; (b) any dissolution or termination of any Facility Borrower's existence or sale of substantially all of any Facility Borrower's assets, whether by sale, transfer, merger, consolidation or otherwise; or (c) a change in any Facility Borrower's state of formation or any Facility Borrower's name. The Borrower Parties have, simultaneously with the execution of this Agreement, delivered to MPT a true and complete copy of each Facility Borrower's organizational documents, whether articles of incorporation, bylaws, articles of organization, or certificate of limited partnership, limited partnership agreements, or limited liability company agreements, together with all other documents creating and governing such Facility Borrower

(collectively, the “Organizational Documents”). The Borrower Parties represent and warrant that the Organizational Documents (i) were duly executed and delivered, (ii) are in full force and effect, binding upon the applicable Facility Borrower, and enforceable in accordance with their terms, and (iii) constitute the entire understanding among the partners, members or owners of the Equitable Interests of the applicable Facility Borrower. The Borrower Parties further represent and warrant that no breach exists under any of the Organizational Documents and no act has occurred and no condition exists which, with the giving of notice or the passage of time or both, would constitute such a breach under any of the Organizational Documents.

**Section 7.7. Representations and Warranties.** Each Facility Borrower hereby represents and warrants to MPT, jointly and severally, that (a) it has full legal right, power and authority to enter into this Agreement, to incur the obligations provided for herein, and to execute and deliver the same to MPT; (b) this Agreement has been duly executed and delivered by such Facility Borrower and constitutes such Facility Borrower’s valid and legally binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and similar laws affecting the enforcement of creditor’s rights or contractual obligations generally and, as to enforcement, to general principles of equity, regardless of whether applied in a proceeding at law or in equity; (c) no approval or consent of any foreign, federal, state, county, local or other governmental or regulatory body, and no approval or consent of any other person is required in connection with the execution and delivery by such Facility Borrower of this Agreement or the consummation and performance by such Facility Borrower of the transactions contemplated hereby; and (d) the execution and delivery of this Agreement and the obligations created hereby have been duly authorized by all necessary proceedings on the part of such Facility Borrower, and will not conflict with or result in the breach or violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both would constitute) a default under the governing documents of such Facility Borrower, any instrument, contract or other agreement to which it is a party or by or to which such Facility Borrower or any of its assets or properties are bound or subject; or any statute or any regulation, order, judgment or decree of any court or governmental or regulatory body.

## ARTICLE VIII

### REPAIRS; RESERVES; RESTRICTIONS; CAPITAL ADDITIONS

#### **Section 8.1. Maintenance; Repair and Remodel.**

(a) The Borrower Parties, at their sole expense, shall keep the Real Property and all private roadways, sidewalks and curbs appurtenant thereto (and the Personal Property) in good first class order and repair (whether or not the need for such repairs occurs as a result of the Borrower Parties’ use, any prior use, the elements, the age of the Real Property or any portion thereof) and, except as otherwise provided in Article IX and Article X, with reasonable promptness, will make all necessary and appropriate repairs thereto of every kind and nature whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, or arising by reason of a condition existing prior to the commencement of the Loan Term (concealed or otherwise). All repairs shall, to the extent reasonably achievable, be at least equivalent in quality to the original work. The Borrower Parties will not take or omit to take any action the taking or omission of which is reasonably likely to materially impair the value or the usefulness of the Real Property or any part thereof for the Primary Intended Use.

(b) Notwithstanding anything contained in this Agreement to the contrary, from time to time the Borrower Parties may remodel, modify and make additions to the Real Property which remodeling, modifications and additions are not Capital Additions (it being understood that Capital Additions are subject to the requirements of Section 8.3 hereof) but which are necessary or advisable for the Primary Intended Use and which permit the Borrower Parties to fully comply with its obligations as set forth in this Agreement. The Borrower Parties shall undertake any such actions expeditiously and in a workmanlike manner and will not significantly alter the character or purpose, or detract from the value or operating efficiency of, the Real Property nor significantly impair the revenue producing capability of the Real Property nor adversely affect the ability of the Borrower Parties to comply with the provisions of this Agreement.

(c) The Borrower Parties shall notify MPT of any and all repairs, improvements, additions, modifications and remodeling made to the portions of the Real Property relating to a particular Facility in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00) for the applicable Facility and obtain consent from MPT (which consent shall not be unreasonably withheld, conditioned or delayed) prior to making such repairs, improvements, additions, modifications or remodeling.

(d) Except as otherwise expressly provided in this Agreement, MPT shall not under any circumstances be required to build or rebuild any improvements on the Real Property, or to make any repairs, replacements, alterations, restorations, or renewals of any nature or description to the Real Property, whether ordinary or extraordinary or capital in nature, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto in connection with this Agreement, or to maintain the Real Property in any way.

(e) Nothing contained in this Agreement and no action or inaction by MPT shall be construed as (i) constituting the consent or request of MPT, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor for the provision or performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Real Property or any part thereof, or (ii) giving the Borrower Parties any right, power or permission to contract for, or permit the performance of, any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against MPT in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, lien, claim or other encumbrance upon the estate of MPT in the Real Property or any portion thereof.

### **Section 8.2. Reserves for Major Repairs.**

(a) Beginning on January 1, 2013, and on the first (1st) day of each calendar quarter thereafter during the Loan Term, the Borrower Parties shall deliver to MPT quarterly deposits in an amount equal to the product of (i) Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Dollar Amount"), multiplied by (ii) the number of beds placed in service or use at the Real Property, divided by (iii) four (4) (the "Reserve"). For the period commencing on the

date hereof and ending on December 31, 2013, the initial number of beds currently placed in service or placed in use at each of the Facilities shall be assumed to be forty (40); except for the Las Cruces Facility which shall be assumed to be sixty (60), with the total beds placed in service or in use at all of the Facilities as of the the date hereof is one hundred forty (140). The Reserve shall be held by MPT for the purpose of making Major Repairs to the applicable portions of the Real Property. Beginning on January 1, 2014, the number of beds shall be determined by the actual number of beds placed in service or certified to be available for use in connection with the Facilities, which shall not be reduced without the prior written consent of MPT. MPT shall advance to or reimburse the Borrower Parties for Major Repairs, limited to the amount of the Reserve, upon MPT's receipt from the Borrower Parties of documentation of such costs that is sufficient in MPT's reasonable judgment. Beginning on the first Adjustment Date and on each Adjustment Date thereafter during the Loan Term, the Dollar Amount to be multiplied by the number of beds as provided above shall be increased by the percentage by which the CPI published for the month which is two months prior to the applicable Adjustment Date shall have increased over the CPI figure published for the month which is two months prior to the previous Adjustment Date; provided, however, that in no event shall the increase in the Dollar Amount be less than Two Percent (2%) or more than Five Percent (5%) on any Adjustment Date. The amounts in the Reserve shall be used as described above to pay for Major Repairs, or, in the event the Borrower Parties fails to make any required non-Major Repairs hereunder, MPT may use funds in the Reserve for that purpose.

(b) The Borrower Parties hereby grants to MPT a first priority security interest in all monies deposited into the Reserve. At MPT's request, the Borrower Parties shall, as soon as practicable, execute all documents necessary to effect such security interest in all monies deposited into the Reserve. So long as no Major Event of Default has occurred, and no event has occurred which, with the giving of notice or passage of time or both, would constitute such a Major Event of Default hereunder, any amounts remaining in the Reserve at the expiration of this Agreement shall be returned to the Borrower Parties; provided, however, if such a Major Event of Default has occurred, or any event which, with the giving of notice or passage of time or both, would constitute such a Major Event of Default hereunder, MPT may retain all amounts remaining in the Reserve and shall apply such amounts to any damages incurred by MPT or used to pay outstanding obligations owed by the Borrower Parties to MPT. The Borrower Parties consents to MPT's pledge of the Reserve to any Facility Lender.

(c) MPT shall hold the Reserve in a separate, interest-bearing account. The Borrower Parties shall receive all interest accrued on the Reserve in accordance with subsection (b) above.

### **Section 8.3. Capital Additions.**

(a) The Borrower Parties shall have the right to construct and install Capital Additions on any parcel of the Real Property with the prior written consent of MPT, not to be unreasonably withheld, conditioned or delayed. Borrower Parties shall not be permitted to create any Encumbrance on such portion of the Real Property in connection with such Capital Addition, except as provided in Section 8.3(b). Prior to commencing construction of any Capital Addition, the Borrower Parties shall, at their sole cost and expense, submit to MPT in writing for MPT's prior approval (i) a proposal setting forth in reasonable detail any proposed Capital Addition, and (ii) such plans and specifications, certificates of need and other approvals, permits, licenses, contracts and other information concerning the proposed Capital Addition as MPT may reasonably request.



(b) With respect to the financing for any Capital Additions, the Borrower Parties shall first request MPT to provide funds to pay for such Capital Addition if the Borrower Parties intend to finance such Capital Addition. If, within thirty (30) days following MPT's receipt of such request, MPT declines to the Borrower Parties, the Borrower Parties may provide or arrange to finance any such Capital Additions. Notwithstanding any other provision of this subsection (b) to the contrary, in the event that MPT declines to finance any Capital Additions, the Borrower Parties' lender for Capital Additions shall have the right to secure its loan by a junior mortgage/deed of trust upon such Capital Additions, provided the form and substance of such deed of trust is approved by MPT, which approval may be granted or withheld in MPT's sole discretion.

(c) All proposed Capital Additions shall be architecturally integrated and consistent with the applicable portion of the Real Property as determined in the sole discretion of MPT. The Borrower Parties will provide to MPT, prior to commencing any proposed Capital Addition, the following:

(i) certificates of insurance (including, but not limited to, endorsements increasing the insurance coverage, if any, at the time required by Section 6.1), required under the construction contract for the Capital Addition, showing MPT and the Facility Lender, if any, as named obligees, additional insureds, and loss payees;

(ii) payment and performance bonds and all other bonds reasonably required by MPT and any Facility Lender and by any governmental authority applicable to the Capital Addition, naming MPT and any Facility Lender as named obliges, additional insureds and loss payee;

(iii) any information, certificates of need, regulatory approvals of architectural plans and other certificates, licenses, permits or documents requested by MPT which are necessary to confirm that the applicable Facility Borrower will be able to use the Capital Addition upon completion thereof in accordance with the Primary Intended Use, including all required federal, state or local government licenses and approvals;

(iv) endorsements to any outstanding policy of lender title insurance covering the Leased Property, satisfactory in form and substance to MPT (A) updating the same without any additional exceptions, except as may be permitted by MPT, and (B) increasing the coverage thereof by an amount equal to the Fair Market Value of the Capital Addition;

(v) appraisals, surveys, environmental reports and assessments, engineering, soil and property condition reports and studies, drawings, building permits, planning studies, financial statements, and any other instruments, certificates, documents and contracts as may be reasonably required by MPT and any Facility Lender advancing or reimbursing any Facility Borrower for any portion of the Capital Addition costs;

(vi) assignments and consents to assignments of contracts and waivers of liens, in forms acceptable to MPT, from each and every general contractor, subcontractor, developer, architect, construction company, engineer and other parties that will participate in the construction and development of such Capital Addition to the Real Property, together with evidence satisfactory to MPT that such waivers of liens have been duly filed in the official records of the county in which such affected portion of the Real Property is located; and

(vii) all customary or other required loan documentation and amendments as required by MPT.

(d) Notwithstanding any provision of this Section 8.3 to the contrary, no Capital Additions shall be made without the consent of MPT, which consent may be withheld in MPT's sole discretion, if the Capital Addition Costs of such proposed Capital Addition, when aggregated with the costs of all Capital Additions made by the Borrower Parties, would exceed Twenty-Five Percent (25%) of the then Fair Market Value of the affected portion of the Real Property or would, in the reasonable judgment of MPT, diminish the value of such portion of the Real Property. Furthermore, no Capital Addition shall be made which would tie in or connect any portion of the Real Property and/or any Improvements on any portion of the Real Property with any other improvements on property adjacent to such portion of the Real Property, including, without limitation, tie-ins of buildings or other structures or utilities, unless the Borrower Parties shall have obtained the prior written approval of MPT, which approval may be granted or withheld in MPT's sole discretion.

**Section 8.4. Encroachments; Restrictions.** If any of the Improvements shall, at any time, encroach upon any property, street or right-of-way adjacent to any portion of the Real Property, or shall violate the agreements or conditions contained in any federal, state or local law, restrictive covenant or other agreement affecting the Real Property, or any part thereof, or shall impair the rights of others under any easement or right-of-way to which the Real Property or any portion thereof is subject, then, promptly upon the request of MPT, the Borrower Parties shall, at their sole expense, subject to their right to contest the existence of any encroachment, violation or impairment, (a) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect MPT or Borrower Parties or (b) make such changes in the Agreementd Improvements, and take such other actions, as MPT reasonably determines, to remove such encroachment, or to end such violation or impairment, including, if necessary, the alteration of any of the Agreementd Improvements, and, in any event, take all such actions as may be necessary to continue the operation of the applicable Facility without such violation, encroachment or impairment. Any such alteration shall be made in conformity with the applicable requirements of Section 8.3. The Borrower Parties' obligations under this Section 8.4 shall be in addition to, and shall in no way discharge or diminish any obligation of, any insurer under any policy of title or other insurance, and the Borrower Parties shall be entitled to a credit for any sums paid by the Borrower Parties and recovered by MPT under any such policy of title or other insurance, less MPT's costs and expenses to recover such sums.

ARTICLE IX

FIRE AND CASUALTY

**Section 9.1. Fire and Casualty.**

(a) **Insurance Proceeds.** All proceeds payable by reason of any loss or damage to the Real Property, or any portion thereof, during the Loan Term and insured under any policy of insurance required by Article VI of this Agreement shall be paid to MPT and held by MPT in trust (subject to the provisions of this Agreement), and shall be applied as follows:

(i) If, within sixty (60) days following the date of such loss or damage the Borrower Parties provide MPT with written notice that, in the Borrower Parties' reasonable opinion, such portion of the Real Property relating to any Facility can be reconstructed, repaired, restored and/or replaced to substantially the same operating utility that it had prior to such event and in a condition suitable for its Primary Intended Use, then at the Borrower Parties' request and following delivery of invoices or other appropriate documentation to MPT, all proceeds shall be paid by MPT to the Borrower Parties from time to time to be used, to the extent necessary, to pay for the costs and expenses of reconstructing, repairing, restoring and/or replacing any damaged portion of the Real Property (or other property of the Borrower Parties related to the operation of the Facilities), or remedying any loss thereof, and debt service payments payable during the restoration.

(ii) If, within sixty (60) days after the event causing any such loss or damage to the Real Property, a Major Event of Default has occurred, or any event has occurred which with the giving of notice or the passage of time, or both, would constitute a Major Event of Default hereunder, or the Borrower Parties fail to notify MPT that, in the Borrower Parties' reasonable opinion, the Real Property can be reconstructed, repaired, restored and/or replaced to substantially the same operating utility that it had prior to such event and to a condition suitable for its Primary Intended Use, then such proceeds, at the Borrower Parties' sole discretion, shall be either (A) retained by MPT and applied toward repayment of the Loan Obligations, in any order, whether or not then due, and the Borrower Parties, jointly and severally, shall pay to MPT on demand the amount of any deductible or uninsured loss arising in connection therewith and any unpaid Loan Obligations, or (B) disbursed to the Borrower Parties by MPT from time to time following delivery of invoices or other appropriate documentation to MPT, to be used, to the extent necessary, to pay for the costs and expenses of reconstructing, repairing, restoring and/or replacing any damaged portion of the Real Property or remedying any loss thereof, in which case the Borrower Parties shall use such proceeds to cause the Real Property to be reconstructed, repaired, restored and/or replaced to substantially the same operating utility that the Real Property had prior to such event and to the reasonable satisfaction of MPT.

(iii) Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Real Property (or in the event neither MPT nor the Borrower Parties are required or elect to reconstruct, repair, restore or replace, all such

insurance proceeds) shall be paid over to, or retained by the Borrower Parties. Any remainder of such proceeds after the completion of the restoration of the Real Property shall be paid to the Borrower Parties.

(iv) With respect to each Facility, if the cost and expense of the reconstruction, repair, restoration, or replacement exceeds the amount of proceeds received by MPT pursuant hereto from the insurance required under Article VI, and the Borrower Parties are obligated hereunder to reconstruct, repair, restore or replace the Real Property, the Borrower Parties shall be obligated, jointly and severally, to contribute any excess amount needed to reconstruct, repair, restore or replace the Real Property prior to use of the insurance proceeds. Such amount shall be paid by the Borrower Parties to MPT to be held in trust together with any other insurance proceeds for application to the cost and expense of reconstruction, repair, restoration, or replacement as herein provided.

(b) Uninsured Event of Damage or Destruction. If the Real Property is totally or materially destroyed from a risk not covered by the insurance described in Article VI but that would have been covered if the Borrower Parties carried the insurance required to be maintained by, hereunder, then, whether or not such damage or destruction renders the Real Property Unsuitable for its Primary Intended Use, the Borrower Parties shall, at their sole, joint and several cost and expense, reconstruct, repair, restore or replace the Real Property to substantially the same condition it was in immediately before such damage or destruction, or shall repay the Loan Obligations to MPT in full, and such damage or destruction shall not terminate this Agreement.

(c) Damage Near End of Loan Term. Notwithstanding any provisions of this Section 9.1 to the contrary, if damage to or destruction of the Real Property occurs during the last twenty-four (24) months of the Loan Term, and if such damage or destruction cannot be fully repaired and restored within six (6) months immediately following the date of loss, and MPT shall be entitled to retain the insurance proceeds relating thereto and apply the same toward prepayment of the Loan Obligations, in any order, whether or not then due, in which case the Borrower Parties, jointly and severally, shall pay to MPT on demand the amount of any deductible or uninsured loss arising in connection therewith and any unpaid Loan Obligations. Any insurance proceeds in excess of the then current principal balance of the Loan shall be paid to the Borrower Parties.

## ARTICLE X

### CONDEMNATION

#### **Section 10.1. Condemnation.**

(a) Parties' Rights and Obligations. If during the Loan Term there is any Taking of all or any part of the Real Property or any interest in this Agreement by Condemnation, the rights and obligations of the parties shall be determined by this Article.

(b) Total Taking. If there is a Taking of all of the Real Property by Condemnation (a "Total Taking"), the provisions of Section 10.1(d)(i) hereof shall apply.

(c) Partial Taking. If there is a Taking of a portion of the Real Property by Condemnation (a "Partial Taking"), this Agreement shall remain in effect if, in MPT's reasonable opinion exercised in good faith, the Real Property is not thereby rendered Unsuitable for its Primary Intended Use. If, however, the Real Property is thereby rendered Unsuitable for its Primary Intended Use, but the Real Property can be reconstructed, repaired, restored and/or replaced to a condition suitable for its Primary Intended Use, then, so long as no Major Event of Default exists, and no other event has occurred that is not then cured which, with the giving of notice or the passage of time or both, would constitute a Major Event of Default hereunder, the Borrower Parties shall have the option to repair or restore the Real Property, utilizing the Award as provided herein but otherwise at their own expense, to the extent possible, to substantially the same condition as existed immediately before the Partial Taking and the provisions of Section 10.1(d)(ii) shall apply. Any remainder of the Award in excess of the costs to repair and restore the Real Property shall be paid to the Borrower Parties.

(d) Award. In the event there is any Taking, the Award shall be paid to MPT and held by MPT in trust, subject to the provisions of this Agreement, and shall be applied as follows:

(i) In the event there is a Total Taking, or there is a Partial Taking that renders the Real Property Unsuitable for its Primary Intended Use and the Borrower Parties do not exercise their option to repair or restore the Real Property, the Award shall be paid to MPT and applied toward prepayment of the Loan Obligations, in any order, whether or not then due, and any unpaid Loan Obligations shall be due and payable to MPT immediately. Any remainder of the Award in excess of the then current principal balance of the Loan shall be paid to the Borrower Parties.

(ii) In the event there is a Partial Taking and the Borrower Parties' exercise their option to repair or restore the Real Property, so long as no Major Event of Default exists (excluding any Event of Default caused by the Taking), the Award shall be paid to the Borrower Parties upon MPT receipt of invoices or other appropriate documentation regarding the costs and expenses for any such repair or restoration, and the Borrower Parties shall apply the Award to the repair and restoration of the Real Property.

(e) Temporary Taking. The Taking of the Real Property, or any part thereof, by military or other public authority shall constitute a Taking by Condemnation only when the use and occupancy by the Taking authority has continued for longer than six (6) months. During any such six (6) month period all the provisions of this Agreement shall remain in full force and effect and the Loan Obligations shall remain payable as provided in this Agreement and the other Loan Documents. Any Award on account of such temporary taking shall be applied first toward payment of Loan Obligations that are due and payable during such period, and the remaining amount of any Award shall be paid to the Borrower Parties.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

**Section 11.1. Assignment; Lease Subordination.**

(a) Assignment and Subletting. The Borrower Parties shall not assign this Agreement without MPT's prior written consent, which consent shall not be unreasonably withheld, provided that such lease shall comply with the provisions of this Section, and an original counterpart of each such lease, in form and substance reasonably satisfactory to MPT, shall be delivered promptly to MPT. Notwithstanding anything contained herein to the contrary, MPT and the Borrower Parties acknowledge the existence of the Tenant Leases set forth on Schedule 11.1(a) hereof ("Existing Subleases"). Any modifications, amendments and restatements of the Existing Subleases must be approved by MPT in accordance with this Section.

(b) Agreement Limitations. In addition to the limitations as set forth in subsection (a) above, all leases and subleases contemplated by this Section shall comply with the applicable provisions of the Healthcare Fraud Laws. The Borrower Parties agree that all Tenant Leases entered into after the date hereof ("New Tenant Leases") and submitted for approval of MPT as provided herein must include provisions to the effect that (i) such New Tenant Lease is subject and subordinate to all of the terms and provisions of the Security Documents and the other Loan Documents and to any applicable financing documents of any Facility Lender; (ii) from and after a Major Event of Default, Tenant will, at MPT's option, exerciseable at any time, attorn to MPT and recognize MPT, or its assignee or purchaser at an applicable foreclosure or other sale, as landlord under such Tenant Lease and waive any right the Tenant may have to terminate the New Tenant Lease or to surrender possession thereunder, as a result thereof; (iii) at MPT's option, exerciseable at any time after a Major Event of Default, the Tenant under any such New Tenant Lease shall attorn to MPT and waive any right such Tenant may have to terminate the lease or sublease, or to surrender possession thereunder as a result of the termination of this Agreement; (iv) if required by MPT, the obligations and performance of Tenant shall be guaranteed by guarantors acceptable to MPT; (v) Tenant shall from time to time upon request of the Borrower Parties or MPT furnish within ten (10) days from request an estoppel certificate in form and content acceptable to MPT relating to the New Tenant Lease; (vi) in the event the Tenant receives a written notice from MPT or its assignees, if any, stating that a Major Event of Default has occurred, the Tenant shall thereafter be obligated to pay all rentals accruing under said New Tenant Lease directly to the Party giving such notice, or as such Party may direct and such Tenant shall be entitled to conclusively rely on such notice, or as such party may direct (all rentals received from the Tenant by MPT or MPT's assignee, if any, as the case may be, shall be credited against amounts owing by the Borrower Parties under the Loan Documents, (vii) such New Tenant Lease shall at all times be subject to the obligations and requirements as set forth in this Section, and (viii) Tenant shall provide to MPT upon written request such officer's certificates and financial statements as MPT may request from time to time.

**Section 11.2. Sublease Subordination and Non-Disturbance.** Within ten (10) days after request by MPT with respect to any Tenant, the Borrower Parties shall cause such Tenant to execute and deliver to MPT a subordination agreement relating to any or all leases or subleases, which subordination agreement shall be in such form and content as is acceptable to MPT.

Within ten (10) days from the date of request of MPT or any Facility Lender with respect to any Tenant, the Borrower Parties shall cause such Tenant, subject to such Tenant receiving a written agreement containing a reasonable non-disturbance provision which provides that such Tenant shall not be disturbed in peaceful enjoyment of the applicable portion of the Real Property nor shall the applicable sublease be terminated or canceled at any time, except as specified in the applicable lease or sublease, to execute and deliver within such ten (10) day period, a written agreement in a form reasonably acceptable to such Facility Lender whereby such Tenant subordinates the lease or sublease and all of its rights and estate thereunder to each such mortgage or deed of trust that encumbers the Real Property or any part thereof and agrees with each such Facility Lender that such Tenant will attorn to and recognize such Facility Lender or the purchaser at any foreclosure sale or any sale under a power of sale contained in any such mortgage or deed of trust, as the case may be, as MPT under this Agreement for the balance of the Loan Term then remaining, subject to all of the terms and provisions of the lease or sublease.

## ARTICLE XII

### ADDITIONAL BORROWER COVENANTS

#### Section 12.1. Affirmative Covenants.

(a) Payment and Performance. Each of the Borrower Parties will duly and promptly pay and perform all of such Borrower Party's liabilities and obligations to MPT in accordance with the terms and conditions of this Agreement and the other Loan Documents.

(b) Certification. At any time and from time to time within ten (10) days following written request by MPT, the Borrower Parties will certify to MPT, in such form and substance as are reasonably acceptable to MPT, that this Agreement and the other Loan Documents are unmodified and in full force and effect (or that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth the modifications), the dates to which the Loan has been paid, that no Event of Default then exists and no event has occurred (that has not been cured) and no condition currently exists that would, but for the giving of any required notice or expiration of any applicable cure period, constitute an Event of Default. Any such certification furnished pursuant hereto may be relied upon by MPT and any prospective purchaser of or participant in the Loan.

(c) Notifications. Each Facility Borrower shall furnish, or cause to be furnished, to MPT the following statements, notices and certificates in such form and detail as MPT may reasonably require:

(i) Within one hundred twenty (120) days after the end of each year, audited Financial Statements of such Facility Borrower and Ernest Health (which Financial Statements may be provided on a consolidated basis so long as such consolidated Financial Statements provide a supplementary schedule of such Facility Borrower operating results and balance sheet and statements of operations and of cash flows) and, if such Facility Borrower owns any assets or conducts any other operations other than the Business, then of the Facility separately, prepared by a nationally recognized accounting

firm or an independent certified public accounting firm reasonably acceptable to MPT, which statements shall include balance sheets and statements of operations and of cash flows, all in accordance with GAAP for the year then ended.

(ii) Within forty-five (45) days after the end of each quarter, current balance sheets and quarterly statements of operations and of cash flows of such Facility Borrower and Ernest Health, and, if such Facility Borrower owns any assets or conducts any other operations other than the Business, then of its Facility separately, certified to be true and correct by an officer of such Facility Borrower.

(iii) Within thirty (30) days after the end of each month, current balance sheets, monthly income statements and of cash flows (if available or produced in the ordinary course of business) of such Facility Borrower (actual and budgeted) and statistics of its Facility, including, but not limited to, the number of patient admissions, the number of inpatient days, the case mix index, the payor sources for inpatient admissions (either by revenue or admissions), outpatient utilization by service, and, if available, clinical service utilization data, and statements of Cash Collections (including a calculation of the percentage of net revenues represented by Cash Collections) for each such month, all of which shall be certified to be true and correct by an officer of such Facility Borrower.

(iv) Within thirty (30) days after the end of each calendar year, a list of the names, specialties, and ages of all active medical staff members of the Facility operated by such Facility Borrower, certified to be true and correct by an officer of such Facility Borrower.

(v) Within ten (10) days after receipt, any and all notices (regardless of form) from any and all licensing and/or certifying agencies that any license or certification, including, without limitation, the Medicare and/or Medicaid certification and/or managed care contract relating to the Facility operated by such Facility Borrower is being downgraded to a substandard category, revoked, or suspended, or that action is pending or being considered to downgrade to a substandard category, revoke, or suspend such Facility's license or certification, including, without limitation, a Facility's Medicare IRF Certification or Medicare LTCH Certification, as applicable.

(vi) Upon MPT's request, each Facility Borrower and Ernest Health shall furnish to MPT a certificate in form acceptable to MPT certifying that no Event of Default then exists and no event has occurred (that has not been cured) and no condition currently exists that would, but for the giving of any required notice or expiration of any applicable cure period, constitute an Event of Default, or disclosing that such an event or condition, if any, exists.

(vii) Within two (2) Business Days after receipt, each Facility Borrower shall furnish to MPT copies of all notices and demands from any third-party payor, including, without limitation, Medicare and/or Medicaid, concerning any overpayment which will or may result in a repayment or a refund in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) with respect to such Facility Borrower. Each Facility Borrower hereby agrees that in the event of receipt of such notices or demands MPT shall have the right, at MPT's option, to participate in the appeal of such notices and demands.



(viii) Each Facility Borrower shall furnish to MPT prompt written notice of, and any information related to, any governmental investigations of such Facility Borrower or any Guarantor (or any of their respective Affiliates), or any inspections or investigations of the Facility operated by such Facility Borrower which are conducted by the United States Attorney, State Attorney General, the Office of the Inspector General of the Department of Health and Human Services, or any other Governmental Body, and provide to MPT, on a monthly basis, ongoing status reports (in form and content acceptable to MPT) of any such government investigations.

(ix) Each Facility Borrower shall furnish to MPT immediately upon receipt thereof copies of all pre-termination notices from Medicare and/or Medicaid, all notices of adverse events or deficiencies as defined by the regulations and standards of the state Medicare and/or Medicaid certification agency, the Joint Commission (formerly known as the Joint Commission on the Accreditation of Healthcare Organizations) (the "Joint Commission") or the equivalent accrediting body of the state which has jurisdiction over such Facility.

(x) With respect to each Facility, such Facility Borrower shall furnish to MPT immediately upon receipt thereof copies of all notices that such Facility Borrower, any Guarantor or their respective Affiliates are not, with respect to such Facility, in compliance with the Standards for Privacy of Individually Identifiable Health Information and the Transaction and Code Set Standards which were promulgated pursuant to HIPAA.

(xi) Each Facility Borrower shall provide to MPT immediate written notice of any default or event of default (or the occurrence of any event or condition that would with notice or the passage of time constitute such a default or event of default) with respect to any Material Obligation of such Facility Borrower or Ernest Health, including any RFFE Loan, and upon MPT's request, such Facility Borrower shall furnish to MPT a certificate in form acceptable to MPT certifying that, with respect to each such Material Obligation, no default or event of default then exists and no event has occurred and no condition currently exists that would, but for the giving of any required notice or expiration of any applicable cure period, constitute a default or event of default thereunder.

(xii) With reasonable promptness, such other information respecting the financial condition and affairs of the Borrower Parties, Ernest Health and their respective Affiliates as MPT may reasonably request from time to time.

(d) Inspection. The Borrower Parties shall permit MPT, or its designated Affiliate, and their respective authorized representatives to inspect the Real Property during usual business hours subject to any security, health, safety or confidentiality requirements of the Borrower Parties, any governmental agency, any Insurance Requirements relating to the Real Property, or imposed by law or applicable regulations, except that, in the event of an emergency, MPT shall

have the right to inspect the Real Property upon reasonable notice (which in this circumstance may be verbal) under the circumstances to the Borrower Parties. On January 1, 2013, the Borrower Parties shall pay to MPT, or its designated Affiliate, and on each anniversary thereof an amount of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) per Facility campus (it being agreed that, for purposes of determining the annual Inspection Fee payable by the Borrower Parties, any multi-hospital campus shall constitute one (1) Facility, per year to cover the cost of the physical inspections of the Real Property (the "Inspection Fee"). Beginning on January 1, 2014 and on each Adjustment Date thereafter during the Loan Term, the amount of the Inspection Fee shall be increased by the percentage by which the CPI published for the month which is two months prior to the applicable Adjustment Date shall have increased over the CPI figure published for the month which is two months prior to the previous Adjustment Date; provided, however, that in no event shall the increase in the Inspection Fee be less than Two Percent (2%) or more than Five Percent (5%) on any Adjustment Date. The Borrower Parties' payment of the Inspection Fee shall be in addition to any other cost, expense or reimbursement obligations as set forth in this Agreement.

**Section 12.2. Management Agreements.** The Borrower Parties shall not engage or terminate any Management Company, without MPT's prior written consent, which consent shall be in MPT's sole discretion; provided, however, that MPT hereby approves the Existing Management Company as the Management Company for the Facilities. The Borrower Parties shall, if required by MPT, assign all of the Borrower Parties' rights under any of the Management Agreements to MPT and MPT shall be entitled to assign same to any third party, including any Facility Lender. At the request of MPT from time to time, the Borrower Parties shall execute and deliver an assignment and/or subordination agreement relating to any Management Agreement, which shall be in substantially the form of the Subordination Agreement attached hereto as **Exhibit D** (the "Subordination Agreement"). The Borrower Parties shall execute and deliver such assignment and/or subordination agreement to MPT within ten (10) Business Days after MPT's request. The Borrower Parties agree that execution of a subordination agreement in substantially the form of the Subordination Agreement shall be a precondition to the Borrower Parties entering into any future Management Agreement. The Borrower Parties shall require any Management Company to execute and deliver to MPT within ten (10) Business Days from MPT's request an estoppel certificate, as required by MPT and/or any lender providing financing to MPT, in such form and content as is acceptable to MPT and/or such lender.

**Section 12.3. Noncompetition.**

(a) The Borrower Parties agree that while the Agreement is in place and, if there is an Event of Default hereunder resulting in an acceleration of the Loan Obligations, then for a period of three (3) years thereafter (the "Noncompete Period"), none of the Borrower Parties shall, directly or indirectly, acquire, finance, guarantee indebtedness, own, lease, manage, develop or provide services in connection with the acquisition, ownership, operation or development of any real estate located within ten (10) miles of any point on or within the Real Property, which real estate is used in a Competing Business. Any violation of the provisions of this Section 12.3 shall suspend the Noncompete Period for the duration of such violation. The term "Competing Business" means any healthcare business which involves the operation of a facility in which skilled nursing, rehabilitation, and long term care services are provided; provided, however, that the foregoing shall not prohibit any of the Borrower Parties from acquiring, owning, operating or developing real estate, the acquisition, ownership, operation or development of which by such Borrower Party will not have an adverse effect on the Real Property or the ability of any of the Borrower Parties to perform their obligations under this Agreement, as determined in the reasonable discretion of MPT.

(b) The Borrower Parties agree that the restrictions contained herein are reasonable and necessary to protect the legitimate interests of MPT and that any violation of the provisions would result in damages which cannot be adequately compensated by money alone. The Borrower Parties agree that MPT will be entitled to injunctive or other equitable relief without proving actual damages or posting any bond in the event of any violation of the restrictions contained herein; provided, however, that the foregoing shall not limit or be construed to prohibit or limit the right of MPT to pursue any other legal and equitable remedies available to it on account of such breach or violation, including the recovery of damages from the Borrower Parties.

(c) If any court shall hold that the duration or scope of this Section 12.3 (geographic or otherwise) is unreasonable or invalid, then the provisions of this Section 12.3 shall remain in effect for whatever time period or geographic area that such court does not declare to be unreasonable or invalid. In addition, if any court shall hold that the duration or scope (geographic or otherwise) of this Section 12.3 is unreasonable or invalid, then, to the extent permitted by law, the court may prescribe a maximum duration or scope (geographic or otherwise) that is judicially enforceable and not unreasonable and the parties agree to accept such judicial determination, which the parties agree shall be substituted in place of any and every judicially unenforceable provision of this Section 12.3, and that this Section 12.3, as so modified, shall be fully enforceable as if originally executed in such manner.

(d) The terms of this Section 12.3 are intended to comply with all applicable rules and regulations of all governmental and regulating authorities. Accordingly, the Parties agree to renegotiate, in good faith, any term, condition or provision of this Section 12.3 determined to be in contravention of any regulation, policy or law of any such authority. All other provisions hereof shall remain enforceable to the fullest extent permitted by law.

## ARTICLE XIII

### DEFAULT

**Section 13.1. Events of Default.** The occurrence of any one or more of the following events (individually, an “Event of Default”) shall constitute Events of Default or defaults hereunder:

(a) if Borrower Parties shall fail to make a payment of the Loan Obligations or any other monetary obligation when the same becomes due and payable by the Borrower Parties under this Agreement, the Note or the other Loan Documents (including, but not limited to, any failure to make Reserve deposits and the failure to pay Insurance Premiums or Impositions) and the same shall remain unpaid for more than five (5) days following receipt by the Borrower Parties of written notice thereof from MPT; provided however, in no event shall MPT be required to give more than two (2) such written notices hereunder during any calendar year; or

(b) if Borrower Parties shall fail to observe or perform any other term, covenant or condition of this Agreement and such failure is not cured by Borrower Parties within a period of

thirty (30) days after receipt by Borrower Parties of written notice thereof from MPT, unless such failure cannot with due diligence be cured within a period of thirty (30) days (in MPT's reasonable discretion), in which case such failure shall not be deemed to continue so long as Borrower Parties commence to cure such failure within the thirty (30) day period and proceeds with due diligence to complete the curing thereof within sixty (60) days after receipt by Borrower Parties of MPT's notice of default (or such longer period as is reasonably required in the determination of MPT to effect such cure if the Borrower Parties are diligently proceeding to do so); provided however, in no event shall MPT be required to give more than one (1) notice and cure period for the Borrower Parties' failure to observe or perform the same (or repetitive) covenant or condition in any consecutive twelve (12) month period; or

(c) if (i) any Facility Borrower or any Guarantor shall admit in writing its inability to pay its debts as they become due; or (ii) any Facility Borrower or any Guarantor shall file a petition in bankruptcy as a petition to take advantage of any insolvency act; or (iii) any Facility Borrower or any Guarantor shall be declared insolvent according to any law; or (iv) any Facility Borrower or any Guarantor shall make any general assignment for the benefit of its creditors; or (v) if the estate or interest of any Facility Borrower in the Real Property or any part thereof shall be levied upon or attached in any proceeding and the same shall not be vacated or discharged within the later of ninety (90) days after commencement thereof or thirty (30) days after receipt by such Facility Borrower of written notice thereof from MPT (unless such Facility Borrower shall be contesting such lien or attachment in good faith in accordance with Article XVIII); or (vi) any petition shall be filed against any Facility Borrower or any Guarantor to declare such Facility Borrower or such Guarantor bankrupt, to take advantage of any insolvency act, or to delay, reduce or modify such Facility Borrower's or such Guarantor's capital structure and the same shall not be removed or vacated within ninety (90) days from the date of its creation, service or attachment; or (vii) any Facility Borrower or any Guarantor shall, after a petition in bankruptcy is filed against it, be adjudicated a bankrupt, or a court of competent jurisdiction shall enter an order or decree, with or without the consent of such Facility Borrower or Guarantor, as the case may be, appointing a trustee, examiner or receiver of such Facility Borrower or Guarantor or the whole or substantially all of its property, or approving a petition filed against such Facility Borrower or Guarantor seeking reorganization or arrangement of such Facility Borrower or Guarantor under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof; or

(d) if any Facility Borrower shall have any of its Licenses, or participation or certification in Medicare or Medicaid or any material other third party payor program, terminated by the applicable government program for fraud or violation of the terms of such program; or

(e) a Change of Control Transaction shall occur which is not approved by MPT in advance; or

(f) if, with respect to each portion of the Real Property relating to a Facility, the applicable Facility Borrower abandons or vacates the applicable Facility (such Facility Borrower's absence from the applicable Facility for thirty (30) consecutive days shall constitute abandonment), or the applicable Facility Borrower fails to continuously operate its Facility in accordance with the terms of this Agreement; or

(g) if any Facility Borrower or any Guarantor shall be liquidated or dissolved, or shall begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the sale or divestiture of substantially all of its assets or any such Facility Borrower or such Guarantor into, or a sale of substantially all of such Facility Borrower's or such Guarantor shall enter into an agreement to do the same; or

(h) a monetary default or a material non-monetary default shall occur under any other Loan Document or any Other Agreement, which default is not cured within any applicable notice or cure period as provided therein; or

(i) any Facility Borrower shall directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, sell, transfer or assign any or all of its right, title or interest in any portion of the Real Property; or

(j) if, on March 31, 2013 and at any time thereafter during the Term, the combined EBITDAR of Ernest Health and its subsidiaries shall fail to equal or exceed One Hundred Twenty-Five Percent (125%) of the Combined Fixed Charges, and such failure shall continue for a period of thirty (30) days after receipt by the Borrower Parties of written notice thereof from MPT. Compliance with the foregoing covenant shall be determined utilizing trailing twelve (12) month operating and financial results and measured on a calendar quarterly basis; provided, however, that until March 31, 2014, operating and financial results of Ernest Health and its subsidiaries shall be measured from January 1, 2013.

**Section 13.2. Remedies.** Upon the occurrence of an Event of Default hereunder, MPT shall be entitled, in its sole and absolute discretion, to pursue any one or more of the following remedies, in addition to any remedies which may be permitted by law, equity or by other provisions of this Agreement or the other Loan Documents (including, without limitation, the Security Documents), without notice or demand, except as expressly hereinafter provided:

(a) MPT may (i) declare all Loan Obligations relating to the Facility from which such Event of Default emanated or to which such Event of Default related primarily, in accordance the

allocations set forth in Schedule 2.1, immediately due and payable at once, without presentment, demand, protest, or further notice of any kind, all of which are expressly waived by the Borrower Parties; or (ii) if there has occurred a Major Event of Default, declare all Loan Obligations relating to any one or more (including all, if so elected by MPT) of the Facilities, regardless of whether such Major Event of Default emanated from or related primarily to a single Facility (whether one or more, and whether pursuant to clause (i) or (ii), the “Defaulted Property”), and, in either such event, the applicable Loan Obligations shall become immediately due and payable to MPT.

(b) MPT may, at its option, foreclosing under any one or more of the Mortgages relating to the Defaulted Property.

(c) MPT may exercise all rights and remedies set forth in Section 3.1 regarding escrowed or deposited funds and apply such funds to the Loan Obligations in such order as MPT may determine.

(d) MPT, at its option, may (i) institute and prosecute proceedings in any court of competent jurisdiction to pursue any remedies available in law or in equity, including, without limitation, the recovery of damages, the enforcement of specific performance or to obtain an injunction, or (ii) pursue any and all rights or remedies available to MPT under any Loan Document. No such termination and/or subsequent election by MPT hereunder shall in any way limit, qualify or otherwise affect the obligations of the Borrower Parties with respect to the Loan Obligations of their indemnification obligations hereunder.

(e) MPT, at its option, may effect a sale, transfer or assignment of the Collateral relating to the Defaulted Property. Notwithstanding anything contained herein to the contrary, for the purpose of effecting the sale, transfer or assignment described herein, the Borrower Parties hereby nominate and irrevocably designates and appoints MPT its true and lawful agent and attorney-in-fact, in the name of the Borrower Parties, as applicable, or in the name of MPT, or in the name of a designee of MPT to do all acts and things and execute all documents which MPT may deem necessary or desirable to effect the sale, transfer or assignment as set forth herein, including, without limitation, preparing, signing and filing any and all agreements, documents and applications necessary to effect such sale, transfer or assignment. This power is coupled with MPT’s ownership of the security interest in the Collateral and all incidental rights attendant to any and all of the rights set forth herein.

(f) Terminate this Agreement and any of the other Loan Documents relating to the Defaulted Property (whether one or more, the “Terminated Facility”) and all future liability or obligation of MPT relating to such Terminated Facility, but without affecting MPT’s liens on the Collateral and without affecting the Loan Obligations.

(g) In addition to any other available remedies, and as provided in the Subordination Agreement, MPT may, at MPT’s option, take any enforcement action as permitted under and in accordance with the terms of the Subordination Agreement.

**Section 13.3. Remedies with Respect to Licenses.**

(a) Following an Event of Default resulting in a termination of this Agreement and/or the foreclosure of the Real Property relating to any one or more of the Facilities (unless the Borrower Parties pay in full the Loan Obligations pursuant to Section 14.1(a)), none of the Borrower Parties shall retain any rights whatsoever to the Licenses relating to such Facilities, nor shall the Borrower Parties move or attempt to move the Licenses to any other location. To the extent that the Borrower Parties have or will extend any right, title, or claim of right whatsoever in and to the Licenses or the right to operate any such Facilities, all such right, title, or claim of right shall automatically revert to MPT or to MPT's designee upon an Event of Default (unless the Borrower Parties pay in full the Loan Obligations pursuant to Section 14.1(a)), to the extent permitted by law. Upon any such Event of Default, to the extent permitted by law, MPT shall have the sole, complete, unilateral, absolute and unfettered right, without additional consideration, to cause all Licenses to be reissued in MPT's name or in the name of MPT's designee upon application therefor to the issuing authority, and to further have the right to have any and all Participation Agreements issued in MPT's name or in the name of MPT's designee.

(b) Upon an Event of Default and for reasonable periods of time immediately before and after such Event of Default, and in connection with MPT's exercise of its rights and remedies with respect to one or more of the Facilities, each of the Borrower Parties shall use its best efforts, without additional consideration to the Borrower Parties, to facilitate an orderly transfer of the operation and occupancy of such Facilities to MPT or any new lessee or operator selected by MPT, it being understood and agreed that such cooperation shall include, without limitation, (a) the applicable Facility Borrower's transfer and assignment of any and all Licenses, if and to the extent permitted by law, to MPT, MPT's nominee or MPT's new lessee or operator; (b) such Facility Borrower's use of best efforts to maintain, to the maximum extent allowed by applicable law, the effectiveness of any and all such Licenses until such time as any new Licenses necessary for any new lessee or operator to operate the applicable Facility have been issued; and (c) the taking of such other actions as are required by applicable law or as are reasonably requested by MPT. The remedies provided in this Section 13.3 are in addition to any other remedies provided in this Agreement.

**Section 13.4. Cumulative.** The remedies of MPT in this Agreement or in any other Loan Document, or at law or in equity, shall be cumulative and concurrent and may be pursued singly, successively or together in MPT's discretion. Notwithstanding any statement contained in this Agreement to the contrary, termination of this Agreement shall not relieve any Borrower Party from liability for any breach or violation of this Agreement that arose prior to such termination.

**Section 13.5. Waiver.** The Borrower Parties waive, to the extent permitted by applicable law, (a) any right of redemption, re-entry or repossession; (b) any right to a trial by jury; and (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

**Section 13.6. Application of Funds.** Any payments otherwise payable to the Borrower Parties which are received by MPT under any of the provisions of this Agreement during the existence or continuance of any Event of Default shall be applied to the Loan Obligations in the order which MPT may reasonably determine.

**Section 13.7. Notices by MPT.** The provisions of this Article concerning notices shall be liberally construed insofar as the contents of such notices are concerned, and any such notice shall be sufficient if reasonably designed to apprise the Borrower Parties of the nature and approximate extent of any default, it being agreed that the Borrower Parties are in good or better position than MPT to ascertain the exact extent of any default by the Borrower Parties hereunder.

**Section 13.8. Additional Expenses.** It is further agreed that, in addition to payments required pursuant to the provisions of Section 21.3, Borrower Parties shall compensate MPT and its Affiliates for (a) all expenses incurred by MPT and its Affiliates in enforcing the provisions of this Agreement and in repossessing the Collateral or any portion thereof (including among other expenses, any increase in insurance premiums caused by the vacancy of all or any portion of the Real Property); (b) all expenses incurred by MPT and its Affiliates in selling or reletting the Real Property (including among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees); (c) all concessions granted to buyers or new Tenants upon selling or reletting the Real Property (including among other concessions, renewal options); (d) MPT's and its Affiliates' reasonable attorneys' fees and expenses; and (e) all losses incurred by MPT and its Affiliates as a direct or indirect result of such Event of Default (including, among other losses, any adverse action by Facility Lenders).

**Section 13.9. MPT's Contractual Security Interest.** In order to secure the payment of all Loan Obligations due and to become due hereunder and the faithful performance of this Agreement by the Borrower Parties and to secure all other obligations, indebtedness and liabilities of the Borrower Parties to MPT, now existing or hereafter incurred, contemporaneously with the execution of this Agreement, the Borrower Parties have executed the Security Agreement granting MPT and certain of its Affiliates certain liens and security interests as therein described. Upon the occurrence of an Event of Default by Borrower Parties, MPT shall have the remedies set forth in the Security Agreement, in addition to all remedies available at law or in equity and the remedies set forth in this Agreement and the other Loan Documents.

**Section 13.10. Assignment of MPT's Security Interest.** The Borrower Parties acknowledge and agree that, contemporaneously with the execution of this Agreement, MPT has collaterally assigned to certain Affiliates of MPT the Note and the various security interests granted by the Borrower Parties to MPT in connection with this Agreement.

## ARTICLE XIV

### OPTION TO PURCHASE

**Section 14.1. Options to Purchase Real Property.**

(a) Upon the occurrence of an Event of Default, in addition to other rights and remedies MPT may have in this Agreement and at law and in equity, MPT and any designee or assignee of MPT (collectively, the "Purchaser"), shall have the right and option (the "Option"), but not the obligation, for a period of thirty (30) days following the date of the occurrence of an Event of Default (the "Option Period"), to purchase the Real Property relating to any one or



more of the Facilities from the applicable Facility Borrower in accordance with this Article XIV. If the Purchaser determines to exercise its option to purchase the Real Property relating to any one or more of the Facilities pursuant hereto (the "Option Property"), the Purchaser shall, within the Option Period, deliver a written notice of such determination (the "Option Notice") to the Borrower Parties. Upon the Borrower Parties' timely receipt of such Option Notice, the Borrower Parties shall be obligated to sell, assign, transfer and convey all of the Option Property to the Purchaser for a purchase price equal to the greater of (i) the outstanding principal amount of the Loan Obligations allocable to the Option Property as of the Option Closing Date in accordance with the allocation schedule attached hereto as Schedule 2.1, as further increased by any portion of the principal amount of the Loan Obligations that has been prepaid on or prior to the Option Closing Date, whether by the application of insurance proceeds or Awards or otherwise; and (ii) the Fair Market Value thereof (the "Option Price"). In the event that MPT purchases less than all of the Real Property as provided herein, the Borrower Parties shall be released from all obligations and liabilities arising under this Agreement and the other Loan Documents relating to such purchased Real Property in accordance with the allocation schedule attached hereto as Schedule 2.1, but the Loan Obligations allocable to any portion of the Real Property not purchased by MPT shall remain outstanding and due and payable in accordance with the Loan Documents.

(b) In addition to the Option granted to MPT under Section 14.1(a), at any time until fifth (5th) anniversary of the date hereof (the "Special Option Period"), whether or not any Event of Default shall have occurred, Purchaser shall have the right and option (the "Special Option"), but not the obligation, to purchase the Real Property relating to any one or more of the Facilities from the applicable Facility Borrower. If MPT determines to exercise its option to purchase the Real Property relating to any one or more of the Facilities pursuant hereto (the "Special Option Property"), MPT shall, within the Special Option Period, deliver a written notice of such determination (the "Special Option Notice") to the Borrower Parties. Upon the Borrower Parties' timely receipt of such Special Option Notice, the Borrower Parties shall be obligated to sell, assign, transfer and convey all of the Special Option Property to the Purchaser for a purchase price equal to the outstanding principal amount of the Loan Obligations allocable to the Special Option Property as of the Option Closing Date in accordance with the allocation schedule attached hereto as Schedule 2.1, as further increased by any portion of the principal amount of the Loan Obligations that has been prepaid on or prior to the Option Closing Date, whether by the application of insurance proceeds or Awards or otherwise (the "Special Option Price"). In the event that the Purchaser purchases less than all of the Real Property as provided herein, the Borrower Parties shall be released from all obligations and liabilities arising under this Agreement and the other Loan Documents relating to such purchased Real Property in accordance with the allocation schedule attached hereto as Schedule 2.1, but the Loan Obligations allocable to any portion of the Real Property not purchased by the Purchaser shall remain outstanding and due and payable in accordance with the Loan Documents.

**Section 14.2. Option to Purchase Personal Property.** In the event that MPT exercises an option described in Section 14.1, in addition to other rights and remedies MPT may have in this Agreement and at law and in equity, the Purchaser shall have the right and option, but not the obligation, on the Option Closing Date to purchase from the Borrower Parties all of the Personal Property relating to the Real Property purchased by Purchaser and all rights title, and interest of the Borrower Parties therein for an amount equal to the net sound insurable value thereof

(current replacement cost less accumulated depreciation on the books of the Borrower Parties pertaining thereto). If the Purchaser determines to exercise its option pursuant hereto, then the Purchaser shall indicate the same in the Option Notice or Special Option Notice and the Borrower Parties shall be obligated to sell, assign, transfer and convey to the Purchaser on an AS IS, WHERE IS BASIS, and without representation or warranty of any kind or nature whatsoever, express or implied, all of the Personal Property and the Borrower Parties' rights, title and interest therein subject to the terms and conditions set forth herein. Notwithstanding anything contained in this [Section 14.2](#) to the contrary, the options to purchase granted under this [Section 14.2](#), do not pertain to any of the Licenses, it being understood and agreed that all matters relating to the transfer of the Licenses are addressed [in Section 13.3](#).

**Section 14.3. Payment of Purchase Price.** In the event the purchase transaction contemplated by this [Article XIV](#) is consummated, on the Option Closing Date the applicable purchase price shall be paid into escrow and applied, first, towards payment of the outstanding Loan Obligations and, then, the balance of the purchase price, if any, shall be paid through escrow to the Borrower Parties. The original Note shall be canceled or amended at closing as necessary to reflect the payment of the Loan Obligations. Notwithstanding any provision herein to the contrary, in the event that the purchase transactions contemplated by this [Article XIV](#) are consummated, the Borrower Parties shall pay all Base Interest and other charges and amounts accruing under the Note but unpaid through the Option Closing Date at the closing of such transaction and, if the Borrower Parties shall fail to do so, MPT may offset the amount of such accrued and unpaid Base Interest and other charges against the amount of the aggregate purchase price payable to the Borrower Parties pursuant to this [Article XIV](#).

**Section 14.4. Closing of Purchase.** Any purchase and sale pursuant to this [Article XIV](#) shall be handled through deliveries into escrow on a mutually agreeable date (the "[Option Closing Date](#)") which shall not be later than sixty (60) days following the expiration of the Option Period or Special Option Period, as applicable. The Borrower Parties shall, upon receipt from MPT (which may be through escrow) of the applicable Option Price or Special Option Price and the other closing documents to which MPT is a party, deliver to the Purchaser, which may be through escrow, a special warranty deed, or other appropriate instrument of conveyance conveying the entire interest of the Borrower Parties in and to the Option Property or Special Option Property to the Purchaser free and clear of all Liens other than (a) those that the Borrower Parties have agreed hereunder to pay or discharge; (b) those Liens, if any, which the Purchaser has agreed in writing to accept and to take title subject to; and (c) the Permitted Exceptions applicable to such portion of the Real Property. All expenses of the conveyance, including, without limitation, the cost of title examination or standard coverage title insurance, survey, attorneys' fees incurred by MPT in connection with such conveyance, transfer taxes, prepayment penalties, recording fees and similar charges shall be paid by the Borrower Parties. Time shall be of the essence in the performance of the Parties' obligations under this [Article XIV](#).

**Section 14.5. Proration.** All rent, income, expenses, utility charges and real and personal property taxes relating to the ownership and operation of the Real Property, the Personal Property and the Facilities purchased by the Purchaser pursuant to this [Article XIV](#) shall be equitably prorated and paid as of the Option Closing Date, with the Borrower Parties responsible therefor to the extent such items relate to the time period prior to and ending on the Option Closing Date.

**ARTICLE XV**

**APPRAISAL**

If it becomes necessary to determine the Fair Market Value of any portion of the Real Property relating to a particular Facility, each party, within ten (10) Business Days following the date of the event which makes such determination necessary, shall, by notice to the other, appoint an appraiser (each of whom must be a member of the AIREA and adhere to the USPAP standards in the preparation of the appraisal). The appraisers thus appointed shall appoint a third appraiser (such third appraiser must also be a member of the AIREA and adhere to the USPAP standards in the preparation of the appraisal) and such third appraiser shall appraise the portion of the Real Property relating to such Facility to determine the Fair Market Value thereof; provided, however, that if a party fails to appoint an appraiser within such required period, the sole appraiser appointed shall conduct the appraisal and the parties shall use commercially reasonable efforts to cause such appraisal to be completed within forty-five (45) days following the event which makes such determination necessary. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. MPT and the Borrower Parties shall each pay one-half ( 1/2) of all costs and expenses incurred in connection with such appraisal. Any appraisal shall assess the Fair Market Value of the portion of the Real Property relating to such Facility as of the date of the event which makes such assessment necessary.

**ARTICLE XVI**

**RESERVED**

**ARTICLE XVII**

**MPT'S RIGHT TO CURE**

Subject to the provisions of Article XVIII relating to permitted contests, if any of the Borrower Parties shall fail to make any payment, or to perform any act required to be made or performed by the Borrower Parties under this Agreement and to cure the same within the relevant time periods provided in Section 13.1, or if a breach or default or event of default occurs, or an event or condition occurs that, with notice or passage of time, would constitute such a default or event of default, with respect to any Material Obligation, including any Material Obligation relating to any receivables or working capital loan or financing provided to any of the Borrower Parties for the purchase or lease of any of the Personal Property of any of the Borrower Parties (collectively the "RFFE Loans"), and such default or event of default is not cured or waived within the applicable cure period provided by the document evidencing the Material Obligation, MPT, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Borrower Parties, and may, to the extent permitted by law, enter upon the Real Property for such purpose and take all such action thereon as, in MPT's sole discretion, may be necessary or appropriate therefor. No such entry shall be deemed

an eviction of any of the Borrower Parties. All sums so paid by MPT and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, in each case, to the extent permitted by law) so incurred, together with a late charge thereon (to the extent permitted by law) at the Default Rate from the date on which such sums or expenses are paid by MPT until reimbursed, shall be paid by the Borrower Parties, jointly and severally, to MPT on demand. The Borrower Parties shall provide to MPT immediate written notice of any default or event of default (or the occurrence of any event or condition that would with notice or passage of time constitute such a default or event of default) with respect to any Material Obligation, including any RFFE Loan that is a Material Obligation.

## ARTICLE XVIII

### PERMITTED CONTESTS

After obtaining prior written approval from MPT, the Borrower Parties, not to be unreasonably withheld, conditioned or delayed, at the Borrower Parties' expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance, charge or claim not otherwise permitted by Article V, provided that (a) in the case of an unpaid Imposition, lien, attachment, levy, encumbrance, charge or claim, the commencement and continuation of such proceedings shall suspend the collection thereof from MPT and from the Real Property; (b) neither the Real Property nor any part thereof or interest therein would, as determined in MPT's sole and absolute discretion, be in any immediate danger of being sold, forfeited, attached or lost; (c) in the case of a Legal Requirement, MPT would not be in any danger whatsoever of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings; (d) in the event that any such contest shall involve a sum of money or potential loss in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), then, in any such event, if the Consolidated Net Worth of the Borrower Parties and the Guarantor is then in excess of Fifty Million and No/100 Dollars (\$50,000,000.00), then the Borrower Parties shall deliver to MPT an Officer's Certificate to the effect set forth in clauses (a), (b) and (c), to the extent applicable; (e) in the case of a Legal Requirement and/or an Imposition, lien, encumbrance or charge, the Borrower Parties shall give such reasonable security as may be demanded by MPT to insure ultimate payment of the same and to prevent any sale or forfeiture of the affected portion of the Real Property by reason of such non-payment or non-compliance; provided, however, the provisions of this Article XVIII shall not be construed to permit the Borrower Parties to contest the payment of the Loan Obligations (except as to contests concerning the method of computation or the basis of levy of any Imposition or the basis for the assertion of any other claim) or any other sums payable by the Borrower Parties to MPT hereunder; (f) in the case of an Insurance Requirement, the coverage required by Article XIII shall be maintained; and (g) if such contest be finally resolved against MPT or the Borrower Parties, the Borrower Parties shall, as Additional Charges due hereunder, promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirement or Insurance Requirement. MPT, at the Borrower Parties' expense, shall execute and deliver to the Borrower Parties such authorizations and other documents as may reasonably be required in any such contest and, if reasonably requested by the Borrower Parties or if MPT so desires, MPT shall join as a party therein. The Borrower Parties shall indemnify and save MPT harmless against any liability, cost or expense of any kind that may be imposed upon MPT in connection with any such contest and any loss resulting therefrom

ARTICLE XIX

INDEMNIFICATION

NOTWITHSTANDING THE EXISTENCE OF ANY INSURANCE OR SELF INSURANCE PROVIDED FOR IN ARTICLE VI, AND WITHOUT REGARD TO THE POLICY LIMITS OF ANY SUCH INSURANCE OR SELF INSURANCE, IN ADDITION TO ANY OTHER INDEMNIFICATION OBLIGATIONS OF THE BORROWER PARTIES AND GUARANTORS AS PROVIDED IN THIS AGREEMENT, THE BORROWER PARTIES WILL PROTECT, INDEMNIFY, SAVE HARMLESS AND DEFEND MPT FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, CLAIMS, DAMAGES, PENALTIES, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) TO THE EXTENT PERMITTED BY LAW), IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST MPT BY REASON OF: (A) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF PERSONAL PROPERTY OCCURRING ON OR ABOUT THE REAL PROPERTY OR ADJOINING SIDEWALKS, INCLUDING WITHOUT LIMITATION ANY CLAIMS OF MALPRACTICE; (B) ANY USE, MISUSE, NO USE, CONDITION, MAINTENANCE OR REPAIR BY THE BORROWER PARTIES OF THE REAL PROPERTY; (C) ANY IMPOSITIONS (WHICH ARE THE OBLIGATIONS OF THE BORROWER PARTIES TO PAY PURSUANT TO THE APPLICABLE PROVISIONS OF THIS AGREEMENT); (D) ANY FAILURE ON THE PART OF THE BORROWER PARTIES TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS AGREEMENT; (E) THE NON-PERFORMANCE OF ANY OF THE TERMS AND PROVISIONS OF ANY AND ALL EXISTING AND FUTURE LEASES AND SUBLEASES OF THE REAL PROPERTY TO BE PERFORMED BY THE LANDLORD (THE BORROWER PARTIES) THEREUNDER; AND (F) ANY AND ALL LAWFUL ACTION THAT MAY BE TAKEN BY MPT IN CONNECTION WITH THE ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, WHETHER OR NOT SUIT IS FILED IN CONNECTION WITH SAME, OR IN CONNECTION WITH THE BORROWER PARTIES OR A GUARANTOR AND/OR ANY PARTNER, JOINT VENTURER, MEMBER OR SHAREHOLDER THEREOF BECOMING A PARTY TO A VOLUNTARY OR INVOLUNTARY FEDERAL OR STATE BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING. ANY AMOUNTS WHICH BECOME PAYABLE BY THE BORROWER PARTIES UNDER THIS ARTICLE XIX SHALL BE PAID WITHIN FIFTEEN (15) DAYS AFTER LIABILITY THEREFOR ON THE PART OF MPT IS DETERMINED BY LITIGATION OR OTHERWISE AND, IF NOT TIMELY PAID (SUBJECT TO ANY APPLICABLE NOTICE AND CURE PERIOD PURSUANT TO SECTION 13.1(a)), SHALL BEAR A LATE CHARGE (TO THE EXTENT PERMITTED BY LAW) AT THE OVERDUE RATE AND A LATE PAYMENT PENALTY COMPUTED AT THE LATE PAYMENT PENALTY RATE FROM THE DATE OF SUCH DETERMINATION TO THE DATE OF PAYMENT. THE BORROWER PARTIES, AT THEIR SOLE EXPENSE, SHALL CONTEST, RESIST AND DEFEND

**ANY SUCH CLAIM, ACTION OR PROCEEDING ASSERTED OR INSTITUTED AGAINST MPT AND MAY COMPROMISE OR OTHERWISE DISPOSE OF THE SAME, SUBJECT TO THE APPROVAL OF MPT. NOTHING HEREIN SHALL BE CONSTRUED AS INDEMNIFYING MPT AGAINST ITS OWN GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT.**

## **ARTICLE XX**

### **NOTICES**

All notices, demands, consents, approvals, requests and other communications under this Agreement shall be in writing (except where specifically stated otherwise) and shall be either (a) delivered in person, (b) sent by certified mail, return receipt requested, (c) delivered by a recognized delivery service, or (d) sent by facsimile transmission and addressed as follows:

if to any

Borrower Party: c/o Ernest Health, Inc.  
7770 Jefferson Street, NE, Suite 320  
Albuquerque, NM 87109  
Attn: Keith Longson  
Phone: (505) 856-5300  
Fax: (505) 856-6800

with a copy to:

Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
Attn: Stuart L. Rosenthal, Esq.  
Phone: (212) 813-8817  
Fax: (212) 255-3333

if to MPT:

c/o MPT Operating Partnership, L.P.  
1000 Urban Center Drive, Suite 501  
Birmingham, Alabama 35242  
Attn: Legal Department  
Phone: (205) 969-3755  
Fax: (205) 969-3756

with a copy to:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
1600 Wells Fargo Tower  
Birmingham, Alabama 35203  
Attn: Thomas O. Kolb, Esq.  
Phone: (205) 250-8321  
Fax: (205) 322-8007

or to such other address as either party may hereafter designate in writing, and shall be effective upon receipt. A notice, demand, consent, approval, request and other communication shall be

deemed to be duly received if delivered in person or by a recognized delivery service, when left at the address of the recipient and if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; provided that if a notice, demand, consent, approval, request or other communication is served by hand or is received by facsimile on a day which is not a Business Day, or after 5:00 p.m. on any Business Day at the addressee's location, such notice or communication shall be deemed to be duly received by the recipient at 9:00 a.m. (based upon Birmingham, Alabama time) on the first Business Day thereafter.

## ARTICLE XXI

### MISCELLANEOUS

**Section 21.1. General.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby. If any late charges provided for in any provision of this Agreement are based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns (subject to [Section 21.17](#)); provided, however, that (a) this Agreement shall not inure to the benefit of any assignee pursuant to an assignment which violates the terms of this Agreement and (b) neither this Agreement nor any other agreement contemplated in this Agreement shall be deemed to confer upon any Person not a party to this Agreement any rights or remedies contained in this Agreement. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect its meaning.

#### **Section 21.2. Bankruptcy Waivers.**

(a) **Relief from Stay.** The Borrower Parties acknowledges and agrees that in the event any Borrower Parties or any Real Property relating to any Facility shall become the subject of any bankruptcy or insolvency estate, then (i) the Borrower Parties shall not oppose any request by MPT to obtain an order from the court granting relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so as to permit the exercise of all rights and remedies pursuant to this Agreement; and (ii) the occurrence or existence of any Event of Default under this Agreement shall, in and of itself, constitute "cause" for relief from the automatic stay pursuant to the provisions of Section 362(d)(1) of the Bankruptcy Code, based on the fact that the non-existence of a bankruptcy proceeding was a material inducement for the entry by MPT into this Agreement.

(b) **Automatic Stay.** The Borrower Parties hereby waive the stay imposed by 11 U.S.C. Section 362(a) as to actions by MPT against each Facility. The Borrower Parties acknowledge and agree that in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against any Facility Borrower, such Facility Borrower shall not assert or request that any other party assert that the automatic stay provided by Section 362 of the

Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of MPT to enforce any rights or remedies held by virtue of the Agreement or applicable law.

(c) Patient Care Ombudsman. The Borrower Parties hereby agree (i) to use their best efforts to contest the necessity of the appointment of a Patient Care Ombudsman for such Facility as that term is defined in 11 U.S.C. Section 333, and/or (ii) to join with MPT in requesting a waiver of or contesting the appointment of such a Patient Care Ombudsman.

**Section 21.3. MPT's Expenses**. In addition to the other provisions of this Agreement, including, without limitation, Section 13.8, the Borrower Parties agree and shall pay and/or reimburse MPTs and its Affiliates' reasonable costs and expenses, including, without limitation, the costs and expenses of reports and investigations and legal fees and expenses attributable to an Event of Default and MPT's pursuing the rights and remedies provided herein and under applicable law, incurred or resulting from or relating to (a) requests by the Borrower Parties for approval or consent under this Agreement (including any consents relating to management, the placing of liens on the Personal Property and any intercreditor issues which arise in connection with any Material Obligation); (b) requests by MPT for approval or consent under this Agreement and all other documents executed between MPT (and its Affiliates) and the Borrower Parties in connection herewith; (c) any circumstances or developments which give rise to MPT or its Affiliates' right of consent or approval under this Agreement or any Other Agreement; (d) circumstances resulting from any action or inaction by the Borrower Parties contrary to the lease provisions; (e) a request for changes, including, but not limited to, (i) the permitted use of the Real Property; (ii) alterations and improvements to the Agreementd Improvements; (iii) subletting or assignment; and (iv) any other changes in the terms, conditions or provisions of this Agreement or any Other Agreement; and (f) enforcement by MPT or its Affiliates of any of the provisions of this Agreement, the other Loan Documents or the Other Agreements. Such expenses and fees shall be paid by the Borrower Parties within thirty (30) days of the submission of a statement for the same or, subject to any applicable notice and cure period pursuant to Section 13.1(a), such amount(s) shall become Additional Charges and subject to the Overdue Rate and a late payment penalty computed at the Late Payment Penalty Rate after that thirty (30)-day period.

**Section 21.4. Entire Agreement; Modifications**. This Agreement, together with all exhibits, schedules and the other documents referred to herein, embody and constitute the entire understanding between the parties with respect to the transactions contemplated herein, and all prior to contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Agreement. Neither this Agreement, any exhibit or schedule attached hereto, nor any provision hereof or thereof may be modified or amended except by an instrument in writing signed by MPT and the Borrower Parties.

**Section 21.5. MPT Securities Offering and Filings**. Notwithstanding anything contained herein to the contrary, the Borrower Parties shall cooperate with MPT in connection with any securities offerings and filings, or MPT's efforts to procure or maintain financing for, or related to, the Real Property, or any portion thereof and, in connection therewith, Borrower Parties shall furnish MPT, in a timely fashion, with such financial and other information (including audited financial statements and consents of auditors) as MPT shall request. MPT may disclose that



MPT has entered into this Agreement with the Borrower Parties and may provide and disclose information regarding this Agreement, the Borrower Parties, the Guarantors, the Real Property and each Facility, and such additional information which MPT may reasonably deem necessary, to its proposed investors in such public offering or private offering of securities, or any current or prospective lenders with respect to such financing, and to investors, analysts and other parties in connection with earnings calls and other normal communications with investors, analysts, and other parties. Upon reasonable advance notice, MPT, its legal and financial representatives, and any lender providing financing for all or any portion of the Real Property shall have the right, subject to the execution of a written confidentiality agreement on terms reasonably acceptable to MPT, such lender and Borrower Parties, to access, examine and copy all agreements, records, documentation and information relating to the Borrower Parties, the Guarantors, and such Real Property, and to discuss such affairs and information with the officers, employees and independent public accountants of Borrower Parties as often as may reasonably be desired. The additional costs of the Borrower Parties in complying with the foregoing shall be reimbursed to the Borrower Parties by MPT.

**Section 21.6. Non-Recourse as to MPT.** Anything contained herein to the contrary notwithstanding, in no event shall MPT or any MPT Party be liable for indirect, incidental, consequential, special, punitive or exemplary damages, regardless of the form of action, whether in contract, tort or otherwise, and even if such party has been advised of the possibility of such damages.

**Section 21.7. Force Majeure.** Except for the payment of all monetary obligations payable pursuant to the terms of this Agreement, the Note and other Loan Documents (which shall not be extended or excused), in the event that MPT or the Borrower Parties shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, or other industrial disturbances, inability to procure materials, failure of power, unavailability of any utility service, restrictive governmental laws or regulations, acts of public enemies, war, blockades, riots, insurrections, earthquakes, fires, storms, floods, civil disturbances, weather-related acts of God, failure to act, or default of another party, or other reason beyond MPT's or the Borrower Parties' control (individually "Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay. Within ten (10) Business Days following the occurrence of Force Majeure, the party claiming a delay due to such event shall give written notice to the other setting forth a reasonable estimate of such delay.

**Section 21.8. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS EXECUTED AND PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES.

**Section 21.9. Jurisdiction and Venue.** MPT AND THE BORROWER PARTIES CONSENT TO PERSONAL JURISDICTION IN THE STATE OF ALABAMA. MPT AND THE BORROWER PARTIES AGREE THAT ANY ACTION OR PROCEEDING ARISING FROM OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT AND TRIED EXCLUSIVELY IN THE STATE OR FEDERAL COURTS OF ALABAMA. EACH OF THE

PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. MPT AND THE BORROWER PARTIES EXPRESSLY ACKNOWLEDGE THAT ALABAMA IS A FAIR, JUST AND REASONABLE FORUM AND AGREE NOT TO SEEK REMOVAL OR TRANSFER OF ANY ACTION FILED BY THE OTHER PARTY IN SAID COURTS. FURTHER, MPT AND THE BORROWER PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY CERTIFIED MAIL ADDRESSED TO A PARTY AT THE ADDRESS DESIGNATED PURSUANT TO ARTICLE XX SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PARTY FOR ANY ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT MAY BE ENFORCED IN ANY OTHER COURT TO WHOSE JURISDICTION ANY OF THE PARTIES IS OR MAY BE SUBJECT.

**Section 21.10. Appointment of Agent and Attorney-in-Fact.** Notwithstanding anything contained herein to the contrary, for the purpose of effecting transfers and assignments described herein, and in addition to the appointment set forth in Exhibit C attached hereto, each Facility Borrower hereby nominate and irrevocably designate and appoint MPT as its true and lawful agent and attorney-in-fact, either in the name of MPT or in the name of such Facility Borrower or in the name of MPT's designee to do all acts and things and execute all documents which MPT may deem necessary or advisable to effect the transfers and assignments set forth herein, including, without limitation, preparing, signing and filing any and all agreements, documents and applications necessary to effect such transfers or assignments. This power is coupled with the ownership interest of MPT in and to the Real Property and the security interest of MPT described in Section 13.8 hereof and all other rights incidental and attendant thereto.

**Section 21.11. Regulatory Cooperation; LLC Agreement.** If, in the reasonable judgment of MPT, MPT Aztec Opco, LLC is prohibited by any laws or regulations from owning all or any portion of its equity interest in Ernest Health or from possessing or exercising any of its rights under that certain Limited Liability Company Agreement of Ernest Health Holdings, LLC, dated the date hereof (as modified, amended or restated from time to time, the "LLC Agreement"), then the parties shall restructure MPT's relationship with the Borrower Parties, including possible modifications of this Agreement and the Other Agreements, so as to preserve the existing business and financial relationships among them. Whenever MPT Aztec Opco, LLC, in its capacity as a Member under the LLC Agreement, has approved pursuant to Section 4.11 of the LLC Agreement any item that requires MPT's approval hereunder or has provided consent pursuant to the LLC Agreement with respect to any item that requires MPT's consent hereunder, MPT will be deemed to have approved or consented to such item hereunder.

**Section 21.12. Compliance with Anti-Terrorism Laws.** MPT hereby notifies the Borrower Parties that pursuant to the requirements of certain Anti-Terrorism Laws (including, without limitation, the Patriot Act) and MPT's policies and practices, MPT is required to obtain, verify and record certain information and documentation that identifies the Borrower Parties, its principals and Affiliates, which information includes the name and address of the Borrower Parties, its principals and Affiliates, and such other information that will allow MPT to identify

such parties in accordance with the Anti-Terrorism Laws (including, without limitation, the Patriot Act). The Borrower Parties will not, directly or indirectly, knowingly enter into any lease for the operation of any part of a Facility or any other lease or any material contracts with any person listed on the OFAC Lists. The Borrower Parties shall immediately notify MPT if Borrower Parties has knowledge that the Borrower Parties or any of its principals or Affiliates or any Guarantor is listed on the OFAC Lists or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. The Borrower Parties will not, directly or indirectly (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, or other Anti-Terrorism Law.

**Section 21.13. Electronically Transmitted Signatures.** In order to expedite the execution of this Agreement, telecopied signatures or signatures sent by electronic mail may be used in the place of original signatures on this Agreement. The parties intend to be bound by the signatures of the telecopied or electronically mailed signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of the signature. Following any facsimile or electronic mail transmittal, the party shall promptly deliver the original instrument by reputable overnight courier in accordance with the notice provisions of this Agreement.

**Section 21.14. Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MPT AND THE BORROWER PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE OF ANY PARTY OF THEIR RESPECTIVE RIGHTS HEREUNDER OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE REAL PROPERTY (INCLUDING ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR MPT TO ENTER INTO THIS AGREEMENT.

**Section 21.15. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

**Section 21.16. Survival.** Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that, all claims against, and liabilities of, the Borrower Parties or MPT which relate to acts or omissions prior to the date of expiration or termination of this Agreement, and the covenants and obligations under this Agreement which expressly relate to periods after the expiration or earlier termination of this Agreement, including, without limitation, all indemnification obligations and those covenants and obligations described in Sections 7.1, 7.5, 7.7, 13.8 and 21.3, and Articles XVII, XVIII and XIX, shall survive such expiration or earlier termination.

**Section 21.17. Assignment.** Neither this Agreement nor any other Loan Document is assignable by any Borrower Party without the prior written consent of MPT. MPT may at any time during the Loan Term and without the consent of any Borrower Party assign all of its rights and obligations hereunder to any other Person.

**Section 21.18. Continuation of Defaults.** Notwithstanding any provision hereof to the contrary, whenever in this Agreement the phrases “continuing,” “continuation of” or similar words or phrases are used in connection with Events of Default, defaults, or events which with notice or passage of time would constitute Events of Default, such phrases or words shall not be construed to create any right in the Borrower Parties to have additional periods of time to cure such defaults or Events of Default other than those specific cure periods provided in this Agreement.

**Section 21.19. Specific Performance.** In addition to any rights and remedies available to the parties hereunder or at law, each party shall be entitled to bring an action for specific performance and to seek other equitable relief in connection with any breach or violation, or any attempted breach or violation, of the provisions of this Agreement.

**Section 21.20. Joint Drafting.** The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provisions of this Agreement in favor of or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Agreement are hereby expressly waived by all parties to this Agreement.

**Section 21.21. Joint and Several Obligations.** Each Facility Borrower shall be jointly and severally liable for all of the liabilities and obligations of the Borrower Parties under this Agreement. Additionally, each Facility Borrower acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and enforceable against any one or more of the Facility Borrowers.

**Section 21.22. Representations, Agreements and Covenants relating to Certain Facilities.** Further representations, agreements and covenants regarding certain of the Facilities are set forth on Schedule 21.22 attached hereto and are hereby incorporated herein by reference.

[Signatures appear on the following page.]

**FORM OF AGREEMENT AND PLAN OF MERGER**

**by and among**

**Ernest Health Holdings, LLC,**

**Ernest Health Acquisition Sub, Inc.,**

**Ernest Health, Inc.,**

**MPT Aztec Opco, LLC**

**(for the limited purposes described herein)**

**and**

**FFC Partners II, L.P., FFC Executive Partners II, L.P.,  
FFC Partners III, L.P., and FFC Executive Partners III, L.P.,  
(for the limited purposes described herein)**

**Dated January 31, 2012**

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## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (this "Agreement"), dated as of January 31, 2012, is by and among ERNEST HEALTH HOLDINGS, LLC a Delaware limited liability company ("Buyer"), ERNEST HEALTH ACQUISITION SUB, Inc., a Delaware corporation ("MergerCo"), ERNEST HEALTH, INC., a Delaware corporation (the "Company"), MPT AZTEC OPCO, LLC, a Delaware limited liability company and solely for each covenant or agreement in Sections 7.4, 7.5, 7.10, 7.11, 7.12 and 7.13 hereof and for no other purpose ("MPT TRS Entity"), and FFC PARTNERS II, L.P., FFC EXECUTIVE PARTNERS II, L.P., FFC PARTNERS III, L.P., and FFC EXECUTIVE PARTNERS III, L.P., each a Delaware limited partnership, and solely for each covenant or agreement in Sections 7.4, 7.5, 7.7(d), 7.10, 7.11, 7.12, 7.13, and 11.13(b) hereof and for no other purpose (the "FFC Funds"). An index of defined terms used in this Agreement is attached as Annex A hereto.

### RECITALS

**WHEREAS**, Buyer, MergerCo and the Company wish to effect a business combination through a merger (the "Merger") of MergerCo with and into the Company on the terms and conditions set forth in this Agreement and in accordance with the Delaware General Corporation Law, as amended (the "DGCL");

**WHEREAS**, the Board of Directors of the Company (the "Company Board") has approved this Agreement, the Merger and the other transactions contemplated by this Agreement, has determined that this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable and in the best interest of its stockholders, and has recommended that this Agreement, the Merger and the other transactions contemplated by this Agreement be submitted to the stockholders of the Company for their adoption and approval;

**WHEREAS**, the Boards of Directors or other governing bodies of Buyer and MergerCo have approved this Agreement, the Merger and the other transactions contemplated by this Agreement and have declared this Agreement, the Merger and the other transactions contemplated by this Agreement to be advisable and in the best interest of their respective stockholders or other owners;

**WHEREAS**, concurrently with the execution and delivery of this Agreement, the Affiliated MPT Property Companies, the Affiliated MPT Lender Companies, the Company, the Affiliated Ernest Health Lessees and the Affiliated Ernest Health Borrowers, have entered into the Real Property Asset Purchase Agreement attached hereto as **Exhibit A** (as the same may be amended, modified or restated, the "Real Property Asset Purchase Agreement") pursuant to which (i) the Affiliated Ernest Health Lessees have agreed to sell to the Affiliated MPT Property Companies, and the Affiliated MPT Property Companies have agreed to purchase from the Affiliated Ernest Health Lessees, the real estate assets identified in the Real Property Asset Purchase Agreement, all on the terms and conditions set forth therein, and (ii) the Affiliated MPT Lender Companies have agreed to provide the Affiliated Ernest Health Borrowers with financing secured by, among other things, a mortgage on those certain real estate assets identified in the Real Property Asset Purchase Agreement;

**WHEREAS**, Buyer, MPT TRS Entity, the Rollover Holders and Management Company have entered into a Contribution Agreement, dated as of the date hereof and attached hereto as **Exhibit B** (as the same may be amended, modified or restated, the "Contribution Agreement"), pursuant to which, immediately following the closing of the transactions contemplated by the Real Property Asset Purchase Agreement but prior to the Effective Time on the Closing Date, (i) the Rollover Holders shall contribute the Rollover Shares to Management Company in exchange for membership interests in Management Company and cash, (ii) Management Company shall immediately thereafter (but prior to the Effective Time on the Closing Date) contribute all of the Rollover Shares to Buyer in exchange for 51% of the membership interests of Buyer and cash, (iii) MPT TRS Entity shall contribute cash to Buyer in exchange for 49% of the membership interests of Buyer, and (iv) Buyer shall contribute all cash then held thereby, after giving effect to the foregoing steps, to MergerCo;

**WHEREAS**, simultaneously with the aforementioned contribution of Rollover Shares and cash into Buyer, Management Company and MPT TRS Entity shall enter into the Amended and Restated Limited Liability Company Operating Agreement of Buyer, in substantially the form attached hereto as **Exhibit C** (as the same may be amended, modified or restated, the "Buyer Operating Agreement");

**WHEREAS**, immediately prior to the Effective Time, MergerCo shall enter into that certain Promissory Note in favor of the MPT TRS Entity, a copy of which is attached hereto as **Exhibit D** (as the same may be amended, modified or restated, the "Acquisition Promissory Note"), which shall evidence a loan by the MPT TRS Entity to MergerCo in the principal amount of Ninety-Three Million Two Hundred Thousand and 00/100 Dollars (\$93,200,000.00), the proceeds of which shall be used to satisfy in part the obligations of Buyer and MergerCo set forth in this Agreement;

**WHEREAS**, concurrently with the Effective Time, the Surviving Corporation, the Affiliated Ernest Health Lessees and Affiliated Ernest Health Borrowers, on the one hand, and Management Company and, if applicable, certain Subsidiaries of Management Company, on the other hand, shall enter into a management agreement with Management Company in substantially the form attached hereto as **Exhibit E** (as the same may be amended, modified or restated, the "Management Agreement");

**WHEREAS**, concurrently with the Effective Time, (i) the Affiliated MPT Property Companies, as landlords, and the MPT TRS Subsidiaries, as tenants, shall enter into a real property Lease Agreement in substantially the form attached hereto as **Exhibit F** (the "Real Property Master Lease Agreement"), and immediately thereafter (ii) the MPT TRS Subsidiaries, as sublandlords, and the Affiliated Ernest Health Lessees, as subtenants, shall enter into a real property Sublease Agreement in substantially the form attached hereto as **Exhibit G** (the "Real Property Master Sublease Agreement"); and

**WHEREAS**, concurrently with the Effective Time, the Affiliated MPT TRS Lender Companies shall borrow One Hundred Million and No/100 (\$100,000,000.00) from the Affiliated MPT Primary Lender Companies, and the Affiliated MPT TRS Lender Companies and the Affiliated Ernest Health Borrowers shall then enter into that certain Real Estate Loan Agreement in substantially the form attached hereto as **Exhibit H** (as the same may be amended,

modified or restated, the “Real Estate Loan Agreement”), together with the mortgages and/or deeds or trust, the promissory note, and the other documents and instruments contemplated therein (collectively, with the Real Estate Loan Agreement, the “Real Estate Loan Documents”).

**NOW THEREFORE**, in consideration of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### THE MERGER

1.1 The Merger. Subject to the terms and conditions of this Agreement and in accordance with the DGCL, at the Effective Time, the Company and MergerCo shall consummate the Merger pursuant to which (a) MergerCo shall be merged with and into the Company and the separate corporate existence of MergerCo shall thereupon cease, (b) the Company shall be the surviving corporation in the Merger (the “Surviving Corporation”) and shall continue to be governed by the laws of the State of Delaware and (c) the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger. The Merger shall have the effects specified in the DGCL.

1.2 Effective Time. On the Closing Date, immediately following the Closing, the Surviving Corporation shall duly execute a certificate of merger (the “Certificate of Merger”) in the form mutually agreed to by the parties not less than two (2) Business Days prior to the Closing Date, and file such Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the DGCL. The Merger shall become effective at such time as the Certificate of Merger, accompanied by payment of the filing fee (as provided in the DGCL), has been examined by, and received the endorsed approval of, the Secretary of State of the State of Delaware, or at such subsequent time as Buyer and Company shall agree and shall specify in the Certificate of Merger (the date and time the Merger becomes effective being the “Effective Time”).

1.3 Certificate of Incorporation and By-Laws. At the Effective Time, the certificate of incorporation of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated in a form mutually acceptable to the MPT TRS Entity and Buyer (provided, that as so amended, such certificate of incorporation shall contain such provisions as are necessary to give full effect to the exculpation and indemnification provided for in Section 7.7 hereof), except that the name of the Company as the Surviving Corporation shall continue to be Ernest Health, Inc. and the provisions of the certificate of incorporation of MergerCo relating to the incorporator of MergerCo shall be omitted, and as so amended shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein and in accordance with applicable law (the “Surviving Corporation Charter”). At the Effective Time, the bylaws of MergerCo shall be amended and restated in a form mutually acceptable to the MPT TRS Entity and Buyer (such amended and restated bylaws of MergerCo shall contain such provisions as are necessary to give full effect to the exculpation and indemnification obligations provided for in Section 7.7 hereof), and such amended and restated bylaws of MergerCo shall be the bylaws of the Surviving Corporation, until thereafter amended as provided therein and in accordance with applicable law (the “Surviving Corporation Bylaws”).

1.4 Closing. The closing of the Merger (the "Closing") shall occur as promptly as practicable (but in no event later than the third (3rd) Business Day) after all of the conditions set forth in Article VIII have been satisfied (other than conditions which by their terms are required to be satisfied at the Closing) or, if permissible, waived by the party entitled to the benefit of the same (the "Closing Date"); provided, that, unless the Company and Buyer shall otherwise agree in writing, in no case shall the Closing occur prior to March 1, 2012. The Closing shall be handled through deliveries into escrow with the Escrow Agent or in such other manner and at such other place as agreed to by the parties hereto.

1.5 Directors and Officers of the Surviving Corporation.

(a) From and after the Effective Time, the directors of MergerCo immediately prior to the Effective Time shall become the directors of the Surviving Corporation, until their successors shall have been duly elected, appointed or qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation Charter and the Surviving Corporation Bylaws.

(b) From and after the Effective Time, the officers of MergerCo immediately prior to the Effective Time shall become the officers of the Surviving Corporation, until their successors shall have been duly elected, appointed or qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation Charter and the Surviving Corporation Bylaws.

## ARTICLE II

### EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

2.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any Party or the holder of any of the following securities:

(a) MergerCo Capital Stock. Each share of capital stock of MergerCo issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

(b) Company Treasury Stock; Company Shares Owned by Buyer or MergerCo. Each Company Share held in the Company's treasury or held by Buyer or MergerCo (including the Rollover Shares acquired by Buyer pursuant to the Contribution Agreement), in each case, immediately prior to the Effective Time, shall be cancelled and retired without payment of any consideration therefor.

(c) Company Shares.

(i) Common Stock. Subject to the provisions of Section 2.2 and Section 3.1(a), and except as provided in Section 2.1(b) and Section 2.4, each Common Share issued and outstanding immediately prior to the Effective Time shall be converted into and represent the right to receive: (i) the Per Common Share Closing Date Merger Consideration; plus (ii) the Per Common Share Final Closing Adjustment Amount, if any; plus (iii) the Per Common Share Escrow Consideration, if any; plus (iv) the Per Common Share Stockholders' Representative Expense Amount, if any.

(ii) Preferred Stock.

a. Series A Preferred Stock. Subject to the provisions of Section 3.1(a), and except as provided in Section 2.1(b) and Section 2.4, each Series A Preferred Share issued and outstanding immediately prior to the Effective Time shall be converted into and represent the right to receive the Per Share Series A Preferred Merger Consideration.

b. Series B Preferred Stock. Subject to the provisions of Section 3.1(a), and except as provided in Section 2.1(b) and Section 2.4, each Series B Preferred Share issued and outstanding immediately prior to the Effective Time shall be converted into and represent the right to receive the Per Share Series B Preferred Merger Consideration.

c. Series C Preferred Stock. Subject to the provisions of Section 3.1(a), and except as provided in Section 2.1(b) and Section 2.4, each Series C Preferred Share issued and outstanding immediately prior to the Effective Time shall be converted into and represent the right to receive the Per Share Series C Preferred Merger Consideration.

(iii) Restricted Stock. At the Effective Time, any right of repurchase, risk of forfeiture or other restriction under any restricted stock or similar agreement with the Company with respect to shares of the Company's Common Stock outstanding immediately prior to the Effective Time shall lapse and any vesting thereon shall fully accelerate, in each case, as of immediately prior to the Effective Time.

(iv) Cancellation. As a result of the Merger and without any action on the part of the holder thereof, at the Effective Time all Company Shares converted into the right to receive merger consideration pursuant to this Section 2.1(c) shall cease to be outstanding, shall be canceled and retired and shall cease to exist, and each holder of a certificate representing any such Company Shares shall thereafter cease to have any rights with respect to such Company Shares, except the right to receive the applicable amounts payable with respect thereto in accordance with the terms of this Agreement.

**2.2 Rollover Investment.** Subject to the terms and conditions of the Contribution Agreement, immediately prior to (but subject to the consummation of) the Merger, (a) each of the Common Stockholders party to the Contribution Agreement as of the date hereof (each, a “Rollover Holder”), shall contribute to Management Company 100% of the Common Shares held thereby as of immediately prior to the Closing (the “Rollover Shares”) and (b) any other Equity Holder that becomes a member of the Management Company after the date hereof and before the Closing (each, an “Other Participating Manager”), will (unless otherwise agreed among the Rollover Holders and such Other Participating Member) contribute to Management Company cash, in each case, for the consideration specified in the Contribution Agreement or as otherwise agreed between the Rollover Holders and such Other Participating Manager, as applicable. The Rollover Holders (but no Other Participating Managers) shall also be entitled to receive in cash, when and to the extent payable, (i) the Per Common Share Final Closing Adjustment Amount, if any, multiplied by the number of Rollover Shares contributed by such Rollover Holder; plus (ii) the Per Common Share Escrow Consideration, if any, multiplied by the number of Rollover Shares contributed by such Rollover Holder; plus (iii) the Per Common Share Stockholders’ Representative Expense Amount, if any, multiplied by the number of Rollover Shares contributed by such Rollover Holder.

### 2.3 Company Options.

(a) At the Effective Time, each option to acquire Common Shares (each an “Option,” and collectively the “Options”) outstanding immediately prior to the Effective Time under the Company’s 2004 Stock Option Plan, as amended to date (the “Option Plan”) shall automatically be cancelled and extinguished, and each holder of an outstanding Option (each an “Optionholder,” and collectively the “Optionholders”) shall have the right to receive in respect of such holder’s Options, the following payments in cash (the “Option Consideration”): (i) a payment in an amount equal to the total number of Common Shares issuable upon the exercise of such Optionholder’s Options (the “Option Shares”), multiplied by the positive difference between (A) the Per Common Share Closing Date Merger Consideration and (B) the applicable exercise price per share for such Option Shares (such amount, the “Closing Date Option Consideration”); plus (ii) a payment in an amount equal to the total Option Shares multiplied by the Per Common Share Final Closing Adjustment Amount, if any; plus (iii) a payment in an amount equal to the total Option Shares multiplied by the Per Common Share Escrow Consideration, if any; plus (iv) a payment in an amount equal to the total Option Shares multiplied by the Per Common Share Stockholders’ Representative Expense Amount, if any.

(b) Prior to the Closing, the Company shall have adopted such resolutions and taken or caused to be taken all such other actions as may be reasonably required to effectuate the provisions of this Section 2.3 and the termination of the Option Plan.



## 2.4 Appraisal Rights.

(a) Notwithstanding anything in this Agreement to the contrary, any Company Shares (the “Dissenting Shares”) that are issued and outstanding immediately prior to the Effective Time and that are held by Stockholders who, in accordance with Section 262 of the DGCL (the “Appraisal Rights Provisions”), (i) have not voted in favor of adopting this Agreement, (ii) shall have demanded properly in writing appraisal for such shares, (iii) have otherwise complied in all respects with the Appraisal Rights Provisions, and (iv) have not effectively withdrawn, lost or failed to perfect their rights to appraisal (the “Dissenting Stockholders”), will not be converted into the right to receive consideration in the Merger as set forth in Section 2.1, but at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, shall be cancelled and shall cease to exist and each holder of Dissenting Shares shall cease to have any rights with respect thereto, except the right to receive only those rights provided under the Appraisal Rights Provisions; provided, however, that all Company Shares held by Stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such Company Shares under the Appraisal Rights Provisions shall thereupon be deemed to have been cancelled and to have been converted, as of the Effective Time, into the right to receive the consideration relating thereto, without interest, in the manner provided in Section 2.1.

(b) The Company shall give Buyer and MergerCo prompt notice of any demands received by the Company for the exercise of appraisal rights with respect to Company Shares, and Buyer shall have the right to participate in all negotiations and proceedings with respect to such demands subject, prior to the Effective Time, to consultation with the Company. The Company shall not, except with the prior written consent of Buyer, which consent shall not be unreasonably withheld, make any payment with respect to, or settle or offer to settle, any such demands.

(c) Each Dissenting Stockholder who becomes entitled under the Appraisal Rights Provisions to payment for Dissenting Shares shall receive payment therefor after the Effective Time from the Surviving Corporation (but only after the amount thereof shall have been agreed upon or finally determined pursuant to the Appraisal Rights Provisions).

## 2.5 Purchase Price Adjustments

(a) Pre-Closing Estimates. At least two (2) Business Days prior to the Closing Date, the Company shall deliver to Buyer a statement (the “Pre-Closing Statement”) setting forth its good faith estimate of (i) the Cash and Cash Equivalents of the Company and its Subsidiaries as of the close of business on the date preceding the Closing Date (the “Estimated Cash and Cash Equivalents”), (ii) the aggregate amount of the Company’s and its Subsidiaries’ Indebtedness as of immediately prior to the Effective Time (the “Estimated Closing Indebtedness”), (iii) the aggregate amount of Company Transaction Expenses as of immediately prior to the Effective Time (“Estimated Company Transaction Expenses”), and (iv) the Net Working Capital of the Company and its Subsidiaries as of the close of business on the Closing Date (the “Estimated Net Working Capital”), in each case together with reasonable supporting documents to evidence the calculations of such amounts.

(b) Post-Closing Adjustments.

(i) Closing Statement. Within sixty (60) days following the Closing Date, the Buyer shall cause the Surviving Corporation to prepare and deliver to the Stockholders' Representative a statement (the "Closing Statement") setting forth Surviving Corporation's calculation of (i) the Company's and its Subsidiaries' Net Working Capital as of the close of business on the date preceding the Closing Date (the "Closing Net Working Capital"), (ii) the Company's and its Subsidiaries' Cash and Cash Equivalents as of the close of business on the date preceding the Closing Date ("Closing Cash"), (iii) the Indebtedness of the Company and its Subsidiaries as of immediately prior to the Effective Time ("Closing Indebtedness"), and (iv) the Company Transaction Expenses as of immediately prior to the Effective Time ("Closing Company Transaction Expenses"), together with reasonable supporting documents to evidence the calculations of such amounts. The Closing Statement shall be prepared in accordance with the definitions of "Net Working Capital", "Cash and Cash Equivalents", "Indebtedness", and "Company Transaction Expenses" as set forth in this Agreement and on a basis consistent with the accounting methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Company's audited Financial Statements and without giving effect to any changes resulting from the consummation of the Merger on the Closing Date. The process described in this Section 2.5(b) is not intended to permit the introduction of different accounting methodologies, practices, estimation techniques, assumptions and principles to the preparation of the Closing Statement from those used in the Company's audited Financial Statements, except as may be expressly provided for in the definitions set forth herein. The Stockholders' Representative shall have thirty (30) days following its receipt of the Closing Statement and the supporting detail (the "Review Period") to review the same. On or before the expiration of the Review Period, the Stockholders' Representative shall deliver to Buyer and Surviving Corporation a written statement accepting or objecting to the Closing Statement (the "Closing Statement Response Notice"). If the Stockholders' Representative does not deliver a Closing Statement Response Notice to Buyer and Surviving Corporation within the Review Period, the Stockholders' Representative shall be deemed to have accepted the Closing Statement in its entirety.

(ii) Disputes. In the event that the Stockholders' Representative objects to all or any portion of the Closing Statement within the Review Period, Buyer and the Stockholders' Representative shall promptly meet and in good faith attempt to resolve such objections. Any such objections that cannot be resolved between Buyer and the Stockholders' Representative within thirty (30) days (or such longer period as Buyer and the Stockholders' Representative shall mutually agree in writing) following Buyer's receipt of the Closing Statement Response Notice shall be resolved in accordance with this Section 2.5(b). Should the Stockholders' Representative and Buyer not be able to resolve such objections set forth in the Closing Statement Response Notice within the time period described above, either party may submit the matter to Deloitte & Touche LLP (the "Accounting Referee") for review and resolution, with instructions to complete the same as promptly as practicable, but in any event within thirty (30) days of its engagement, and to resolve any objections consistent with the terms of this Agreement, including, without limitation, making the calculations in accordance

with the definitions of “Cash and Cash Equivalents”, “Net Working Capital”, “Indebtedness”, and “Company Transaction Expenses” (as applicable) set forth in this Agreement. The Accounting Referee shall only have authority to make determinations in respect of those specific items for which an objection has been raised in the Closing Statement Response Notice, and all determinations shall be based solely on the presentations of Buyer and the Stockholders’ Representative and their respective Representatives, and not by independent review. In resolving any disputed item, the Accounting Referee: (A) shall be bound by the principles set forth in this Section 2.5(b), and (B) shall not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Accounting Referee shall deliver a statement setting forth its resolution of the dispute within thirty (30) days of the submission of the dispute to such firm, which resolution, absent manifest error, shall be binding and conclusive on the parties and not subject to appeal. The Closing Statement shall be modified if necessary to reflect such determination by the Accounting Referee. The fees and costs of the Accounting Referee, if one is required, shall be payable by Surviving Corporation, on the one hand, and by the Stockholders’ Representative, on the other hand, on the basis, for each such party, of the percentage the portion of the contested amount not awarded to each party bears to the amount contested by such party, as determined by the Accounting Referee.

(iii) Determinations; Adjustments.

a. Net Working Capital Adjustment. If the Closing Net Working Capital as finally determined pursuant to this Section 2.5(b) is greater than the Estimated Net Working Capital, Buyer shall, or shall cause the Surviving Corporation to, pay to the Common Equity Holders and Rollover Holders such excess in accordance with Section 2.5(b)(iv). If the Closing Net Working Capital as finally determined pursuant to this Section 2.5(b) is less than the Estimated Net Working Capital, the Buyer shall be entitled to receive a payment, solely from the Escrow Fund, in the amount of such shortfall in accordance with Section 2.5(b)(iv).

b. Closing Cash Adjustment. If the Closing Cash as finally determined pursuant to this Section 2.5(b) is greater than the Estimated Cash and Cash Equivalents, Buyer shall, or shall cause the Surviving Corporation to, pay to the Common Equity Holders and Rollover Holders such excess in accordance with Section 2.5(b)(iv). If the Closing Cash as finally determined pursuant to this Section 2.5(b) is less than the Estimated Cash and Cash Equivalents, Buyer shall be entitled to receive a payment, solely from the Escrow Fund, in the amount such shortfall in accordance with Section 2.5(b)(iv).

c. Closing Indebtedness Adjustment. If the Closing Indebtedness as finally determined pursuant to this Section 2.5(b) is less than the Estimated Indebtedness, Buyer shall, or shall cause the Surviving Corporation to, pay such shortfall to the Common Equity Holders and Rollover Holders in accordance with Section 2.5(b)(iv). If the Closing Indebtedness as finally determined pursuant to this Section 2.5(b) is greater than the Estimated Indebtedness, Buyer shall be entitled to receive a payment, solely from the Escrow Fund, in the amount such excess in accordance with Section 2.5(b)(iv).

d. Closing Company Transaction Expenses Adjustment. If the Closing Company Transaction Expenses as finally determined pursuant to this Section 2.5(b) are less than the Estimated Company Transaction Expenses, Buyer shall, or shall cause the Surviving Corporation to, pay such shortfall to the Common Equity Holders and Rollover Holders in accordance with Section 2.5(b)(iv). If the Closing Company Transaction Expenses as finally determined pursuant to this Section 2.5(b) are greater than the Estimated Company Transaction Expenses, Buyer shall be entitled to receive a payment, solely from the Escrow Fund, in the amount such excess in accordance with Section 2.5(b)(iv).

(iv) Payments. The payments to be made to the parties pursuant to Section 2.5(b)(iii) shall be aggregated and offset, and the net amount (if any) owed by Buyer to the Common Equity Holders and Rollover Holders, on the one hand, or owed to Buyer, on the other hand, shall be referred to as the "Final Closing Adjustment Amount". In the event that the Final Closing Adjustment Amount is owed to Buyer, an amount in cash equal to the Final Closing Adjustment Amount shall be paid from the Escrow Fund to Buyer in accordance with the Escrow Agreement. In the event the Final Closing Adjustment Amount is owed to the Common Equity Holders and Rollover Holders, the Stockholders' Representative shall deliver to the Buyer a schedule that sets out each Person's Pro Rata Portion of the Final Closing Adjustment Amount, and Buyer shall promptly thereafter cause the Surviving Corporation to pay (i) to each Optionholder through the Surviving Corporation's payroll system, such Optionholder's Pro Rata Portion of such amount, and (ii) to each Common Stockholder and Rollover Holder, such Person's Pro Rata Portion of such amount in accordance with the payment instructions set forth in such Person's Letter of Transmittal. Any payment required under this Section 2.5(b)(iv) to be made to Buyer or to the Common Equity Holders and Rollover Holders shall be made within five (5) Business Days of the final determination of the Final Closing Adjustment Amount.

## 2.6 Escrow Fund.

(a) At the Closing, Buyer shall deposit the Escrow Amount with First American Title Insurance Company (the “Escrow Agent”), such deposit, together with all interest and dividends accrued thereon, if any, to constitute an escrow fund (the “Escrow Fund”). The Escrow Fund shall be governed by the terms of an escrow agreement among Buyer, the Stockholders’ Representative and the Escrow Agent, in the form mutually agreed to by the parties not less than two (2) Business Days prior to the Closing Date (as the same may be amended, modified or restated, the “Escrow Agreement”). The Escrow Fund shall be held in escrow and shall be available to pay any amounts payable to Buyer pursuant to Section 2.5(b)(iv) of this Agreement. If the Final Adjustment Amount is payable to the Common Equity Holders and Rollover Holders, the entire Escrow Fund shall be released to or as directed by the Stockholders’ Representative on behalf of the Common Equity Holders and Rollover Holders within two (2) Business Days of the determination of the Final Adjustment Amount. If the Final Adjustment Amount is payable to Buyer, that portion of the Escrow Fund equal to the Final Adjustment Amount shall be released to Buyer in accordance with Section 2.5(b)(iv) and the entire remaining amount of the Escrow Fund, if any, shall be released to or as directed by the Stockholders’ Representative on behalf of the Common Equity Holders and Rollover Holders substantially concurrently with the release of the Final Closing Adjustment Amount to Buyer.

(b) All parties hereto agree for all tax purposes: (i) any portion of the Escrow Fund paid to the Optionholders shall be treated as compensation paid by the Company to the Optionholders, (ii) the right of the holders of shares of Common Stock or Rollover Shares to receive any portion of the Escrow Fund shall be eligible to be treated as deferred contingent purchase price eligible for installment sale treatment under Section 453 of the Code and any corresponding provision of foreign, state or local law, as appropriate; (iii) Buyer shall be treated as the owner of the Escrow Amount solely for tax purposes, and all interest and earnings earned from the investment and reinvestment of the Escrow Amount, or any portion thereof, shall be allocable to Buyer pursuant to Section 468B(g) of the Code and Proposed Treasury Regulation Section 1.468B-8; (iv) if and to the extent any amount of Escrow Fund paid to the Common Stockholders’ or Rollover Holders is actually distributed thereto, interest may be imputed on such amount, as required by Section 483 or 1274 of the Code; and (v) in no event shall the total amount of the Escrow Amount and any interest and earnings earned thereon paid to the Common Equity Holders or Rollover Holders under this Agreement exceed an amount to be designated by the Stockholders’ Representative prior to the Closing. Clause (v) of the preceding sentence is intended to ensure that the right of the Common Stockholders or Rollover Holders to any portion of the Escrow Fund and any interest and earnings earned thereon is not treated as a contingent payment without a stated maximum selling price under Section 453 of the Code and the Treasury Regulations promulgated thereunder. All parties hereto shall file all Tax Returns consistently with the foregoing.

2.7 Redemption for Tax Purposes. Amounts received by holders of Company Shares in connection with the Merger are intended to be treated as received in complete redemption of Company Shares under Section 302(b)(3) of the Code.

## ARTICLE III

### PAYMENTS TO EQUITYHOLDERS; OTHER CLOSING DATE PAYMENTS; POST-CLOSING PAYMENTS

#### 3.1 Closing Date Payments to Holders of Company Shares and Options.

(a) Delivery of Letter of Transmittal. As soon as practicable after the date hereof, the Company shall deliver to each holder of Company Shares a letter of transmittal customary for transactions of this type in the form mutually agreed to by the parties (the "Letter of Transmittal"), and containing, among other terms, representations and warranties regarding due authority, enforceability, and title to the Company Shares transmitted thereby, to effect the exchange of such holder's Company Shares for the applicable consideration set forth in Section 2.1. Each holder of a Common Stock Certificate, a Series A Preferred Stock Certificate, Series B Preferred Stock Certificate and/or Series C Preferred Stock Certificate (together, the "Certificates") representing Company Shares shall deliver such Certificate, together with a duly completed Letter of Transmittal, to the Company; provided, however, that if any Certificate shall have been lost, stolen or destroyed, the affected Stockholder may deliver to the Company, in lieu of such lost, stolen or destroyed Certificate, a lost stock certificate affidavit containing a customary indemnity obligation, but no such Stockholder shall be required to deliver any bond or other security in connection with the delivery of such affidavit. Until so surrendered and exchanged, each outstanding Certificate shall be deemed to represent and evidence only the right to receive the applicable consideration relating thereto pursuant to Section 2.1, and until such surrender and exchange of the above described documents, no cash shall be paid to the holder of a Certificate in respect thereof.

(b) Payments to Holders of Company Shares. Subject to the terms of Section 3.1(d), the Surviving Corporation, in accordance with the delivery instructions set forth in the applicable Letter of Transmittal, shall pay (i) to each holder of Series A Preferred Stock, an amount equal to the Per Share Series A Preferred Merger Consideration multiplied by the number of Series A Shares held thereby, (ii) to each holder of Series B Preferred Stock, an amount equal to the Per Share Series B Preferred Merger Consideration multiplied by the number of Series B Shares held thereby, (iii) to each holder of Series C Preferred Stock, an amount equal to the Per Share Series C Preferred Merger Consideration multiplied by the number of Series C Shares held thereby, and (iv) to each holder of Common Stock, an amount equal to the Per Common Share Closing Date Merger Consideration multiplied by the number of shares of Common Stock held thereby, in the case of each such Equity Holder, as set forth on a payment schedule (the "Payment Schedule") to be delivered by the Company to Buyer not less than two (2) Business Days prior to the Closing Date. Any such payment to a holder of Company Shares that is the obligor of a Stockholder Note shall automatically be reduced by the amount of principal and accrued interest then outstanding under such Stockholder Note, in each case, as shall be set forth on the Payment Schedule (and Buyer and Surviving Corporation acknowledge and agree that upon delivery to any such Stockholder of any payment so reduced in accordance with the foregoing, the applicable Stockholder Note obligation of such Stockholder shall be satisfied in full, and such Stockholder Note shall be cancelled).

(c) Timing of Payments to Holders of Company Shares. With respect to holders of Company Shares who have duly delivered to the Company the documents described in Section 3.1(a) at least two (2) Business Days prior to the Closing Date, the Surviving Corporation shall, immediately after the Effective Time on the Closing Date, pay to each such holder of Company Shares their applicable portion of the Closing Date Merger Consideration in accordance with Section 2.1 (as such amount may be adjusted in the event that such holder of Company Shares is an obligor of a Stockholder Note). With respect to any holder of Company Shares who duly delivers to the Company or the Surviving Corporation the documents described in Section 3.1(a) at any time following the date which is two (2) Business Days prior to the Closing Date, the Surviving Corporation shall, as promptly as practicable after the Effective Time, pay to each such holder of Company Shares their applicable portion of the Closing Date Merger Consideration in accordance with Section 2.1 (as such amount may be adjusted in the event that such holder of Company Shares is an obligor of a Stockholder Note).

(d) Payments to Optionholders. As soon as practicable following the Effective Time, but in any event within five (5) Business Days thereafter, the Surviving Corporation shall pay to each Optionholder an amount equal to the Closing Date Option Consideration multiplied by the number of Option Shares held by such Optionholder, in each case, as shall be set forth on the Payment Schedule.

### 3.2 Other Closing Date Payments.

(a) Escrow Amount. At the Effective Time, Buyer and MergerCo shall pay the Escrow Amount to the Escrow Agent in cash by wire transfer of immediately available funds to one or more accounts designated in writing by the Escrow Agent.

(b) Indebtedness. At the Effective Time, Buyer and MergerCo shall pay to the holders of Indebtedness identified in the Pre-Closing Statement funds sufficient to satisfy the Estimated Closing Indebtedness set forth therein, in cash by wire transfer of immediately available funds to one or more accounts designated in writing by each such Person in a payoff letter delivered thereby to the Company not less than two (2) Business Days prior to the Closing.

(c) Company Transaction Expenses and Transaction Bonuses. At the Effective Time, Buyer and MergerCo shall pay (i) to those third-party Representatives of the Company identified in the Pre-Closing Statement, funds sufficient to satisfy that portion of the Estimated Company Transaction Expenses payable thereto as set forth in the Pre-Closing Statement, and (ii) to the Company, on behalf of the Persons entitled to receipt thereof, an amount equal to the aggregate amount of all Transaction Bonuses, in each case, that have not been paid on or prior to the Closing Date, in cash by wire transfer of immediately available funds to one or more accounts designated in writing by each such Representative or the Company, as applicable.

(d) Stockholders' Representative Expense Amount. At the Closing, Buyer and MergerCo shall deposit into an account designated by the Stockholders' Representative an amount equal to \$250,000 (the "Stockholders' Representative Expense Amount"). The Stockholders' Representative Expense Amount may be used at any time by the Stockholders' Representative to fund any expenses incurred by it in the performance of its duties and

obligations hereunder, the Escrow Agreement or otherwise in connection with the transactions contemplated hereby or thereby. The Stockholders' Representative Expense Amount will be held by the Stockholders' Representative for so long as the Stockholders' Representative determines is reasonably necessary for it to fulfill its obligations and duties under this Agreement, the Escrow Agreement or otherwise in connection with the transactions contemplated hereby or thereby.

3.3 Post-Closing Payments. (a) The Surviving Corporation, the Escrow Agent or the Stockholders' Representative, as the case may be, shall pay or cause to be paid to each holder of Common Stock (including any Rollover Holder with respect to all Rollover Shares), in accordance with the payment instructions set forth in the applicable Letter of Transmittal, and (b) the Surviving Corporation shall pay or cause to be paid to each Optionholder, in the case of each of the foregoing clauses (a) and (b), as and to the extent such amounts, if any, become payable to such Persons, each such Person's Pro Rata Portion of (i) the Final Closing Adjustment Amount, (ii) the Escrow Fund, and (iii) the Stockholders' Representative Expense Amount.

#### 3.4 Additional Provisions.

(a) If any payment is to be made pursuant to this Article III to a Person other than the Person in whose name a surrendered Certificate is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and delivered to the Company or the Surviving Corporation with all documents required to evidence and effect such transfer, and that the Person requesting such payment pay any transfer or other taxes required by reason of the payment to a Person other than the registered holder of the Certificate surrendered or establish to the satisfaction of the Company or the Surviving Corporation that such tax has been paid or is not applicable. After the Effective Time, each Certificate (other than Certificates representing shares of Company Stock to be cancelled in accordance with Section 2.1(b)) shall represent solely the right to receive, upon surrender in accordance with Section 3.1, the applicable consideration allocable to the Company Shares represented by such Certificate, as contemplated by this Agreement.

(b) The Company, the Surviving Corporation, Buyer, and/or the Stockholders' Representative, without duplication, shall be entitled to deduct and withhold from any amounts payable to a Common Equity Holder or Rollover Holder pursuant to this Agreement such amounts as are required to be withheld with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), and the rules and regulations promulgated thereunder, or any provision of United States federal, state or local tax laws. To the extent that amounts are so withheld, such withheld amounts shall be (i) remitted by the Stockholders' Representative, the Company, the Surviving Corporation and/or Buyer, as the case may be, to the applicable governmental agency and (ii) treated for all purposes of this Agreement as having been paid to the holder of the Common Shares or Options in respect of which such deduction and withholding was made. All payments to Optionholders shall be treated as compensation when such consideration is actually paid, and each such payment shall be subject to and reduced by all applicable federal, state and local withholding Taxes.



(c) At the Effective Time, the stock transfer books of the Company shall be closed and no further registration of transfers of shares shall thereafter be made on the records of the Company.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby makes to Buyer and MergerCo the representations and warranties contained in this Article IV.

#### 4.1 Existence; Good Standing; Enforceability.

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to own, operate and lease its properties and carry on its business as currently conducted. The Company is duly licensed or qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction listed on Schedule 4.1(a) and each other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not result in a Company Material Adverse Effect. The copies of the Company's Third Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") and Bylaws (the "By-laws"), each as amended to date and provided by the Company to the Buyer, are complete and correct, and no amendments thereto are pending. The Company is in compliance with the Certificate of Incorporation and the Bylaws in all material respects.

(b) The Company has all requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party and, subject to the receipt of the Stockholder Written Consent, to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and each other Transaction Document to which the Company is a party, the performance by the Company of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Company Board and no further action, other than the delivery of the Stockholder Written Consent, on the part of the Company or its Stockholders is necessary to authorize the execution and delivery by the Company of this Agreement or such other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby. This Agreement and the other Transaction Documents to which the Company is a party have been (or with respect to certain Transaction Documents to be executed at Closing, will be) duly executed and delivered by the Company and, assuming the due authorization, execution and delivery of this Agreement and such other Transaction Documents by each of the other parties hereto and thereto, constitute (or, as applicable with respect to certain Transaction Documents to be executed at Closing, shall constitute) legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms and conditions hereof and thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Notwithstanding the foregoing, the Company makes no representations or warranties

regarding the enforceability of any of the Contracts or other documents identified on Schedule 4.1(b) (collectively, the “Financing Documents”); provided, that, such Financing Documents shall include therein enforceability representations and warranties substantially similar to those provided herein.

4.2 Capitalization. The authorized capital stock of the Company consists of (i) 11,052,913 shares of preferred stock, par value \$.01 per share, (A) 3,600,000 of which have been designated Series A Preferred Stock, of which 3,600,000 Series A Preferred Shares are issued and outstanding, (B) 5,952,913 of which have been designated Series B Preferred Stock, of which 5,772,913 Series B Preferred Shares are issued and outstanding and (C) 1,500,000 of which have been designated Series C Preferred Stock, of which 500,000 Series C Preferred Shares are issued and outstanding and (ii) 26,380,346 shares of Common Stock, of which 24,339,096 Common Shares are issued and outstanding, and as of the date hereof such shares of capital stock are held of record by the Persons and in the amounts listed on Schedule 4.2. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth on Schedule 4.2, there are no outstanding subscriptions, options, warrants, commitments, preemptive rights, deferred compensation rights, agreements, arrangements or commitments of any kind to which the Company is a party relating to the issuance of, or outstanding securities convertible into or exercisable or exchangeable for, any shares of capital stock of any class or other equity interests of the Company. Except as set forth on Schedule 4.2, there are no agreements to which the Company is a party with respect to the voting of any shares of capital stock of the Company or which restrict the transfer of any such shares. Except as set forth on Schedule 4.2, there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of capital stock, other equity interests or any other securities of the Company.

#### 4.3 Subsidiaries.

(a) All of the Company’s Subsidiaries are listed on Schedule 4.3(a). Except as set forth in Schedule 4.3(a), the Company owns, directly or indirectly, all of the outstanding shares of capital stock or other equity interest of each of the Company’s Subsidiaries, in each case free and clear of all Encumbrances. Except as set forth on Schedule 4.3(a), neither the Company nor any of its Subsidiaries owns, directly or indirectly, any capital stock, equity or other ownership interest in any other Person.

(b) Each of the Company’s Subsidiaries is an entity of the type set forth on Schedule 4.3(b), duly incorporated, organized or otherwise formed, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own, operate and lease its properties and to carry on its business as currently conducted. Each such Subsidiary is duly licensed or qualified to do business as a foreign organization under the laws of each jurisdiction listed on Schedule 4.3(b) and each other jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified would not result in a Company Material Adverse Effect. The copies of the organizational and governing documents of each such Subsidiary, in each case as amended to date and delivered to Buyer’s counsel, are complete and correct, and no amendments thereto are pending. The Company and each Company Subsidiary, as applicable, is in compliance with its respective organizational and governing documents in all material respects.

(c) Except as set forth on Schedule 4.3(c)(i), each of the Company's Subsidiaries has all requisite limited liability, partnership or corporate, as applicable, power and authority to execute and deliver each of the Transaction Document to which it is a party and to perform its obligations hereunder and thereunder. Schedule 4.3(c)(ii) sets forth, for each of the Company's Subsidiaries, such Subsidiary's managers, members, partners, shareholders and directors and any other Persons exercising similar authority. Following delivery of the Subsidiaries' Approvals in accordance with this Agreement, the execution and delivery of each of the Transaction Document to which any of the Company's Subsidiaries is party, the performance by the Company's Subsidiaries of their respective obligations thereunder and the consummation of the transactions contemplated hereby and thereby will be duly authorized by all necessary action by the managers, members, partners, shareholders, directors, and other Persons exercising similar authority, as applicable, of each of the Company's Subsidiaries, and no further action on the part of any of the Company's Subsidiaries shall be necessary to authorize the execution and delivery by any of the Company's Subsidiaries of the applicable Transaction Documents, and the consummation of the transactions contemplated hereby and thereby. Each of the Transaction Documents to which any of the Company's Subsidiaries is a party have been (or with respect to certain Transaction Documents to be executed at Closing, will be) duly executed and delivered by such Company Subsidiary and, assuming the due authorization, execution and delivery of this Agreement and such other Transaction Documents by each of the other parties hereto and thereto, constitute (or, with respect to certain Transaction Documents to be executed at Closing, shall constitute) legal, valid and binding obligations of the Company's Subsidiaries, enforceable against each of them in accordance with the terms and conditions thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Notwithstanding the foregoing, the Company makes no representations or warranties regarding the enforceability of any of the Financing Documents; provided, that, such Financing Documents shall include therein enforceability representations and warranties substantially similar to those provided herein.

(d) All of the issued and outstanding equity interest of each of the Company's Subsidiaries, as applicable, have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth on Schedule 4.3(d), all of the issued and outstanding equity interests of the Company's Subsidiaries are free and clear of all Encumbrances, and there are no outstanding subscriptions, options, warrants, commitments, preemptive rights, deferred compensation rights, agreements, arrangements or commitments of any kind to which the Company or any of the Company's Subsidiaries is a party relating to the issuance of, or outstanding securities convertible into or exercisable or exchangeable for, any shares of capital stock of any class or other equity interests of any of the Company's Subsidiaries. Except as set forth on Schedule 4.3(d), there are no agreements to which the Company or any of the Company's Subsidiaries is a party with respect to the voting of any shares of capital stock or other equity interest of any of the Company's Subsidiaries or which restrict the transfer of any such shares or equity interests. Except as set forth on Schedule 4.3(d), there are no outstanding contractual obligations of the Company or any of the Company's Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock, other equity interests or any other securities of any of the Company's Subsidiaries.

#### 4.4 No Conflict; Consents.

(a) Except as set forth on Schedule 4.4(a), the execution and delivery by the Company of this Agreement and each other Transaction Document to which it is a party and the execution and delivery by each of the Company's Subsidiaries of the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby in accordance with their respective terms, do not: (i) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under, or give rise to a right of termination, amendment, acceleration or cancellation of, or result in the triggering of any payments or the creation of an Encumbrance on any property or asset of the Company or its Subsidiaries under any Material Contract or Company Permit to which the Company or any of its Subsidiaries is a party or by which the Company's or any of its Subsidiaries' assets are bound; (ii) conflict with, or result in any violation of, any provision of the Certificate of Incorporation, By-laws or any other organizational or governing documents of the Company or its Subsidiaries; or (iii) violate or result in a violation of, in any material respect, or constitute a material default under (whether after the giving of notice, lapse of time or both), or result in the triggering of any payments or the creation of an Encumbrance on any material property or asset of the Company or its Subsidiaries under any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or other governmental agency applicable to the Company or any of its Subsidiaries.

(b) The execution and delivery by the Company and its Subsidiaries of this Agreement and each other Transaction Document to which any of them is a party, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby in accordance with their respective terms, do not require from the Company or its Subsidiaries any notice to, declaration or filing with, or consent or approval of any Governmental Body, except for: (A) the filing of the Certificate of Merger with the Secretary of the State of the State of Delaware; (B) the Stockholder Written Consent; and (C) as otherwise set forth on Schedule 4.4(b).

#### 4.5 Financial Statements.

(a) The following financial statements are attached hereto as Schedule 4.5(a) (collectively, the "Financial Statements"):

(i) Audited consolidated balance sheets of the Company and its Subsidiaries as of the fiscal years ending December 31, 2009 and December 31, 2010, and consolidated statements of income and cash flows for each of the years then ended; and

(ii) An unaudited consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2011 (the "Base Balance Sheet"), and unaudited consolidated statements of income and cash flows for the nine (9) month period then ended.

(b) Subject to the absence of footnotes and normal, year-end audit adjustments to any unaudited Financial Statements, which, to the Knowledge of the Company, are not reasonably expected to be material in amount or effect (either individually or in the aggregate), the Financial Statements have been prepared in accordance with GAAP from the books and records of the Company and its Subsidiaries and present fairly in all material respects the consolidated financial condition and results of operation, cash flows and owners' equity of the Company and its Subsidiaries as of the dates and for the periods covered thereby.

(c) Since the date of the Base Balance Sheet, except for those liabilities that are fully reflected or reserved against on the Base Balance Sheet, and for liabilities incurred in the Ordinary Course of Business since the date of the Base Balance Sheet (none of which result from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement or violation of law) or in connection with the transactions contemplated by this Agreement or any other Transaction Document, and except as set forth on Schedule 4.5(c), neither the Company nor any of its Subsidiaries has incurred any material liability or obligation (i) of the type required by GAAP to be reflected or reserved on a balance sheet prepared in accordance with GAAP or (ii) to the Company's Knowledge, incurred any other material liability, whether absolute, accrued, contingent or otherwise, including any future material liability arising out of acts or omissions which have already occurred.

(d) All accounts receivable and other receivables reflected on the Base Balance Sheet, and those arising in the Ordinary Course of Business after the date thereof, are (i) in respect of services or products provided by the Company or its Subsidiaries arising from bona fide transactions in the conduct of the Ordinary Course of Business, (ii) in all material respects true and genuine, represent legal, valid and binding obligations of the respective debtors enforceable in accordance with their terms, and (iii) not subject to any defense, counterclaim, refunds or adjustments or right of set off, other than refunds, recoupments, retractions or other adjustments in the Ordinary Course of Business that are reserved in accordance with GAAP by credit balances or bad debt or other reserves on the Base Balance Sheet. No material payment of said receivables is contingent upon performance of any obligations or contract, past or future, and, except as set forth on Schedule 4.5(d), all such receivables are free of all security interests and encumbrances created by the Company, its Subsidiaries, or their respective Affiliates.

4.6 Operating in Ordinary Course of Business. Except as set forth on Schedule 4.6, from January 1, 2011 to the date of this Agreement, the Company and its Subsidiaries have operated only in the Ordinary Course of Business. Without limiting the generality of the foregoing, from January 1, 2011 to the date of this Agreement, (i) neither the Company nor any of its Subsidiaries has taken any of the actions described in Section 6.1 which would, if taken after the date hereof, require the consent of Buyer, and (ii) there has been no Company Material Adverse Effect.

#### 4.7 Title to Assets; Related Matters.

(a) Schedule 4.7(a) sets forth in reasonable detail a list, as of December 31, 2011, of all material tangible personal properties, assets and equipment owned or used by the Company and its Subsidiaries (the "Personal Property"), in each case, having an initial cost basis per item in excess of \$50,000.

(b) Except as set forth on Schedule 4.7(b)(i), the Company and its Subsidiaries have good and marketable title to, a valid leasehold interest in, or a valid license to use, all of the Personal Property, free and clear of all Encumbrances except Permitted Encumbrances. The Personal Property, taken as a whole, is in good operating condition and repair, and is capable of being used for its intended purposes, ordinary wear and tear excepted, and, as of Closing, will be located (i) on the Real Property, (ii) at the Company's principal office, or (iii) at the locations identified on Schedule 4.7(b)(i).

(c) Schedule 4.7(c) sets forth an accurate and complete list of all leases of Personal Property requiring annual payments by the Company or any of its Subsidiaries in excess of \$250,000, if any, used in the operation of the business of the Company and its Subsidiaries (the "Personal Property Leases"). The Company has delivered to the Buyer complete, correct and current copies of all of any Personal Property Leases.

(d) Except as set forth on Schedule 4.7(d), since January 1, 2011, neither the Company nor any of its Subsidiaries has sold, transferred, assigned or disposed of any of the Personal Property or Personal Property Leases other than (i) in the Ordinary Course of Business or (ii) in respect of obsolete or unsalable items.

4.8 Litigation. Except as set forth on Schedule 4.8, as of the date hereof there is no Litigation against, involving or pending or, to the Company's Knowledge, threatened, against the Company or any of its Subsidiaries, or any of the directors or officers of (or other Persons exercising similar governance authority on behalf of) the Company or its Subsidiaries in their capacity as directors or officers of the Company or such Subsidiaries (including, without limitation any suit, action, proceeding or investigation pursuant to Title 11 of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act of 1993, or any other federal, state or local law regulating employment). There is no Litigation pending, or to the Knowledge of the Company, threatened, that questions the validity of this Agreement, any of the other Transaction Documents to which the Company or any of its Subsidiaries is a party, or any action taken or to be taken by the Company or its Subsidiaries in connection with this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby. Neither the Company nor any of its Subsidiaries are subject to any outstanding writ, order, judgment, injunction, decree, rule or order of any Governmental Body or any other Person (including, without limitation, any arbitral tribunal) outstanding against the Company or any of its Subsidiaries, and neither the Company or its Subsidiaries is in violation of any term of any judgment, decree, injunction or order outstanding against any of them.

#### 4.9 Taxes.

(a) Except as set forth on Schedule 4.9(a), all material Tax Returns required to be filed by or with respect to the Company and its Subsidiaries have been timely filed (taking into account applicable extensions of time to file), and all such Tax Returns are accurate and complete in all material respects.

(b) Except as set forth on Schedule 4.9(b), the Company and its Subsidiaries have paid or caused to be paid all material Taxes due and owing by any of them (whether or not

shown on the Tax Returns described in Section 4.9(a)), or have made adequate provision on the books of the Company or its Subsidiaries, as applicable, for all Taxes owed or accrued by the Company and its Subsidiaries.

(c) Except as set forth on Schedule 4.9(c), no U.S. federal, state, local or foreign audits or other administrative proceedings or court proceedings are pending with regard to any Taxes or Tax Returns of the Company or any of its Subsidiaries.

(d) Except as set forth on Schedule 4.9(d), no assessment, deficiency, or other claims for any Taxes of the Company or its Subsidiaries has been proposed, asserted, or assessed in writing by any taxing authority, for which Buyer, the Company or its Subsidiaries may be held liable. Neither the Company nor any of its Subsidiaries has waived any material statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency which extension is currently effective.

(e) There are no Encumbrances filed by any Governmental Body for Taxes upon the assets of the Company or its Subsidiaries, except for (i) Encumbrances relating to current Taxes not yet due and payable or (ii) that are being contested in good faith by appropriate proceedings and as to which adequate provision has been made on the books of the Company or its Subsidiaries, as applicable, all of which contests are described in reasonable detail on the attached Schedule 4.9(e).

(f) Except as set forth on Schedule 4.9(f), the Company and its Subsidiaries have withheld and paid all Taxes and other amounts required by law or agreement to be withheld and paid by them in connection with any wages, salaries, or other amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and neither the Company nor any of its Subsidiaries is liable for any material arrearages of any tax or material penalties for failure to comply with the foregoing

(g) Except as set forth on Schedule 4.9(g), the Company and its Subsidiaries will not be required to include any item of income, or exclude any item of deduction from, taxable income for any taxable period ending after the Closing Date as a result of any (i) change in accounting method for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; (iv) prepaid amount received on or prior to the Closing Date; or (v) status as a beneficiary of any trust or as a partner or member of any partnership or limited liability company.

(h) The Company and its Subsidiaries have no liability for the Taxes of any Person other than the Company and its Subsidiaries as a transferee or successor by contract or otherwise, and other than pursuant to any commercial Contract entered into in the Ordinary Course of Business that does not primarily relate to Taxes.

(i) Neither the Company nor any of its Subsidiaries is or has been a party to any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(j) Neither the Company nor any of its Subsidiaries are party to any Tax abatement agreements relating to any of its properties or assets.

(k) The representations and warranties set forth in this Section 4.9 shall constitute the only representations and warranties by the Company with respect to Taxes.

#### 4.10 Employee Benefit Plans.

(a) Schedule 4.10(a) sets forth each employee benefit plan within the meaning of Section 3(3) of ERISA that is sponsored or maintained by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is obligated to contribute (the “Benefit Plans”).

(b) Neither the Company nor any of its ERISA Affiliates sponsors, maintains or contributes to (or is obligated to contribute to) any “employee pension plan,” as defined in Section 3(2) of ERISA, that is subject to Title IV of ERISA or Section 412 of the Code or any “multiemployer plan,” as defined in Section 3(37) of ERISA.

(c) The Benefit Plans have been administered in all material respects in accordance with the applicable provisions of ERISA and the Code, and the Company and its Subsidiaries are in compliance in all material respects with all other applicable laws and regulations respecting such Benefit Plans.

(d) Except as set forth on Schedule 4.10(d), neither the execution and delivery of this Agreement and the other Transaction Documents, nor the consummation of the transactions contemplated hereby and thereby, will result in any “parachute payment” as defined in Section 280G of the Code or (ii) any “change in control” or other payment under any Benefit Plan or employment agreement or non-qualified deferred compensation plan or agreement.

#### 4.11 Labor and Employment Matters.

(a) Schedule 4.11(a) sets forth a list of all employees of the Company and of each of its Subsidiaries who provide, as of the date hereof, services at any of the Facilities (collectively, the “Business Employees”), and specifies which of the Company or its applicable Subsidiaries employs such Business Employees. Except as set forth on Schedule 4.11(a), all of the Business Employees are “at will” employees. Except as set forth on Schedule 4.11(a), neither the Company nor any of its Subsidiaries is a party to any oral (express or implied) or written: (i) employment agreement, or (ii) agreement that contains any severance or termination pay obligations with any Business Employee. The Company has delivered to the Buyer true, correct and current copies (or, if not written, accurate descriptions of the parties and terms) of all such agreements.

(b) Except as set forth on Schedule 4.11(b), the Company and each of its Subsidiaries is currently in compliance with, and, during the prior three (3)-year period have complied with, in each case, in all material respects (and none of them has received any written notice of noncompliance with), all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, including, without limitation, any provisions relating to wages, hours, equal employment, occupational safety and health, workers’ compensation, unemployment insurance, collective bargaining, immigration, affirmative action and the payment and withholding of social security and other taxes.



(c) To the Company's Knowledge, as of the date hereof, (i) there are no material audits or investigations pending or scheduled by any Governmental Body pertaining to the employment practices of the Company or any of its Subsidiaries, including but not limited to audits or investigations concerning the payment of wages or overtime in accordance with applicable law or concerning the proper classification of any worker as an independent contractor or consultant; and (ii) no complaints relating to employment practices of the Company or any of its Subsidiaries have been made to any Governmental Body or submitted to the Company or any of its Subsidiaries.

(d) Neither the Company nor any Subsidiary of the Company is a party to or otherwise bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union, labor organization, trade association or other employee organization, and no such agreements are currently being proposed and/or negotiated by the Company or any of its Subsidiaries. To the Knowledge of the Company, (i) no Business Employee is represented by any labor union, trade association or other employee organization, (ii) neither the Company nor any Subsidiary of the Company is subject to or has received any written charge, demand, petition or representation proceeding seeking to compel, require or demand it to bargain with any labor union or labor organization, (iii) there is no pending or, to the Company's Knowledge, threatened labor strike, dispute, walkout, work stoppage, slow-down or lockout involving the Business Employees, the Company or any Subsidiary of the Company, and (iv) no union has attempted to organize any group of the Business Employees, and no group of the Business Employees has sought to organize themselves into a union or similar organization for the purpose of collective bargaining.

(e) To the Company's Knowledge, there is no material investigation, grievance, arbitration, complaint, claim or other dispute or controversy (collectively, "Labor Proceeding") pending or threatened, between the Company and/or its Subsidiaries, on the one hand, and any present or former Business Employee, on the other hand, nor has there been any such Labor Proceeding within the past twelve (12) months.

(f) As of the date hereof, neither the Company nor any of its Subsidiaries has received written notice that any of the individuals listed on Schedule 4.11(f) intends to terminate his or her employment or affiliation with the Company or any of its Subsidiaries.

#### 4.12 Contracts and Commitments; Enforceability.

(a) Except as set forth on Schedule 4.12(a), as of the date hereof neither the Company nor any Subsidiary of the Company is a party to:

(i) any partnership agreement, joint venture agreement, or profit sharing agreement;

(ii) any agreement which creates a future payment obligation to or from the Company or any of its Subsidiaries in excess of \$500,000 in any calendar year;

- (iii) any contract for capital expenditures or the acquisition or construction of fixed assets requiring payments by the Company or any of its Subsidiaries in excess of \$500,000;
- (iv) any contract that requires the payment of royalties, commissions, finder's fees or similar payments;
- (v) any employment or consulting agreement with any current director, officer or employee requiring an annual payment of cash compensation in excess of \$250,000 for each Person;
- (vi) any contract providing for the marketing, sale, advertising or promotion of the Company's or its Subsidiaries' products or services involving annual expenditures of \$500,000 or more;
- (vii) any sales, distribution, dealer or manufacturer's representative or franchise contracts involving annual expenditures in excess of \$500,000;
- (viii) any contract with any commercial payor of the Company or any of the Company's Subsidiaries that provides for most favored nation pricing, volume rebates or discounts (other than standard rebates or discounts provided in the Ordinary Course of Business);
- (ix) any take or pay or requirements contracts or agreements or any other contracts or agreements requiring the Company or any of its Subsidiaries to pay regardless of whether products or services are received;
- (x) any agreement with another Person materially limiting or restricting the ability of the Company or any of its Subsidiaries to enter into or engage in any market, territory, area or line of business;
- (xi) any agreement for the sale of any of the assets of the Company or any of its Subsidiaries other than (A) pursuant to this Agreement or any other Transaction Document, (B) in the Ordinary Course of Business or (C) the disposition of unsalable or obsolete assets;
- (xii) any agreement relating to the acquisition by the Company or any of its Subsidiaries of substantially all of the assets or capital stock of any Person or a merger, consolidation or business combination involving the Company or any of its Subsidiaries;
- (xiii) any agreement relating to the incurrence, assumption, surety or guarantee of any Indebtedness;
- (xiv) any agreement under which the Company or any of its Subsidiaries has made advances or loans to any other Person (excluding advances made to an employee of the Company or any of its Subsidiaries in the Ordinary Course of Business);

(xv) any agreement with any Person in a position to make, or influence the making of, referrals to the Company or any of the Facilities, for items or services which are billable to any of the Government Programs;

(xvi) any agreement that provides for or obligates the Company or any of its Subsidiaries to indemnify, hold harmless or defend any Person (including, without limitation, any officers, directors, members, managers, partners, employees or agents of the Company or any of its Subsidiaries), other than commercial Contracts entered into in the Ordinary Course of Business the primary purpose of which is not related to the indemnification of any Person;

(xvii) any contracts or orders with any Governmental Body; or

(xviii) any Personal Property Lease.

(b) Each of the Contracts set forth on Schedule 4.12(a) (the “Material Contracts”) is the legal, valid and binding obligation of the Company and/or its Subsidiaries (and, to the Company’s Knowledge, of the other parties thereto), enforceable against them (and, to the Company’s Knowledge, of the other parties thereto) in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). The Company has delivered to the Buyer complete and correct copies of all of the Material Contracts. Except as stated on Schedule 4.12(b), (i) each Material Contract is in full force and effect, (ii) the Company is not and, to the Knowledge of the Company, no other party to any such agreement is in default under any such agreement, except where such default has not caused Company Material Adverse Effect, (iii) to the Knowledge of the Company no party has received notice of any default, offset, counterclaim or defense under any Material Contract; and (iv) to the Company’s Knowledge, no condition or event has occurred which with the passage of time or the giving of notice or both would constitute a default or breach by the Company or any of its Subsidiaries under the terms of any Material Contract.

#### 4.13 Intellectual Property.

(a) Schedule 4.13(a) sets forth a complete and accurate list, as of the date hereof, of Intellectual Property owned by the Company or any of its Subsidiaries and material to the conduct of the business of the Company and its Subsidiaries, taken as a whole, as currently conducted.

(b) Except as set forth on Schedule 4.13(b), the Company or a Subsidiary of the Company is the owner of, or has adequate, enforceable licenses or other rights to use, all Intellectual Property, as is necessary in connection with the business of the Company and its Subsidiaries as currently conducted taken as a whole, and no such rights thereto have been granted to others by the Company or any of its Subsidiaries.

(c) Except as set forth in Schedule 4.13(c), all of the Intellectual Property is owned or used by the Company and/or its Subsidiaries free and clear of all Encumbrances, except Permitted Encumbrances, and none is subject to any outstanding order, decree, judgment, stipulation or charge.

(d) (i) To the Company's Knowledge, the Company's and its Subsidiaries respective use of the Intellectual Property does not infringe upon or otherwise violate the rights of any other Person, (ii) no Person has asserted in writing to the Company or any of its Subsidiaries that the Company's or any of its Subsidiaries' use of the Intellectual Property infringes upon the patents, trade secrets, trade names, trademarks, service marks, copyrights or other intellectual property rights of any other Person, and (iii) neither the Company nor any of its Subsidiaries is a party to any suit, action or proceeding which involves a claim of infringement, unauthorized use, or violation of any Intellectual Property used or owned by any Person against the Company or its Subsidiaries, or challenging the ownership, use, validity or enforceability of any Intellectual Property owned or used by the Company or its Subsidiaries. Further, to the Company's Knowledge, there is no unauthorized use, disclosure, infringement or misappropriation of any of the Intellectual Property by any third party.

(e) Schedule 4.13(e) sets forth a complete and accurate list of all material licenses, sublicenses and other agreements to which the Company and/or its Subsidiaries are a party (i) granting any other Person the right to use the Intellectual Property, or (ii) pursuant to which the Company or its Subsidiaries are authorized to use any third party Intellectual Property, which are incorporated in, are, or form a part of any services rendered by the Company or any Subsidiary or which are otherwise used (or currently proposed to be used) by the Company or its Subsidiaries in the business of the Company as currently conducted, other than commercial off-the-shelf software.

4.14 Insurance. Schedule 4.14 sets forth, as of the date hereof, a complete and accurate list and brief description of all insurance policies (including the insurer, term of such policy, insured parties, type and amount of coverage, deductible and aggregate limit of the insurer's liability for such policy) held by, or for the benefit of, the Company and its Subsidiaries (the "Insurance Policies"). Each Insurance Policy is legally valid, binding and in full force and effect, all premiums due thereon have been paid in full, and the Company and the applicable Subsidiaries of the Company are in compliance, in all material respects, with the terms of such insurance policies.

4.15 Permits; Compliance with Laws; Reimbursement; Accreditation.

(a) Schedule 4.15(a) contains a complete and accurate list, as of the date hereof, of all material Licenses and material accreditations or certifications issued by private accreditation agencies held by the Company and its Subsidiaries that are required to conduct their respective businesses as currently conducted and to occupy and operate the Facilities, including, without limitation, all provider agreements with governmental payors (the "Company Permits").

(b) Except as set forth in Schedule 4.15(b), the Company and/or its Subsidiaries, as applicable, possess all such Company Permits, such Company Permits are in full force and effect.

(c) Except as set forth on Schedule 4.15(c), (i) the Company and its Subsidiaries are in compliance, in all material respects, with the terms of all Company Permits, (ii) no suspension or cancellation of any such Company Permits is pending or, to the Knowledge of the Company, threatened, and (iii) neither the Company nor any of its Subsidiaries has received any written notice from any Governmental Body with respect to, as applicable, the threatened or pending denial, revocation, termination, or suspension of any of the Company Permits.

(d) The Company and each of its Subsidiaries is in material compliance with all laws, statutes, ordinances, regulations, rules, orders, judgments, decrees, orders, and writs of a Governmental Body applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or its Subsidiaries is bound. Neither the Company nor any of its Subsidiaries has received any written notice from any Governmental Body to the effect that the Company or its Subsidiaries are not in material compliance with any applicable laws, statutes, ordinances, regulations, rules, orders, judgments, decrees, order, writs and other actions of a Governmental Body.

#### 4.16 Healthcare Compliance.

(a) The activities of Company and its Subsidiaries are currently being, conducted in compliance in all material respects with all Healthcare Laws.

(b) There is no Litigation, audit or recoupment pending by or before any Governmental Body or, to the Knowledge of the Company threatened, which alleges a violation of Healthcare Laws by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries, has received, at any time during prior three (3) years, any written notice alleging a violation of any Healthcare Law. Neither the Company nor any of its Subsidiaries, has received, at any time during prior three (3) years, any written notice indicating that qualification as a participating provider in any government or private reimbursement program may be terminated or withdrawn.

(c) None of the Company, its Subsidiaries, nor any of their respective officers, directors, or employees, or, the Company's Knowledge, any Physicians performing services at the Facilities, is, or has been at any time during the past three (3) years, excluded, suspended or debarred from participation or is otherwise ineligible to participate in any federal or individual state health care program, including, but not limited to the Government Programs.

(d) Except as would not have a material and adverse effect, the Company and its Subsidiaries hold all Licenses required under applicable Healthcare Laws now in effect which are necessary to own, lease or otherwise hold and operate their properties and assets and to conduct their respective businesses as currently conducted.

(e) All Contracts between third party payors and the Company or any of its Subsidiaries (each, a "Payor Contract") were entered into in the Ordinary Course of Business. The Company and its Subsidiaries are in compliance in all material respects with all Payor Contracts.

(f) Except as set forth on Schedule 4.16(f), every Contract providing for remuneration to a Physician (or his or her immediate family member) for services performed at, or on behalf of, the Company or any of its Subsidiaries is pursuant to a written contract which complies with an applicable exception under the Stark Law.

(g) The Facilities are currently licensed as specified in the attached Schedule 4.16(g), with the number of licensed beds specified thereon, and will remain so licensed through the Closing Date in compliance with and subject only to the usual and customary laws and government regulations pertaining to the operation of hospitals so licensed, as applicable, in the States of Texas, Colorado, Montana, New Mexico, Wyoming, Arizona, Idaho, South Carolina, and Utah.

(h) Except as set forth on Schedule 4.16(h), each of the Facilities (i) are enrolled and are providers authorized to participate without restriction under the Government Programs; (ii) are in compliance in all material respects with all the conditions of participation for the Government Programs, (iii) have received all approvals or qualifications necessary for capital reimbursement; and (iv) are in compliance with 42 C.F.R. §§ 489.20 and 489.24 and their Medicare provider agreements.

(i) Except as set forth on Schedule 4.16(i), the Company and its Subsidiaries are, and have been, in compliance in all material respects with all filing requirements with respect to cost reports of the Facilities, including, without limitation, the appropriate allocation of expenses associated with any management or consulting services provided by any employees of the Company or its Subsidiaries, and, to the Company's Knowledge, such reports do not claim, and the Facilities have not received, payment or reimbursement materially in excess of the amount provided or allowed by applicable law or any applicable agreements.

(j) Except as set forth on Schedule 4.16(j), each of the LTCH Operators (i) are excluded from the inpatient prospective payment system specified in 42 C.F.R. §412.1(a); (ii) satisfy all requirements necessary for Medicare reimbursement as a "long-term care hospital" as set forth in C.F.R., Title 42, Part 412, as applicable; and (iii) to the Knowledge of the Company, no action is pending or threatened by any Governmental Body which would affect the ability of any of the LTCH Operators to be reimbursed as a "long-term care hospital" under Medicare.

(k) Except as set forth on Schedule 4.16(k), each of the IRF Operators (i) are excluded from the inpatient prospective payment system specified in 42 C.F.R. §412.1(a); (ii) satisfy all requirements necessary for Medicare reimbursement as an "inpatient rehabilitation facility" as set forth in C.F.R., Title 42, Part 412, as applicable; and (iii) to the Knowledge of the Company, no action is pending or threatened by any Governmental Body which would affect the ability of any of the IRF Operators to be reimbursed as an "inpatient rehabilitation facility" under Medicare.

(l) Except as set forth on Schedule 4.16(l), each of the Co-Located Operators (i) satisfies all requirements necessary for Medicare reimbursement as "hospitals-within-hospitals" as set forth in C.F.R., Title 42, Part 412, as applicable; (ii) in each state where a Co-Located Operator is located, comply in all material respects with any state laws and regulations applicable to hospitals located in the same building, or on the same campus, as another hospital;

and (iii) to the Knowledge of the Company, no action is pending or threatened by any Governmental Body which would affect ability of any of the Co-Located Operators to be reimbursed as “hospitals-within-hospitals” under Medicare.

(m) Each of the Facilities has been accredited by the Joint Commission and the Company has delivered to Buyer true, correct and complete copies of the following documents: (i) the most recent Joint Commission accreditation survey reports for each of the Facilities and deficiency list and plan of correction, if any, and a list and description of any events in the past three (3) years at each of the Facilities that constitutes “Adverse Events” (as defined by the Joint Commission), if any, and any documentation that was created, prepared or produced by the Company or any of its Subsidiaries, to satisfy the Joint Commission requirements relating to addressing such Adverse Events; and (ii) any state licensing survey reports with respect to the Facilities for the three (3) year period prior to the date of this Agreement, as well as any statements of deficiencies and any plans of correction in connection with such reports. The Company has taken reasonable steps to correct or cause to be corrected all such deficiencies and a description of any uncorrected deficiency is set forth on Schedule 4.16(m).

4.17 Transactions with Affiliates. Schedule 4.17 sets forth a complete and correct list of all Contracts between either the Company or any of its Subsidiaries with any Person that is an Affiliate of the Company or any of its Subsidiaries, other than Contracts for compensation and benefits received as employees, directors, officers or consultants of the Company or any of its Subsidiaries.

4.18 No Brokers. Except as set forth on Schedule 4.18, neither the Company nor any of its Subsidiaries has entered into any contract, arrangement or understanding with any Person or firm that may result in the obligation of such entity or Buyer or MergerCo to pay any finder’s fees, brokerage or agent’s commissions or other like payments in connection with the negotiations leading to this Agreement or consummation of the Merger.

#### 4.19 Patriot Act Compliance.

(a) To the extent applicable to the Company or any of its Subsidiaries, each of them has complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which comprises Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “Patriot Act”) and the regulations promulgated thereunder, and the rules and regulations administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”).

(b) Neither the Company nor any of its Subsidiaries is included on the List of Specially Designated Nationals and Blocked Persons maintained by the OFAC, and neither the Company nor any of its Subsidiaries is a resident in, or organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

4.20 Ability to Grant Security Interest. Except as set forth on Schedule 4.20, to the Knowledge of the Company, the Company may grant the Buyer and/or its Affiliates a first priority security interest in (a) the outstanding shares of capital stock and other equity interests of each of the Company's Subsidiaries, (b) the accounts receivable of the Company and each Company Subsidiary, (c) the Personal Property, (d) the Personal Property Leases, (e) the Intellectual Property, and (f) the Licenses and Company Permits (including, without limitation, all provider agreements with governmental payors).

4.21 Disclaimer of Other Representations and Warranties.

(a) NONE OF THE COMPANY, ANY OF ITS SUBSIDIARIES OR ANY OF ITS REPRESENTATIVES, DIRECTORS, OFFICERS OR STOCKHOLDERS, HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO THE COMPANY OR ANY OF ITS SUBSIDIARIES OR THE BUSINESS OF THE COMPANY OR ANY OF ITS SUBSIDIARIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE IV OR IN THE REAL PROPERTY ASSET PURCHASE AGREEMENT.

(b) Without limiting the generality of the foregoing, neither the Company nor any of its Subsidiaries, nor any Representative of the Company or any of its Subsidiaries, nor any of their respective employees, officers, directors or stockholders, has made, and shall not be deemed to have made, any representations or warranties in the materials relating to the business of the Company and its Subsidiaries made available or delivered to Buyer and MergerCo, including due diligence materials, or in any presentation of the business of the Company and its Subsidiaries by management of the Company or others in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder and deemed to be relied upon by Buyer or MergerCo in executing, delivering and performing this Agreement and the transactions contemplated hereby. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including but not limited to, any offering memorandum or similar materials made available or delivered by the Company and its Representatives, are not and shall not be deemed to be or to include representations or warranties of the Company, and are not and shall not be deemed to be relied upon by Buyer or MergerCo in executing, delivering and performing this Agreement and the transactions contemplated hereby.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGERCO

Buyer and MergerCo hereby jointly and severally make to the Company the representations and warranties contained in this Article V.



5.1 **Organization.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and MergerCo is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and each has all requisite limited liability company or corporate, as applicable, power and authority to own, operate and lease its properties and to carry on its respective business as currently conducted. Each of Buyer and MergerCo is duly licensed or qualified to do business as a foreign limited liability company or corporation, as applicable, under the laws of each jurisdiction in which the character of its properties or in which the transaction of its business makes such qualification necessary, except where the failure to be so licensed or qualified has not had a Buyer Material Adverse Effect. Buyer has never elected to be taxed as a corporation for U.S. federal, state or local income tax purposes.

5.2 **Authority.** Each of Buyer and MergerCo has all requisite limited liability company or corporate, as applicable, power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, and to perform their respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other Transaction Document to which Buyer and/or MergerCo is a party, the performance by Buyer and MergerCo of their respective obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action by the manager and member of Buyer and the board of directors of MergerCo and no other action on the part of Buyer or MergerCo is necessary to authorize the execution and delivery by Buyer or MergerCo of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and MergerCo, and, assuming due and valid authorization, execution and delivery hereof by the Company, is a valid and binding obligation of each of Buyer and MergerCo, as the case may be, enforceable against each of them in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Notwithstanding the foregoing, the Company makes no representations or warranties regarding the enforceability of any of the Financing Documents.

5.3 **No Conflict.** The execution and delivery by Buyer and MergerCo of this Agreement and each other Transaction Document to which either is a party, and the consummation by Buyer and MergerCo of the transactions contemplated hereby and thereby in accordance with their respective terms, do not (a) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under, or give rise to a right of termination of, any contract, agreement, permit, license, authorization or obligation to which Buyer or MergerCo is a party or by which Buyer or MergerCo or any of their respective assets are bound, (b) conflict with, or result in, any violation of any provision of the certificate of formation, certificate of incorporation, bylaws or other organizational documents of Buyer or MergerCo; (c) violate or result in a violation of, or constitute a default under (whether after the giving of notice, lapse of time or both), any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or other governmental agency applicable to Buyer or MergerCo or (d) require from Buyer or MergerCo any notice to, declaration or filing with, or consent or approval of any Governmental Body or other Person, except in the case of clauses (a) and (c) of this Section 5.3 for any such conflicts, defaults, violations, terminations and any waivers which, if not obtained, would not have a Buyer Material Adverse Effect.

5.4 **Required Financing.** Buyer and MergerCo have furnished to the Company true, correct and complete copies of fully-executed commitment letters from MPT Operating Partnership, L.P., a Delaware limited partnership (“MPT Operating Partnership”), dated as of the date hereof (the “Commitment Letters”), pursuant to which MPT Operating Partnership has committed, subject only to the terms and conditions set forth in the Commitment Letters, to provide or cause to be provided equity and debt financing to (a) the Affiliated MPT Property Companies and the Affiliated MPT TRS Lender Companies of up to an aggregate amount of \$300,000,000, and (b) the MPT TRS Entity of up to an aggregate amount of \$96,500,000. Each of the Commitment Letters are in full force and effect and have not been terminated as of the date hereof. Upon receipt of funds in accordance with the Commitment Letters, Buyer, MergerCo, the Affiliated MPT Property Companies, and the Affiliated MPT TRS Lender Companies will have at the Closing funds sufficient to consummate the transactions contemplated by this Agreement, the Real Property Asset Purchase Agreement, and any other Transaction Document to which any of them is a party. The financings contemplated by the Commitment Letters is not subject to any condition precedent or other restriction or contingency limiting the availability of such financing other than as expressly set forth in the Commitment Letters. Each of Buyer and MergerCo affirms that it is not a condition to Closing or any of its other obligations under this Agreement, the Real Property Asset Purchase Agreement, or any other Transaction Document to which any of them is a party that it obtain the financing contemplated by the Commitment Letters or any other financing for or related to any of the transactions contemplated by this Agreement, the Real Property Asset Purchase Agreement or any other Transaction Document to which any of them or any of the Affiliated MPT Property Companies or the Affiliated MPT TRS Lender Companies is a party.

5.5 **Litigation.** There is no Litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to the actual knowledge of Buyer or MergerCo, threatened in writing against Buyer or MergerCo, nor is Buyer or MergerCo subject to any outstanding order, writ, judgment, injunction or decree, in either case, which would (a) prevent, hinder or materially delay the consummation of the Merger or (b) otherwise prevent, hinder or materially delay performance by Buyer or MergerCo of any of their material obligations under this Agreement.

5.6 **Brokers.** Except as set forth on Schedule 5.6, no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission from the Company in connection with the Merger based upon arrangements made by or on behalf of Buyer, MergerCo or either of their respective Affiliates.

5.7 **Absence of Conduct; Undisclosed Liabilities.** Prior to the date hereof, neither Buyer nor MergerCo has engaged in any business, nor do either of them have any liabilities or obligations, other than those related to or incurred in connection with this Agreement, the Real Property Asset Purchase Agreement, any other Transaction Documents to which either Buyer or MergerCo is a party, and the transactions contemplated hereby or thereby.

5.8 Inspection; No Other Representations. Each of Buyer and MergerCo is an informed and sophisticated Person, and has engaged expert advisors experienced in the evaluation and acquisition of companies such as the Company and its Subsidiaries as contemplated hereunder. Each of Buyer and MergerCo has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the transactions contemplated hereby. Buyer and MergerCo have received all materials relating to the business of the Company and its Subsidiaries that they have requested and have been afforded the opportunity to obtain any additional information necessary to verify the accuracy of any such information or of any representation or warranty made by the Company hereunder or to otherwise evaluate the merits of the transactions contemplated hereby. Without limiting the generality of the foregoing, each of Buyer and MergerCo acknowledges that (a) the Company does not make any representation or warranty with respect to (i) any projections, estimates or budgets delivered to or made available to Buyer or MergerCo of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Company and its Subsidiaries or the future business and operations of the Company and its Subsidiaries or (ii) any other information or documents made available or delivered to Buyer or MergerCo or their Representatives with respect to the Company, its Subsidiaries or any of their respective businesses, assets, liabilities or operations, except as expressly set forth in Article IV of this Agreement, and (b) neither Buyer nor MergerCo has relied or will rely upon any representation or warranty except those representations or warranties set forth in Article IV hereof, in negotiating, executing, delivering and performing this Agreement and the transactions contemplated hereby.

## ARTICLE VI

### CONDUCT OF BUSINESS PENDING THE MERGER

6.1 Conduct of Business Prior to Closing. Except as expressly provided or permitted herein, as set forth on Schedule 6.1, as required by contract in effect on the date hereof or by law, or as consented to in writing by Buyer, during the period commencing on the date of this Agreement and ending at the Effective Time or the earlier termination of this Agreement, the Company shall, and shall cause each of its Subsidiaries to, (a) act and carry on its business in all material respects in the Ordinary Course of Business and in compliance in all material respects with all applicable laws and regulations and (b) use commercially reasonable efforts to maintain and preserve its and each of its Subsidiaries' business organization, assets and properties, to use commercially reasonable efforts to keep available the services of each of their current officers and employees and to preserve their present relationships with patients, suppliers and other Persons with which the Company or any of its Subsidiaries has significant business relations. Without limiting the generality of the foregoing, except as expressly provided or permitted herein or as set forth on Schedule 6.1, or as required by contract in effect on the date hereof or by law, from and after the date hereof until the Effective Time or the earlier termination of this Agreement, the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, do any of the following without the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed):

(a) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities;

(b) authorize for issuance, issue or sell or agree or commit to issue or sell (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any stock of any class or any other securities or equity equivalents (other than the issuance of Common Shares upon the exercise of Options that are outstanding on the date of this Agreement);

(c) make any change to the Certificate of Incorporation or By-laws, or the organizational or governing documents of its Subsidiaries, terminate or alter its legal existence and or business organization;

(d) (i) incur any Indebtedness, except for borrowings under the Company's existing credit facilities, or guarantee any Indebtedness of another Person, (ii) issue or sell any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another Person, or enter into any "keep well" or other agreement to maintain any financial statement condition of another Person, or (iii) make any loans, advances (other than advances to employees of the Company and its Subsidiaries in the Ordinary Course of Business) or capital contributions to, or investment in, any other Person, other than by the Company or any of its Subsidiaries in any of the Company's direct or indirect wholly-owned Subsidiaries;

(e) fail to pay or satisfy any Indebtedness when the same becomes due and payable;

(f) knowingly waive, release, cancel, or assign any material rights or claims, other than in the Ordinary Course of Business (including any material write-off or other material compromise of any accounts receivable or other receivable of the Company or any of its Subsidiaries); provided, however, that, for the avoidance of doubt, the Company shall not be prohibited from paying any Indebtedness or any expenses in connection with the Merger and related transactions);

(g) materially change accounting policies or procedures or Tax elections, except as required by GAAP or applicable law;

(h) (i) materially increase the rates of direct compensation or bonus compensation payable or to become payable to any officer, management level employee, agent or consultant of the Company or any Subsidiary, except (A) in the Ordinary Course of Business, (B) in accordance with the existing terms of contracts entered into prior to the date of this Agreement, (C) for the acceleration of unvested Options and/or restricted stock as provided for under the applicable incentive agreements, or (D) for bonuses payable to senior management of the Company in connection with the transactions contemplated by this Agreement which are approved by the Company Board, or (ii) adopt any new Benefit Plan or materially amend or modify any existing Benefit Plan;

(i) (i) merge with, enter into a consolidation with or otherwise acquire an interest of the outstanding equity interests in any Person or acquire a substantial portion of the assets or business of any Person (or any division or line of business thereof), or (ii) otherwise acquire (including, through leases, subleases and licenses of real, personal or intangible property) any material assets, except, in the case of this clause (ii), in the Ordinary Course of Business;

(j) sell, lease, license, pledge or otherwise dispose of or encumber any properties or assets of the Company or any of its Subsidiaries other than in the Ordinary Course of Business or in connection with the disposition of obsolete properties or assets;

(k) fail to maintain any of the Insurance Policies in full force and effect;

(l) amend or terminate any Material Contract to which the Company or any of its Subsidiaries is party, except for terminations or amendments provided by the terms thereof or in the Ordinary Course of Business;

(m) settle or compromise any Litigation or other disputes (whether or not commenced prior to the date of this Agreement) other than settlements or compromises for Litigation or other disputes where the amount paid in settlement or compromise does not exceed \$100,000 individually or \$500,000 in the aggregate for all such Litigation or other disputes;

(n) terminate or materially and adversely modify its relationships with any material suppliers, trade creditors or trade debtors except in the Ordinary Course of Business;

(o) make any capital expenditure or commitment for the acquisition of assets or properties in excess of One Million One Hundred and Ninety Three and No/100 Dollars (\$1,193,000.00);

(p) enter into any executory agreement, commitment or undertaking, whether in writing or otherwise, to do any of the activities prohibited by the foregoing provision, or permit any of its equity holders, directors, officers, members, managers, partners, or Person or group of Persons possessing and/or exercising similar authority to authorize the taking of, any action prohibited by the foregoing provisions.

## ARTICLE VII

### ADDITIONAL AGREEMENTS

#### 7.1 Stockholders' and Subsidiaries' Consents.

(a) Within one (1) Business Day after the date hereof, the Company shall deliver, or cause to be delivered, to Buyer the Stockholder Written Consent.

(b) After the date hereof and prior to the Closing Date, the Company shall deliver, or cause to be delivered, to Buyer and MPT TRS Entity on behalf of the Affiliated MPT Property Companies and the Affiliated MPT TRS Lender Companies, the written consent and approval of, as applicable, the members, managers, partners, shareholders, directors, or other Persons exercising similar authority, of each of the Subsidiaries of the Company, which consents and approvals shall approve, adopt and consent (i) to each of the Transaction Documents to which such Subsidiary is a party and the transactions contemplated thereby, (ii) all of the

transactions contemplated in this Agreement, the Real Property Asset Purchase Agreement, the Real Estate Loan Documents, the Acquisition Promissory Note, and all of the other Transaction Documents, and (iii) as applicable, the amendments, if any, to such Subsidiary's organizational documents specified on Schedule 7.1(b) (the "Subsidiaries' Approvals").

(c) Buyer shall use commercially reasonable efforts to provide to the Company any information for inclusion in preparation for the consents and approvals required pursuant to Sections 7.1(a) and (b) hereof that may be required under applicable law or that is reasonably requested by the Company.

7.2 Access to Information. From and after the date hereof until the Effective Time or the earlier termination of this Agreement, the Company shall, and shall cause each of its Subsidiaries and each of its and their officers, employees and agents to (a) give Buyer and its Representatives reasonable access upon reasonable notice and during times mutually convenient to Buyer and senior management of the Company and its Subsidiaries to the Facilities, properties, employees, books and records of the Company and its Subsidiaries as from time to time may be reasonably requested, (b) permit the Buyer and its Representatives to make such inspections and to make copies of such books and records as they may reasonably require, and (c) furnish the Buyer and its Representatives with such financial and operating data as the Buyer may from time to time reasonably request. Notwithstanding the foregoing, neither the Company nor any of its Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would contravene any law, rule, regulation, order, judgment, decree, or binding agreement entered into prior to the date of this Agreement or would reasonably be expected to violate or result in a loss or impairment of any attorney-client or work product privilege. The parties hereto will use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply. Any such investigation by Buyer shall not unreasonably interfere with any of the businesses or operations of the Company or its Subsidiaries. Notwithstanding anything to the contrary in this Agreement, neither Buyer nor its Representatives shall have any contact whatsoever with respect to the Company or any of its Subsidiaries or with respect to the transactions contemplated by this Agreement with any partner, lender, lessor, vendor, customer, supplier, employee or consultant of the Company or any of its Subsidiaries, except in consultation with the Company and then only with the express prior approval of the Company, which approval shall not be unreasonably withheld, conditioned or delayed. All requests by Buyer for access or information shall be submitted or directed exclusively to an individual or individuals to be designated by the Company.

7.3 Confidentiality Agreement. The parties shall adhere to the terms and conditions of that certain confidentiality agreement, by and between the Company, Medical Properties Trust, Inc., and MPT Operating Partnership, L.P., dated August 17, 2011 (the "Confidentiality Agreement").

7.4 Third Party Consents and Regulatory Approvals. Subject to the terms and conditions of this Agreement, each of the parties hereto will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under this Agreement and applicable laws and regulations to consummate the Merger as soon as practicable after the date hereof, including (i) preparing and filing, in

consultation with the other party and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions and filings and to obtain as promptly as reasonably practicable all consents, clearances, waivers, licenses, orders, registrations, approvals, permits, Tax rulings and authorizations necessary to be obtained from any third party and/or any Governmental Body (including, without limitation, with respect to any change of control consent or notification requirements to applicable federal and state healthcare regulatory agencies, if required) in order to consummate the Merger or any of the other transactions contemplated by this Agreement and (ii) taking all reasonable steps as may be necessary, proper or advisable to obtain all such consents, clearances, waivers, licenses, orders, registrations, approvals, permits, Tax rulings and authorizations.

7.5 Confidentiality; Press Releases. The parties hereto will, and will cause each of their Affiliates and Representatives to, maintain the confidentiality of this Agreement. The parties agree that public announcements or press release, if any, with respect to this Agreement or the transactions contemplated hereby shall be mutually approved in advance by the parties; provided, however, that, notwithstanding any provision hereof or in the Confidentiality Agreement to the contrary, a party may, without the prior consent of the other parties hereto, (i) issue or cause publication of any such press release or public announcement to the extent that such party reasonably determines, after consultation with outside legal counsel, such action to be required by law or by the rules of any applicable self-regulatory organization (including, without limitation, federal and state securities laws and the rules and regulations of the NYSE or NASDAQ), in which event such party will use its commercially reasonable efforts to allow the other parties hereto reasonable time to comment on such press release or public announcement in advance of its issuance, and (ii) disclose that it has entered into this Agreement and the other Transaction Documents, and may provide and disclose information regarding this Agreement, the parties to this Agreement and the other Transaction Documents, the Real Property, the Facilities, and the other assets and properties subject hereto and thereto, and such additional information which such party may reasonably deem necessary, to its proposed investors in connection with a public offering or private offering of securities (including, without limitation, the offerings to be conducted by Medical Properties Trust, Inc. in anticipation of the transactions contemplated herein), or any current or prospective lenders with respect to its financing, and to investors, analysts and other parties in connection with earnings calls and other normal communications with investors, analysts and other parties, or (iii) include any information in a prospectus, prospectus supplement or other offering circular or memorandum in connection with public or private capital raising or other activities undertaken by such party. Notwithstanding the foregoing, nothing in this Section 7.5 shall prohibit any Equity Holder from disclosing the terms of the Merger and this Agreement to any investor in such Equity Holder, in the ordinary course of such Equity Holder's business.

7.6 No Solicitations. The Company will not, and will not permit any of its Subsidiaries or any Representative of the Company or any of its Subsidiaries to, directly or indirectly, (i) discuss, negotiate, undertake, authorize, recommend, propose or enter into, either as the proposed surviving, merged, acquiring or acquired corporation, any transaction involving a merger, consolidation, business combination, purchase or disposition of any amount of the assets of the Company (other than in the Ordinary Course of Business) or any of its Subsidiaries or any capital stock or equity interests of the Company or any of its Subsidiaries, or any other similar transaction other than the transactions contemplated by this Agreement and the Other

Transaction Documents (an “Acquisition Transaction”), (ii) knowingly facilitate, encourage, solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (iii) furnish or cause to be furnished to any Person or entity any information concerning the business, operations, properties or assets of the Company or its Subsidiaries in connection with an Acquisition Transaction, or (iv) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person or entity to do or seek any of the foregoing. The Company shall notify the Buyer immediately if any discussions or negotiations are sought to be initiated, any inquiry or proposal is made, or any such information is requested with respect to any Acquisition Transaction.

#### 7.7 Officers’ and Directors’ Indemnification.

(a) Subject to the last sentence of this Section 7.7(a) and the limitations and restrictions set forth herein, in the event of any threatened or actual claim, action, suit, proceeding or investigation, whether civil, criminal or administrative, including, without limitation, any such claim, action, suit, proceeding or investigation in which any Person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Effective Time, a director or officer of the Company or any of its Subsidiaries (the “Indemnified Parties”) is, or is threatened to be, made a party based in whole or in part on, or arising in whole or in part out of, or pertaining to, the fact that he or she is or was a director or officer of the Company or any of its Subsidiaries, or is or was serving at the request of the Company or any of its Subsidiaries as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, whether asserted or arising before or after the Effective Time, the parties hereto agree to cooperate and use commercially reasonable efforts to defend against any such claim, action, suit, proceeding or investigation and respond thereto. It is understood and agreed that (i) the Company shall indemnify and hold harmless, and after the Effective Time the Surviving Corporation shall indemnify and hold harmless, as and to the full extent permitted by applicable law, each Indemnified Party against any losses, claims, damages, liabilities, costs, expenses (including reasonable attorneys’ fees and expenses), judgments, fines and amounts paid in settlement, in each case, arising out of or incurred in connection with any such threatened or actual claim, action, suit, demand, proceeding or investigation (whether asserted or arising before or after the Effective Time), (ii) the Company, and the Surviving Corporation after the Effective Time, shall promptly pay expenses incurred by each Indemnified Party as the same are incurred in advance of the final disposition of any claim, suit, proceeding or investigation to such Indemnified Party, (iii) the Indemnified Parties may retain counsel satisfactory to them, and the Company and the Surviving Corporation shall pay all fees and expenses of such counsel for the Indemnified Parties within fifteen (15) days after statements therefor are received, and (iv) the Company and the Surviving Corporation will use commercially reasonable efforts to assist in the vigorous defense of any such matter; provided, however, that neither the Company nor the Surviving Corporation shall be liable for any settlement effected without its prior written consent (which consent shall not be unreasonably withheld); and provided further that the Company and Surviving Corporation shall have no obligation hereunder to any Indemnified Party when and if a court of competent jurisdiction shall ultimately determine, and such determination shall have become final and non-appealable, that indemnification of such Indemnified Party in the manner contemplated hereby is prohibited by applicable law. Any Indemnified Party wishing to claim indemnification under this Section 7.7, upon learning of any such claim, action, suit, proceeding or investigation, shall notify the Company and, after the Effective Time, the Surviving



Corporation thereof; provided, however, that the failure to so notify shall not affect the obligations of the Company and the Surviving Corporation except to the extent such failure to notify materially prejudices such party. Notwithstanding the foregoing or any other provision to the contrary in this Agreement, the Surviving Corporation, the Company, and the Company's Subsidiaries, as applicable, shall be required to indemnify, defend, and hold harmless each Indemnified Party with respect to the Specified Claims (as hereinafter defined) solely to the extent of amounts available under applicable insurance coverages held by the Surviving Corporation pursuant to Section 7.7(c) hereof, it being acknowledged and agreed that no such indemnification shall be made for any amount payable by the Surviving Corporation, the Company, the Company Subsidiaries or any of their Affiliates with respect to any Specified Claims (singly or in the aggregate) in excess of the amount of such insurance. As used herein, "Specified Claims" means any claims arising out of, based upon or relating to the negotiation, execution, terms and conditions, or performance of this Agreement, the Real Property Asset Purchase Agreement, or any other Transaction Documents (other than with respect to any Transaction Document identified on Schedule 4.1(b) attached hereto), or any of the transactions contemplated hereby or thereby; provided, that, the Specified Claims hereby expressly include any claims, suits, proceedings or investigations respecting (i) the pricing of, amounts or other consideration paid, or any declarations of dividends or other distributions of the assets or properties by the Company to any Equity Holders, Rollover Holders, or Optionholders, or by any of the Company's Subsidiaries to the Company or any of their respective equity holders, in each case, in violation of applicable laws, the Certificate of Incorporation, the Bylaws or any other similar organizational or governing documents of the Company or its Subsidiaries, or (ii) the purchase, redemption, or cancellation, as applicable, of the Company Shares, Rollover Shares, or Options in violation of applicable laws, the Certificate of Incorporation, the Bylaws or any other similar organizational or governing documents of the Company or its Subsidiaries.

(b) Subject to the limitations and restrictions set forth herein, Buyer and MergerCo agree that all rights to indemnification or exculpation existing in favor of, and all limitations on the personal liability of, each present and former Indemnified Party provided for in the Certificate of Incorporation, Bylaws, or equivalent governing documents of the Company's Subsidiaries, or otherwise in effect as of the date hereof shall continue in full force and effect for a period of six (6) years from the Effective Time; provided, however, that all rights to indemnification in respect of any claims asserted or made within such period shall continue until the disposition of such claim.

(c) At the Effective Time, the Surviving Corporation shall purchase an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance coverage for the Company's and its Subsidiaries' directors and officers in a form reasonably acceptable to the Company that shall provide such directors and officers with coverage for six (6) years following the Effective Time of not less than the existing coverage. The Surviving Corporation shall maintain such policy in full force and effect, and continue to honor the obligations thereunder. To the extent the premium payments for such directors' and officers' liability insurance coverage are not paid in full by the Company prior to the Effective Time, then at the Effective Time, any then unpaid portion of such premium payments shall be treated as a Company Transaction Expense (and shall not be included as an accrued payable in the Net Working Capital calculation) for purposes of this Agreement.

(d) The FFC Funds, individually and on behalf of their Affiliates (excluding, for purposes of this Section 7.7(d), any directors or officers of the Company or any of the Company's Subsidiaries, in each case, in their capacity as such), hereby (i) unconditionally waive and release all rights to seek indemnification, or to be held harmless or defended, by the Buyer, Company, the Surviving Corporation, the Company's Subsidiaries, or any of their respective Affiliates with respect to any claims arising out of or resulting from the negotiation, execution, or terms and conditions of this Agreement or any of the Transaction Documents, or any of the transactions contemplated hereby or thereby, including, without limitation, (A) the price of, or amounts or form of consideration paid with respect to, or any declarations of dividends or other distributions of the assets or properties of the Company in respect of, any Company Shares, Rollover Shares or Options, whether paid or payable to any Equity Holders, Rollover Holders, or Optionholders, or by any of the Company's Subsidiaries to the Company or any of their respective equity holders, in each case, in violation of applicable laws, the Certificate of Incorporation, the Bylaws or any other similar organizational or governing documents of the Company or its Subsidiaries, or (B) the purchase, redemption, or cancellation, as applicable, of the Company Shares, Rollover Shares, or Options in violation of applicable laws, the Certificate of Incorporation, the Bylaws or any other similar organizational or governing documents of the Company or its Subsidiaries, and (ii) acknowledge and agree that none of the FFC Funds shall assert, and hereby unconditionally waive and release, any right to demand, request or plead for the re-characterization of any amount owing to any of the Buyer, the MPT TRS Entity, MPT TRS Subsidiaries, the Affiliated MPT Property Companies, the Affiliated MPT TRS Lender Companies, or any of their respective Affiliates pursuant to this Agreement, the Real Property Master Lease Agreement, the Real Property Master Sublease Agreement, the Real Estate Loan Agreement or the other Real Estate Loan Documents, or any of the other Transaction Documents (collectively, the "Re-characterization Restrictions"), in each case, as the terms and conditions of such Transaction Documents are agreed upon as of the date hereof or at the Closing, as applicable, with only such amendments thereto or modifications thereof as shall have been expressly agreed to in writing by the FFC Funds (regardless of whether the FFC Funds, or any of them, is a party to any such Transaction Document). The Re-characterization Restrictions shall be applicable whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company, any of the Company's Subsidiaries, or any of their respective Affiliates.

(e) The obligations under this Section 7.7 shall not be terminated or modified in such a manner as to adversely affect any Indemnified Party to whom this Section 7.7 applies without the consent of such Indemnified Party (it being expressly agreed that the Indemnified Parties to whom this Section 7.7 applies shall be third party beneficiaries of this Section 7.7 and shall be entitled to enforce the covenants contained herein).

#### 7.8 Intentionally Omitted.

7.9 Books and Records. Buyer and MergerCo shall, and shall cause the Surviving Corporation and each Subsidiary to, until the sixth (6th) anniversary of the Closing Date, retain all books, records and other documents pertaining to the business of the Company and its Subsidiaries in existence on the Closing Date and to make the same available for inspection and copying by the Stockholders' Representative at the expense of the Stockholders' Representative during the normal business hours of Buyer, MergerCo, the Surviving Corporation or such Subsidiary, as applicable, upon reasonable request and upon reasonable notice, and without material disruption to the business of the Buyer, MergerCo, the Surviving Corporation or such Subsidiary.

7.10 Further Action. Each of the parties hereto shall use commercially reasonable efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable and execute and deliver such documents and other papers, as may be reasonably required or requested to carry out the provisions of this Agreement and each of the other Transaction Documents and consummate and make effective the transactions contemplated hereby and thereby, but without in any manner limiting such party's specific rights and obligations set forth in this Agreement and the other Transaction Documents.

7.11 Acquisition Promissory Note; Contribution Agreement.

(a) Immediately prior to the Effective Time, the MPT TRS Entity shall make a loan to MergerCo in the principal amount of Ninety-Three Million Two Hundred Thousand and 00/100 Dollars (\$93,200,000.00), the proceeds of which shall be used to satisfy in part the obligations of Buyer and MergerCo hereunder, and MergerCo shall execute and deliver the Acquisition Promissory Note to MPT TRS Entity. Each of MPT TRS Entity and MergerCo shall not, and shall not permit any other Person to, amend, restate, or otherwise modify the Acquisition Promissory Note, as attached hereto as **Exhibit D**, except for those amendments, restatements or modifications as shall have been expressly agreed to in writing by the Company.

(b) Immediately following the closing of the transactions contemplated by the Real Property Asset Purchase Agreement and prior to the Effective Time, MPT TRS Entity will take all actions required to be taken thereby under the Contribution Agreement, including, without limitation, making the cash contribution to Buyer required pursuant to the terms of the Contribution Agreement.

7.12 Other Actions by Parties. Without in any manner limiting any party's specific rights and obligations set forth in this Agreement and the other Transaction Documents, no party hereto shall take (and shall use commercially reasonable efforts to cause its Affiliates not to take), directly or indirectly, any action that would reasonably be expected to, individually or in the aggregate, prevent, materially delay or materially impede the consummation of the Merger or the other transactions contemplated by this Agreement. Buyer shall, promptly following execution of this Agreement, approve and adopt this Agreement in its capacity as sole stockholder of MergerCo and deliver to the Company evidence of its vote or action by written consent approving and adopting this Agreement in accordance with applicable law and the articles of organization and bylaws of MergerCo.

7.13 HSR Act Filings. Each party hereto agrees to make or cause to be made, in consultation and cooperation with the other parties hereto, as promptly as practicable but in any event within five (5) Business Days after the date hereof, (i) any necessary filing of a Notification and Report Form pursuant to the HSR Act and (ii) all other necessary registrations, declarations, notices and filings relating to the Merger with other Governmental Bodies under any other antitrust, competition, trade regulation or other applicable law with respect to the transactions contemplated hereby. From the date of such filing until the Closing Date, the parties shall use their commercially reasonable efforts to file all reports or other documents required or

requested by the FTC or the Justice Department under the HSR Act or otherwise and will use their commercially reasonable efforts to comply promptly with any requests by the FTC or the Justice Department for additional information concerning the transactions described herein, so that any waiting period specified in the HSR Act will expire as soon as reasonably possible after the execution and delivery of this Agreement. Each of the parties agrees to take all other commercially reasonable actions necessary to insure that the waiting period imposed under the HSR Act terminates or expires prior to thirty (30) days after the date of making such premerger filings. Without limiting the foregoing, each of the parties agrees to use commercially reasonable efforts to cooperate with the other parties hereto and oppose any preliminary injunction sought by any Governmental Body preventing the consummation of the transactions contemplated by this Agreement and the other Transaction Documents. The Company and the Buyer shall each pay fifty percent (50%) all application fees required in connection with any filings required under the HSR Act; provided, however, that in the event that the Merger is consummated as provided herein, the Merger Consideration shall be increased by the portion of the application fees that are paid by the Company pursuant hereto.

## ARTICLE VIII

### CONDITIONS TO THE MERGER AND DELIVERABLES

8.1 Conditions to the Obligations of Each Party to Effect the Merger. The respective obligations of each party to effect the Merger are subject to the fulfillment or waiver by written consent of the other party, where permissible, at or prior to the Effective Time, of each of the following conditions:

(a) Stockholder and Subsidiaries' Approvals. The Stockholders' Written Consent and the Subsidiaries' Approvals shall have been delivered in accordance with Section 7.1(a) and (b), respectively.

(b) No Injunctions, Orders or Restraints; Illegality; Lawsuits. No preliminary or permanent injunction or other order, decree or ruling issued by a court or other Governmental Body of competent jurisdiction, and no statute, rule, regulation or executive order promulgated or enacted by any governmental agency of competent jurisdiction, shall be in effect which would have the effect of (i) making the consummation of the Merger illegal or (ii) otherwise prohibiting the consummation of the Merger. Further, there shall not have been instituted in a court of competent jurisdiction by any creditor of the Company or any of its Subsidiaries, any Governmental Body or any other third party, any suit, action or proceeding to restrain, enjoin or invalidate the transactions contemplated by this Agreement and the other Transaction Documents; provided, however, that if any such suit, action or proceeding is so instituted, then the Company, Buyer and MergerCo shall use their commercially reasonable efforts to defend against the same and to take such other actions as may be necessary or desirable to permit the transactions contemplated by this Agreement and the other Transaction Documents to be consummated.

(c) Real Property Asset Purchase. The transactions contemplated by the Real Property Asset Purchase Agreement shall have been consummated, and all agreements, Contracts, certificates or other documents required to be delivered by the parties thereto as expressly set forth therein shall have been delivered.

(d) Contribution Agreement. The transactions contemplated by the Contribution Agreement shall have been consummated.

(e) Mutual Release. That certain Mutual Release and Waiver attached hereto as **Exhibit I** (the "Mutual Release") shall have been executed and delivered by each of the Persons indicated therein as parties on such Mutual Release.

(f) Waiver of Dissenters' Rights. The holders of at least ninety-three percent (93%) of the Common Shares issued and outstanding immediately prior to the Effective Time shall have signed the Stockholders Written Consent or otherwise waived, by operation of law or otherwise, the right to exercise dissenter's rights under the Appraisal Rights Provisions.

(g) No Termination. None of the parties shall have terminated this Agreement in accordance with Section 9.1 hereof.

8.2 Additional Conditions to Obligations of Buyer and MergerCo. The obligations of Buyer and MergerCo to effect the Merger are further subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by Buyer and MergerCo at or prior to the Effective Time:

(a) Representations and Warranties. The representations and warranties of the Company contained in this Agreement (without giving effect to any limitation as to "materiality," "Company Material Adverse Effect", or similar terms set forth therein) shall be true and correct in all respects (i) as of the date of this Agreement and (ii) as of the Closing Date as though made on the Closing Date (except to the extent such representations and warranties expressly relate to a specific date or are made as of the date hereof, in which case such representations and warranties shall be true and correct in all respects as of such date), in each case of clauses (i) and (ii) above, without giving effect to the transactions contemplated by this Agreement or any other Transaction Document, and except where the failure of such representations and warranties (taken as a whole) to be so true and correct has not had a Company Material Adverse Effect.

(b) Performance and Obligations of the Company. The Company shall have, and shall have caused its Subsidiaries to have, performed or complied in all material respects with all agreements and covenants required by this Agreement and the other Transaction Documents to be performed or complied with by the Company or its Subsidiaries on or prior to the Effective Time.

(c) Company Material Adverse Effect. Since the date of this Agreement, a Company Material Adverse Effect shall not have occurred.

(d) Officer's Certificates. The Buyer shall have received certificates in form and substance reasonably satisfactory to the Buyer from (i) the Company, which is executed and delivered by the Company's Chief Executive Officer or Chief Financial Officer, dated as of the Closing Date, (A) stating therein that the conditions set forth in Sections 8.2(a), (b), and (c) have

been satisfied in all respects, (B) certifying as to (1) the Certificate of Incorporation and By-Laws, each as in effect from the date of this Agreement until the Closing Date and (2) a copy of the votes and authorizing resolutions of the Company Board and the Stockholder Written Consent authorizing and approving the applicable matters contemplated hereunder and under the other Transaction Documents, and (C) providing specimen signatures of the officers of the Company, and (ii) from each of the Company's Subsidiaries, which is executed and delivered by their respective Chief Executive Officer or Chief Financial Officer (or Person's exercising similar authority), dated as of the Closing Date, (A) certifying, as applicable, to (1) such Subsidiary's articles or certificate of incorporation, bylaws, operating agreements, limited liability company agreements, partnership agreements, and other similar organizational and governing documents, each as in effect from the date of this Agreement until the Closing Date and (2) a copy of the Subsidiaries' Approvals and any other votes and authorizing resolutions of the requisite number of directors, stockholders, members, managers, partners or other Persons exercising similar authority authorizing and approving the applicable matters contemplated hereunder and under the other Transaction Documents, and (C) providing specimen signatures of the officers or authorized agents of such Subsidiaries.

(e) Certificates of Existence and Good Standing. The Buyer shall have received certificates of existence and good standing of the Company and each of its Subsidiaries dated within twenty (20) days prior to the Closing Date from, as applicable, the State of its incorporation or formation, and each other jurisdiction in which the character of their respective properties or in which the transaction of their respective businesses makes qualification as a foreign entity necessary.

(f) Third-Party Consents. The Company shall have delivered to Buyer written consents or waivers in a form reasonably satisfactory to Buyer of the third parties to those contracts set forth on Schedule 8.2(f), and all such consents and waivers shall be in full force and effect.

(g) Approvals of Governmental Bodies. The Merger shall have been approved by the Colorado Department of Public Health and Environment and Buyer shall have received copies of all material notices sent thereto by or on behalf of the Company or any of its Subsidiaries, and copies of all approvals and consents received therefrom by the Company or any of its Subsidiaries.

(h) Additional Company Deliverables.

(i) Escrow Agreement. The Stockholders' Representative shall have executed and delivered the Escrow Agreement to Buyer and the Escrow Agent.

(ii) Buyer Operating Agreement. Management Company shall have executed and delivered to the MPT TRS Entity the Buyer Operating Agreement.

(iii) Payoff Letters. The Company shall have delivered or caused to be delivered payoff letters in respect of all Indebtedness of the Company and its Subsidiaries to be paid at Closing, including any principal, interest, fees or penalties outstanding or accrued thereunder, in each case, as of the Effective Time.

(iv) Management Agreement. Management Company shall have executed and delivered the Management Agreement to the Surviving Corporation.

(v) Termination of Agreements. The Company shall have delivered, or caused the applicable Company Subsidiary to deliver, evidence reasonably satisfactory to the Buyer of the termination, amendment or restatement, as applicable, of the Contracts identified on Schedule 8.2(h)(v).

(vi) Certificate of Merger. The Certificate of Merger shall have been executed and delivered by the Surviving Corporation.

(vii) Cooperation Agreement. The Company shall have, and shall have caused the Affiliated Ernest Health Lessees, and the Affiliated Ernest Health Borrowers to have, executed and delivered to the Buyer the Cooperation Agreement.

(viii) Employment Terminations. The Company shall have delivered to Buyer evidence that all of the Persons identified at items 1 through 4 on Schedule 8.2(h)(viii), and not less than ten (10), in the aggregate, of all Persons listed on Schedule 8.2(h)(viii), shall have terminated, as of the Effective Time, their employment with the Company and/or its Subsidiaries, as applicable, and accepted employment with the Management Company as of the Effective Time.

(ix) Management Company. Immediately following the consummation of the transactions contemplated by the Contribution Agreement and prior to the Effective Time, Darby Brockette, Keith Longson, David Fuller and Danny Banks shall, in the aggregate, hold not less than a majority of the issued and outstanding equity interests of Management Company.

8.3 Additional Conditions to Obligations of the Company. The obligation of the Company to effect the Merger is further subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by the Company at or prior to the Effective Time:

(a) Representations and Warranties. Each of the representations and warranties of Buyer and MergerCo contained in this Agreement (without giving effect to any limitation as to “materiality” or “Buyer Material Adverse Effect” or similar terms set forth therein) shall be true and correct in all respects as of the date when made and as of the Closing Date as though made on the Closing Date (except to the extent such representations and warranties expressly relate to a specific date or as of the date hereof, in which case such representations and warranties shall be true and correct in all material respects as of such date) subject to changes permitted by this Agreement or any other Transaction Document, except where the failure of such representations and warranties (taken as a whole) to be so true and correct has not had a Buyer Material Adverse Effect.

(b) Performance of Obligations of Buyer and MergerCo. Each of Buyer and MergerCo shall have performed or complied in all material respects with all agreements and covenants required by this Agreement and the other Transaction Documents to be performed or complied with by it on or prior to the Effective Time.

(c) Officer's Certificate. The Company shall have received a certificate executed and delivered by Buyer's Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer, dated as of the Closing Date, stating therein that the conditions set forth in Sections 8.3(a) and (b) have been satisfied.

(d) Additional Buyer and MergerCo Deliverables.

(i) Escrow Agreement. Buyer shall have executed and delivered the Escrow Agreement to the Stockholders' Representative and the Escrow Agent.

(ii) Management Agreement. Buyer shall have caused the Surviving Corporation to execute and deliver the Management Agreement to Management Company.

(iii) Buyer Operating Agreement. MPT TRS Entity shall have executed and delivered the Buyer Operating Agreement to Management Company.

(iv) Acquisition Promissory Note. MergerCo shall have executed and delivered to the MPT TRS Entity the Acquisition Promissory Note.

(v) Cooperation Agreement. Buyer shall have, and shall have caused the Affiliated MPT Property Companies and the Affiliated MPT TRS Lender Companies to have, executed and delivered to the Company the Cooperation Agreement.

8.4 Frustration of Closing Conditions. Neither the Company nor Buyer may rely on the failure of any condition set forth in Section 8.1, Section 8.2 or Section 8.3, as the case may be, to be satisfied if such failure was caused by such party's failure to perform any of its material obligations under this Agreement, to act in good faith or to use its commercially reasonable efforts to consummate the Merger and the other transactions contemplated by this Agreement as required by and subject to Section 7.10.

## ARTICLE IX

### TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, as follows:

(a) by the written consent of Buyer (on behalf of itself and MergerCo) and the Company;



(b) by either the Company, on the one hand, or Buyer, on the other hand, by written notice to the other if any Governmental Body of competent jurisdiction shall have issued an injunction or taken any other action (which injunction or other action the parties hereto shall use commercially reasonable efforts to lift) that permanently restrains, enjoins or otherwise prohibits the consummation of the Merger, and such injunction shall have become final and non-appealable;

(c) by either the Company, on the one hand, or Buyer, on the other hand, by written notice to the other, if the consummation of the Merger shall not have occurred on or before May 1, 2012 (the "Termination Date"); provided, however, that the right to terminate the Agreement pursuant to this Section 9.1(c) shall not be available to any party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of the Merger to occur on or before such date;

(d) by the Company, if the Company is not then in material breach of any term of this Agreement, upon written notice to Buyer if there occurs a breach of any representation, warranty or covenant of Buyer or MergerCo contained in this Agreement, such that the conditions set forth in Section 8.1 or Section 8.3 cannot be satisfied or cured prior to the Termination Date; provided, however, that such breach is either not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by the Company to Buyer;

(e) by Buyer, if neither Buyer nor MergerCo is then in material breach of any term of this Agreement, upon written notice to the Company if there occurs a breach of any representation, warranty or covenant of the Company contained in this Agreement, such that the conditions set forth in Section 8.1 or Section 8.2 cannot be satisfied or cured prior to the Termination Date; provided, however, that such breach is not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by Buyer or MergerCo to the Company.

9.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 9.1, this Agreement shall forthwith become null and void and have no effect, without any liability on the part of Buyer, MergerCo, the Company, or the Stockholders' Representative, or any of their respective directors, officers, employees, partners, managers, members or stockholders, and all rights and obligations of any party hereto shall cease, except that the provisions contained in, and the definitions pertaining to, Section 7.3, Section 7.5, this Section 9.2 and Article XI shall survive the termination of this Agreement; provided, however, that notwithstanding the foregoing, no party shall be relieved or released from any liabilities or damages arising out of its wrongful repudiation, termination or intentional and knowing breach by such party of a representation, warranty or covenant prior to such termination.

ARTICLE X

STOCKHOLDERS' REPRESENTATIVE

10.1 Appointment. The Stockholders' Representative shall have full power and authority to take all actions under this Agreement and the Escrow Agreement that are to be taken by the Stockholders' Representative. The Stockholders' Representative shall take any and all actions that it believes are necessary or appropriate under this Agreement or the Escrow Agreement, including, without limitation, executing the Escrow Agreement as Stockholders' Representative, giving and receiving any notice or instruction permitted or required under this Agreement or the Escrow Agreement by the Stockholders' Representative, interpreting all of the terms and provisions of this Agreement and the Escrow Agreement, authorizing payments to be made with respect hereto or thereto, obtaining reimbursement as provided for herein for all out-of-pocket fees and expenses and other obligations of or incurred by the Stockholders' Representative in connection with this Agreement and/or the Escrow Agreement, defending all disputes pursuant to Section 2.5 hereof, consenting to, compromising or settling all disputes pursuant to Section 2.5, conducting negotiations with Buyer, the Surviving Corporation and their respective agents regarding such disputes, dealing with Buyer, the Surviving Corporation and the Escrow Agent under this Agreement and the Escrow Agreement, taking any other actions specified in or contemplated by this Agreement or the Escrow Agreement, and engaging counsel, accountants or other Representatives in connection with the foregoing matters.

10.2 Authorization. The Stockholders' Representative shall have the authority to:

(a) Receive all notices or documents given or to be given to the Common Equity Holders or Rollover Holders pursuant hereto or to the Escrow Agreement or in connection herewith or therewith and to receive and accept services of legal process in connection with any suit or proceeding arising under this Agreement or the Escrow Agreement;

(b) Engage counsel, accountants and other advisors, and incur other expenses in connection with this Agreement or the Escrow Agreement and the transactions contemplated hereby or thereby, as the Stockholders' Representative may in its sole discretion deem necessary or appropriate; and

(c) Take such action as the Stockholders' Representative may in its sole discretion deem necessary or appropriate in respect of: (i) waiving any inaccuracies in the representations or warranties of Buyer or MergerCo contained in this Agreement or in any document delivered by Buyer or MergerCo pursuant hereto; (ii) taking such other action as the Stockholders' Representative is authorized to take under this Agreement or the Escrow Agreement; (iii) receiving all documents or certificates and making all determinations, in its capacity as Stockholders' Representative, required under this Agreement or the Escrow Agreement; and (iv) all such actions as may be necessary to carry out any of the transactions contemplated by this Agreement or the Escrow Agreement, including, without limitation, the defense and/or settlement of any claims for which indemnification is sought pursuant to Section 7.7 and any waiver of any obligation of Buyer or the Surviving Corporation; provided, however, that the Stockholders' Representative may not take any action that disparately and adversely affects any Common Equity Holder or Rollover Holder (in their capacities as such) as compared to each other Common Equity Holder (including the Stockholders' Representative, in its capacity as a Common Equity Holder) or Rollover Holder, and the Stockholders' Representative may not waive or materially impair the rights of any Indemnified Party under Section 7.7.

10.3 Agency. Notwithstanding any provision herein to the contrary, the Stockholders' Representative is not an agent of the Common Equity Holders or Rollover Holders, and shall have no duties to the Common Equity Holders or Rollover Holders or liability to the Common Equity Holders or Rollover Holders with respect to any action taken, decision made or instruction given by the Stockholders' Representative in connection with the Escrow Agreement or this Agreement.

10.4 Indemnification of Stockholders' Representative. The Stockholders' Representative shall be indemnified by the Common Equity Holders and Rollover Holders for and shall be held harmless against any loss, liability or expense incurred by the Stockholders' Representative or any of its Affiliates and any of their respective Representatives or controlling persons, in each case, relating to the Stockholders' Representative' conduct as Stockholders' Representative, other than losses, Liabilities or expenses resulting from the Stockholders' Representative's willful misconduct in connection with its performance under this Agreement and the Escrow Agreement. This indemnification shall survive the termination of this Agreement. The Stockholders' Representative shall have the right to cause the satisfaction of some or all of such indemnification obligations using any then available proceeds of the Stockholders' Representative Expense Amount. The Stockholders' Representative may, in all questions arising under this Agreement, rely on the advice of counsel and for anything done, omitted or suffered in good faith by the Stockholders' Representative in accordance with such advice, and the Stockholders' Representative shall not be liable to the Common Equity Holders or Rollover Holders or the Escrow Agent or any other person in connection therewith. In no event shall the Stockholders' Representative be liable hereunder or in connection herewith for any indirect, punitive, special or consequential damages.

10.5 Reasonable Reliance. In the performance of its duties hereunder, the Stockholders' Representative shall be entitled to (a) rely upon any document or instrument reasonably believed to be genuine, accurate as to content and signed by any Common Equity Holder or Rollover Holder or any party hereunder and (b) assume that any Person purporting to give any notice in accordance with the provisions hereof has been duly authorized to do so.

10.6 Orders. The Stockholders' Representative is authorized, in its sole discretion, to comply with final, nonappealable orders or decisions issued or entered by any court of competent jurisdiction or arbitrator with respect to any dispute arising hereunder or under the Escrow Agreement. If any portion of the Escrow Fund is disbursed to the Stockholders' Representative and is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Stockholders' Representative is authorized, in its sole discretion, but in good faith, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Stockholders' Representative complies with any such order, writ, judgment or decree, it shall not be liable to any Common Equity Holder or Rollover Holder or to any other Person by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled set aside or vacated.

10.7 Removal of Stockholders' Representative; Authority of Stockholders' Representative. A majority in interest of the Stockholders, voting together as a single class, shall have the right at any time to remove the then-acting Stockholders' Representative and to appoint a successor Stockholders' Representative; provided, however, that neither such removal of the then acting Stockholders' Representative nor such appointment of a successor Stockholders' Representative shall be effective until the delivery to the Escrow Agent of executed counterparts of a writing signed by such majority in interest of the Stockholders with respect to such removal and appointment, together with an acknowledgement signed by the successor Stockholders' Representative appointed in such writing that he, she or it accepts the responsibility of successor Stockholders' Representative and agrees to perform and be bound by all of the provisions of this Agreement and the Escrow Agreement applicable to the Stockholders' Representative. For purposes of the above, a majority in interest of the Stockholders shall be determined on the basis of each Stockholder's pro rata Common Stock holdings prior to the Closing. Each successor Stockholders' Representative shall have all of the power, authority, rights and privileges conferred by this Agreement upon the original Stockholders' Representative, and the term "Stockholders' Representative" as used herein and in the Escrow Agreement shall be deemed to include any interim or successor Stockholders' Representative.

10.8 Expenses of the Stockholders' Representative. The Stockholders' Representative Expense Amount shall be held and controlled by the Stockholders' Representative to reimburse the out of pocket fees and expenses (including legal, accounting and other advisors' fees and expenses, if applicable) incurred by the Stockholders' Representative in performing all of its duties and obligations under this Agreement and the Escrow Agreement.

## ARTICLE XI

### GENERAL PROVISIONS

11.1 Notices. All notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given if delivered personally, sent by overnight courier (providing proof of delivery) or via facsimile (providing proof of receipt) to the parties at the following addresses (or at such other address for a party as specified by like notice):

If to the Company, to:

Ernest Health, Inc.  
7770 Jefferson Street, NE, Suite 320  
Albuquerque, NM 87109  
Attn: Keith Longson  
Facsimile: (505) 856-6800

with copy to:

Goodwin Procter LLP  
The New York Times Building

620 Eighth Avenue  
New York, NY 10018  
Attn: Stuart L. Rosenthal, Esq.  
Facsimile: (212) 355-3333

If to Buyer or MergerCo, to:

c/o Ernest Health, Inc.  
7770 Jefferson Street, NE, Suite 320  
Albuquerque, NM 87109  
Attn: Keith Longson  
Facsimile: (505) 856-6800

with a copy to:

Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
Attn: Stuart L. Rosenthal, Esq.  
Facsimile: (212) 355-3333

and

c/o MPT Operating Partnership, L.P.  
1000 Urban Center Drive, Suite 501  
Birmingham, AL 35242  
Attn: Legal Department  
Facsimile: (205) 969-3756

and

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
1600 Wells Fargo Tower  
420 Twentieth Street North  
Birmingham, AL 35203  
Attn: Thomas O. Kolb, Esq.  
Facsimile: (205) 322-8007

If to MPT TRS Entity:

c/o MPT Operating Partnership, L.P.  
1000 Urban Center Drive, Suite 501  
Birmingham, AL 35242  
Attn: Legal Department  
Facsimile: (205) 969-3756

with a copy to:

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
1600 Wells Fargo Tower  
420 Twentieth Street North  
Birmingham, AL 35203  
Attn: Thomas O. Kolb, Esq.  
Facsimile: (205) 322-8007

If to Stockholders' Representative or any other FFC Funds, to:

c/o Ferrer Freeman & Company, LLC  
10 Glenville Street  
Greenwich, CT 06831  
Attn: David Freeman  
Facsimile: (203) 532-8016

with a copy to:

Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
Attn: Stuart L. Rosenthal, Esq.  
Facsimile: (212) 355-3333

11.2 Disclosure Schedules. Certain information set forth in the schedules to this Agreement (as may be amended from time to time by a Schedule Supplement, the "Schedules") is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by Buyer, MergerCo or the Company, as applicable, in this Agreement or that such information is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, Buyer, MergerCo, the Company, the Surviving Corporation or the Stockholders' Representative on behalf of the Common Equity Holders and Rollover Holders, as applicable. The section number headings in the Schedules correspond to the section numbers in this Agreement and any information disclosed in any section of the Schedules shall be deemed to be disclosed and incorporated into any other section of the Schedules where the relevance of such disclosure is reasonably apparent on its face, whether or not there is a schedule reference in such other section; provided, however, that the parties shall use their reasonable efforts to include such applicable schedule cross-references in each of the Schedules regardless of whether the relevance of such disclosure is reasonable apparent of its face. From the date of this Agreement until the Closing Date, (a) the Company shall amend and/or supplement the Schedules to reflect (i) any deficiencies or inaccuracies in such Schedule arising

out of circumstances or matters which occurred or existed at or prior to the date hereof, and (ii) any deficiencies or inaccuracies in such Schedule arising out of circumstances or matters which first occurred or arose after the date of hereof, where such deficiency or inaccuracy would cause a failure of any condition set forth in Section 8.1 or Section 8.2, and (b) the Company may amend and/or supplement the Schedules with respect to any other matter that, if existing or occurring at or prior to the date hereof, would have been required to be set forth or described on such a Schedule or that is necessary to complete or correct any information in any representation or warranty contained in Article IV (any such amendment or supplement, a "Schedule Supplement"); provided, that, no additions, changes, or disclosures contained in any Schedule Supplement shall be deemed to cure any breach or inaccuracy of a representation or warranty, covenant or agreement or to satisfy any condition unless otherwise agreed to in writing by the Buyer or be considered for purposes of establishing whether or not the closing conditions set forth in Section 8.1 or Section 8.2 have been satisfied.

11.3 Assignment. Except as expressly permitted by the terms hereof, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties.

11.4 Severability. If any provision of this Agreement, or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable.

11.5 Interpretation. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference will be to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms used herein with initial capital letters have the meanings ascribed to them herein and all terms defined in this Agreement will have such defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein, or in any agreement or instrument that is referred to herein, means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. As used herein, the terms "provided to", "delivered", "made available to" and terms of similar import shall mean, with respect to any documents or information provided, delivered or made available by the Company or any of its Subsidiaries, Affiliates or Representatives to Buyer, MergerCo or any of their respective Representatives or Affiliates, all documents and information provided, delivered, or made available in any form and by any means, including, without limitation, by posting to any virtual data room established by or on behalf of the Company and to which Buyer, MergerCo and/or any of their respective Representatives or Affiliates has been granted access.

11.6 Fees and Expenses. Except as otherwise set forth in this Agreement, whether or not the Merger is consummated, each of Buyer (on behalf of Buyer and MergerCo), on the one hand, and the Company, on the other hand, shall bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement and each other Transaction Document.

11.7 Choice of Law. All disputes, claims or controversies arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its rules of conflict of laws.

11.8 Service of Process; Venue. For purposes of this Agreement, each of the parties hereto hereby (i) consents to service of process in any legal action, suit or proceeding among the parties to this Agreement arising in whole or in part under or in connection with the negotiation, execution and performance of this Agreement in any manner permitted by Delaware law, (ii) agrees that service of process made in accordance with this Section 11.8 or made by registered or certified mail, return receipt requested, at its address specified pursuant to Section 11.1, will constitute good and valid service of process in any such legal action, suit or proceeding and (iii) waives and agrees not to assert (by way of motion, as a defense, or otherwise) in any such legal action, suit or proceeding any claim that service of process made in accordance with clause (i) or (ii) does not constitute good and valid service of process. Each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Delaware Court of Chancery, New Castle County, or if that court does not have jurisdiction, a federal court sitting in the State of Delaware in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto.

11.9 Specific Performance and Remedies.

(a) The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached and that each party hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the provisions of this Agreement (without any requirement to post any bond or other security in connection with seeking such relief), in addition to any other remedy at law or equity, exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). The parties hereto



agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by the Company, the FFC Funds, and the Stockholders' Representative, on the one hand, and to prevent or restrain breaches of this Agreement by Buyer, MergerCo, or MPT TRS Entity, on the other hand, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the parties under this Agreement. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding relating to this Section 11.9, for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Section 11.9 in any court other than the aforesaid courts. For purposes of this Section 11.9, each of the parties hereto hereby consents to service of process in accordance with the terms of Section 11.8 of this Agreement.

(b) If the Closing shall not have occurred because of a breach by any of the parties of their respective obligations under this Agreement and all of the conditions to such parties' obligations as set forth in Article VIII have either been satisfied or previously waived (or would have been satisfied or are capable of being satisfied but for such breach of such parties' respective obligations under this Agreement), then the non-breaching parties shall have the right to a court order specifically enforcing the provisions of this Agreement to which such breach applies and, in any event, to specifically force the Closing to occur. If any of the non-breaching parties brings any action to enforce specifically the performance of the terms and provisions of this Agreement by the breaching parties, the Termination Date shall automatically be extended by (x) the amount of time during which such action is pending, plus twenty (20) Business Days or (y) such other time period established by the Delaware court presiding over such action.

11.10 Amendment. This Agreement may be amended by the parties hereto by an instrument in writing signed on behalf of each of the parties hereto at any time before or after any approval hereof by the stockholders of the Company and MergerCo; provided, however, that after the execution of the Stockholder Written Consent, no amendment shall be made that by law requires further approval by the holders of Common Shares without obtaining such requisite approval.

11.11 Extension; Waiver. At any time prior to the Effective Time, the parties hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto and (c) waive compliance by the other party with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of the party against which such waiver or extension is to be enforced. Waiver of any term or condition of this Agreement by a party shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition by such party, or a waiver of any other term or condition of this Agreement by such party.

11.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION

BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION WITH SUCH AGREEMENTS.

11.13 No Survival.

(a) The representations and warranties of the parties set forth in this Agreement shall terminate as of the Effective Time, other than the representations and warranties of the Company in Sections 4.1(b), 4.3(c), and 4.4(a)(ii), and the representations and warranties of Buyer and MergerCo in Sections 5.2 and 5.3(b), each of which shall survive indefinitely.

(b) The FFC Funds hereby join in this Agreement for the purpose of making to the Buyer and MergerCo all of the representations and warranties set forth in Sections 4.1(b), 4.3(c), and 4.4(a)(ii) hereof, each of which shall survive indefinitely. The FFC Funds shall be jointly and severally liable for any Losses arising out of any breach of any of the representations and warranties made in such sections, including, without limitation, with respect to all reasonable attorney fees incurred by the Buyer, MergerCo or any of their respective Affiliates in connection therewith.

11.14 Mutual Drafting. The parties hereto are sophisticated and have been represented by attorneys throughout the transactions contemplated hereby who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of laws or rules relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement or any agreement or instrument executed in connection herewith, and therefore waive their effects.

11.15 Waiver of Conflicts. Recognizing that Goodwin Procter LLP has acted as legal counsel to certain of the Stockholders and the Company and its Subsidiaries prior to the Closing, and that Goodwin Procter LLP intends to act as legal counsel to certain of the Stockholders after the Closing, each of Buyer and the Surviving Corporation (including on behalf of their respective Subsidiaries and Affiliates) hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Goodwin Procter LLP representing the Stockholders' Representative, any of the FFC Funds, or any of the Stockholders after the Closing as such representation may relate to Buyer or the Surviving Corporation or the transactions contemplated herein or in any other Transaction Document. In addition, all attorney-client privileged communications involving any Stockholders and its Affiliates in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall belong solely to such Stockholders and their Affiliates (and not the Surviving Corporation and its Subsidiaries). Without limiting the generality of the foregoing, upon and after the Closing, (i) the applicable Stockholders and their Affiliates (and not the Surviving Corporation and its Subsidiaries) shall be the sole holders of the attorney-client privilege with respect to such engagement, and (ii) to the extent that files of Goodwin Procter LLP in respect of such engagement constitute property of the client, only the applicable Stockholders and their Affiliates (and not the Surviving Corporation and its Subsidiaries) shall hold such property rights.

11.16 Exhibits Within Exhibits. All exhibits or schedules referenced within any of the Exhibits attached hereto, which are not otherwise attached in an agreed upon form to such Exhibit, this Agreement, or the Real Property Asset Purchase Agreement, shall be mutually agreed to by the parties.

11.17 Miscellaneous. This Agreement, together with the Schedules and Exhibits hereto, and any documents executed by the parties simultaneously herewith or pursuant thereto, constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, written and oral, among the parties with respect to the subject matter hereof, other than the Confidentiality Agreement, which shall survive the execution of this Agreement and any termination of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and, except as expressly set forth herein, is not intended to confer upon any other Person any rights or remedies hereunder. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile or "PDF" transmission.

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**ANNEX A**

**DEFINED TERMS**

“Accounting Referee” shall have the meaning as set forth in Section 2.5(b)(ii).

“Acquisition Promissory Note” shall have the meaning set forth in the Recitals.

“Acquisition Transaction” shall have the meaning as set forth in Section 7.6.

“Affiliate” of any Person shall mean another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

“Affiliated Ernest Health Borrowers” means, collectively, (i) Mountain Valley Regional Rehabilitation Hospital, Inc., a Delaware corporation, (ii) South Texas Rehabilitation Hospital, LP, a Delaware limited partnership, (iii) Rehabilitation Hospital of Southern New Mexico, Inc., a Delaware corporation, and (iv) Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company.

“Affiliated Ernest Health Lessees” means, collectively, (i) Northern Colorado Rehabilitation Hospital, Inc., a Colorado corporation, (ii) Advanced Care Hospital of Northern Colorado, LLC, a Delaware limited liability company d/b/a Northern Colorado Long Term Acute Hospital, (iii) Northern Idaho Advanced Care Hospital, Inc., a Delaware corporation, (iv) Southwest Idaho Advanced Care Hospital, Inc., a Delaware corporation, (v) Advanced Care Hospital of Montana, Inc., a Delaware corporation, (vi) Greenwood Regional Rehabilitation Hospital, LLC, a South Carolina limited liability company, (vii) New Braunfels Regional Rehabilitation Hospital, Inc., a Delaware corporation, (viii) Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company d/b/a Mesquite Rehabilitation Institute, LLC, (ix) Mesquite Specialty Hospital, LP, a Delaware limited partnership, (x) Laredo Specialty Hospital, LP, a Delaware limited partnership, (xi) Utah Valley Specialty Hospital, Inc., a Delaware corporation, (xii) Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company, and (xiii) Spartanburg Rehabilitation Institute, Inc., a Delaware corporation f/k/a Spartanburg Regional Rehabilitation Hospital, Inc.

“Affiliated MPT Property Companies” means, collectively, (i) MPT of Johnstown, LLC, a Delaware limited liability company, (ii) MPT of Post Falls, LLC, a Delaware limited liability company, (iii) MPT of Boise, LLC, a Delaware limited liability company, (iv) MPT of Billings, LLC, a Delaware limited liability company, (v) MPT of Greenwood, LLC, a Delaware limited liability company, (vi) MPT of Comal County, LLC, a Delaware limited liability company, (vii) MPT of Mesquite, LLC, a Delaware limited liability company, (viii) MPT of Laredo, LLC, a Delaware limited liability company, (ix) MPT of Provo, LLC, a Delaware limited liability company, and (x) MPT of Casper, LLC, a Delaware limited liability company.

“Affiliated MPT TRS Lender Companies” means, collectively, (i) MPT of Prescott Valley Hospital, LLC, a Delaware limited liability company, (ii) MPT of Brownsville Hospital, LLC, a Delaware limited liability company, and (iii) MPT of Las Cruces Hospital, LLC, a Delaware limited liability company.

“Affiliated MPT Primary Lender Companies” means, collectively, (i) MPT of Prescott Valley, LLC, a Delaware limited liability company, (ii) MPT of Brownsville, LLC, a Delaware limited liability company, and (iii) MPT of Las Cruces, LLC, a Delaware limited liability company.

“Aggregate Option Exercise Amount” shall mean an amount equal to the aggregate exercise price of all Options outstanding immediately prior to the Effective Time.

“Aggregate Preferred Preference Amount” shall mean an amount equal to the sum of (i) the Series A Preference Amount, plus (ii) the Series B Preference Amount, plus (iii) the Series C Preference Amount.

“Aggregate Promissory Note Proceeds Amount” shall mean an amount equal to the aggregate outstanding principal amount and accrued interest as of immediately prior to the Effective Time of all Stockholder Notes.

“Agreement” shall have the meaning as provided in the Preamble.

“Appraisal Rights Provisions” shall have the meaning as provided in Section 2.4(a).

“Base Balance Sheet” shall have the meaning as set forth in Section 4.5(a)(ii).

“Benefit Plans” shall have the meaning as set forth in Section 4.10(a).

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, or the office of the Secretary of State of the State of Delaware, are authorized or required by law to close.

“Business Employees” shall have the meaning set forth in Section 4.11(a).

“Buyer” shall have the meaning as provided in the Preamble.

“Buyer Material Adverse Effect” shall mean a material adverse effect on the financial condition, business, results of operations, or assets of the Buyer or its Affiliates, including without limitation, MergerCo, taken as a whole, except for any such effects resulting from or relating to (i) the negotiation, execution, announcement or performance of this Agreement or the consummation of the transactions contemplated by this Agreement or the matters set forth in the Schedules, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, licensors, distributors, partners, providers, employees or any matter described in the Schedules, (ii) changes in general business, economic or financial market conditions, so long as such change does not adversely affect the Buyer or its Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iii) changes in national or international political or social conditions (whether as a result of acts of terrorism, war (whether or not declared), armed conflicts or otherwise) so long as such change does not adversely affect the Buyer or its

Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iv) changes to financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) so long as such change does not adversely affect the Buyer or its Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (v) changes in conditions generally applicable to businesses in the same or similar industries as the Buyer and its Affiliates, so long as such change does not adversely affect the Buyer or its Affiliates, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate; (vi) changes in laws, regulations, rules, ordinances, policies, mandates, guidelines or other requirements of any Governmental Body applicable to the Buyer and its Affiliates; and (vii) changes in GAAP or its application.

“Buyer Operating Agreement” shall have the meaning as provided in the Recitals.

“By-laws” shall have the meaning as set forth in Section 4.1(a).

“Cash and Cash Equivalents” shall mean all cash and cash equivalents determined in accordance with GAAP as of immediately prior to the consummation of the transactions contemplated by the Real Property Asset Purchase Agreement and this Agreement, minus the aggregate outstanding amount of uncashed checks written by the Company or any of its Subsidiaries.

“Certificate of Incorporation” shall have the meaning as set forth in Section 4.1(a).

“Certificate of Merger” shall have the meaning as set forth in Section 1.2.

“Certificates” shall have the meaning as set forth in Section 3.1(a).

“Closing” shall have the meaning as set forth in Section 1.4.

“Closing Cash” shall have the meaning as set forth in Section 2.5(b)(i).

“Closing Company Transaction Expenses” shall have the meaning as set forth in Section 2.5(b)(i).

“Closing Date” shall have the meaning as set forth in Section 1.4.

“Closing Date Merger Consideration” shall mean an amount equal to the difference between:

(i) the sum of (A) the Merger Consideration, plus (B) the Estimated Cash and Cash Equivalents, plus (C) if the Estimated Net Working Capital is greater than the Target Net Working Capital, the Working Capital Adjustment Amount, minus

(ii) the sum of (A) the Estimated Closing Indebtedness, plus (B) the Estimated Company Transaction Expenses, plus (C) if the Estimated Net Working Capital is less than the Target Net Working Capital, the Working Capital Adjustment Amount, plus (D) the Escrow Amount, plus (E) the Stockholders’ Representative Expense Amount.

“Closing Date Option Consideration” shall have the meaning as set forth in Section 2.3(a).

“Closing Indebtedness” shall have the meaning as set forth in Section 2.5(b)(i).

“Closing Net Working Capital” shall have the meaning as set forth in Section 2.5(b)(i).

“Closing Statement” shall have the meaning as set forth in Section 2.5(b)(i).

“Closing Statement Response Notice” shall have the meaning as set forth in Section 2.5(b)(i).

“CMS” shall mean the Centers for Medicare & Medicaid Services.

“Code” shall have the meaning as set forth in Section 3.4(b).

“Co-Located Operators” shall mean, collectively,

- (a) Advanced Care Hospital of Northern Colorado, LLC, a Delaware limited liability company;
- (b) Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company; and
- (c) Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company.

“Commitment Letters” shall have the meaning as set forth in Section 5.4.

“Common Equity Holder” shall mean a Common Stockholder and/or an Optionholder, as applicable.

“Common Share” shall mean a share of the Company’s Common Stock.

“Common Stock” shall mean the Company’s Common Stock, par value \$.01 per share. As used herein, “Common Stock” shall include any shares of Common Stock that have been issued by the Company to Person(s) pursuant to restricted stock or similar agreements that impose vesting and/or repurchase or forfeiture requirements on such shares.

“Common Stockholder” shall mean a holder of Common Shares.

“Company” shall have the meaning set forth in the Preamble.

“Company Board” shall have the meaning set forth in the Recitals.

“Company Material Adverse Effect” shall mean a material adverse effect on the financial condition, business, results of operations, or assets of, the Company and its Subsidiaries, taken as a whole, except for any such effects resulting from or relating to (i) the negotiation, execution, announcement or performance of this Agreement or the consummation of the transactions contemplated by this Agreement or the matters set forth in the Schedules, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, licensors, distributors, partners, providers, employees or any matter described in the Schedules, (ii) changes in general business, economic or financial market conditions, so long as such change does not adversely affect the Company or its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iii) changes in national or international political or social conditions (whether as a result of acts of terrorism, war (whether or not declared), armed conflicts or otherwise) so long as such change does not adversely affect the Company or its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (iv) the failure of the Company to achieve any periodic earnings, revenue, expense or other estimated projections or budget, (v) changes to financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) so long as such change does not adversely affect the Company or its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate, (vi) changes in conditions generally applicable to businesses in the same or similar industries as the Company and its Subsidiaries, so long as such change does not adversely affect the Company or its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries in which they operate; (vii) changes in laws, regulations, rules, ordinances, policies, mandates, guidelines or other requirements of any Governmental Body applicable to the Company and its Subsidiaries; and (viii) changes in GAAP or its application.

“Company Permits” shall have the meaning as set forth in Section 4.15(a).

“Company Shares” shall mean the Common Shares, the Series A Preferred Shares, the Series B Preferred Shares and the Series C Preferred Shares.

“Company Transaction Expenses” shall mean all outstanding fees and expenses of the Company, its Subsidiaries and the Stockholders’ Representative incurred in connection with the negotiation and consummation of the transactions contemplated by this Agreement, including, without limitation, (x) those expenses which are payable to Goodwin Procter LLP and Lazard Middle Market LLC, (y) any and all Transaction Bonuses, and (z) any and all amounts due from the Company to former employees pursuant to any separation, termination or similar agreement.

“Confidentiality Agreement” shall have the meaning as set forth in Section 7.3.

“Contracts” means all contractual agreements, whether written or oral, relating to or affecting the assets or the operation of the Facilities to which the Company or any of its Subsidiaries is a party, and all contracts, agreements or offers with regard to the development and construction of any additional healthcare facilities to which the Company or any of its Subsidiaries is a party.



“Contribution Agreement” shall have the meaning set forth in the Recitals.

“Cooperation Agreement” shall mean the Cooperation Agreement to be entered into at the Closing by and among the Company, the Affiliated Ernest Health Lessees, the Affiliated Ernest Health Borrowers, Buyer, and the other parties thereto, substantially in the form mutually agreed to by such parties thereto, pursuant to which each of them shall agree to cooperate and take all reasonably necessary actions to cause certain organizational and governing documents of the Company’s Subsidiaries to be amended and/or restated as reflected therein.

“DGCL” shall have the meaning set forth in the Recitals.

“Dissenting Shares” shall have the meaning as set forth in Section 2.4(a).

“Dissenting Stockholders” shall have the meaning as set forth in Section 2.4(a).

“Effective Time” shall have the meaning as set forth in Section 1.2.

“Elkhorn LLC” means Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company.

“Encumbrance” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, lien (statutory or otherwise) or preference, security interest, restrictions or easements or other encumbrance of any kind or nature whatsoever.

“Equity Holder” shall mean a holder of Company Shares (including Rollover Shares) and/or an Optionholder, as applicable.

“ERISA” shall mean the United States Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” shall mean, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 4.14(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that include the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

“Escrow Agent” shall have the meaning as set forth in Section 2.6(a).

“Escrow Agreement” shall have the meaning as set forth in Section 2.6(a).

“Escrow Amount” shall mean an amount equal to Six Hundred Thousand and No/100 Dollars (\$600,000.00).

“Escrow Fund” shall have the meaning as set forth in Section 2.6(a).

“Estimated Cash and Cash Equivalents” shall have the meaning set forth in Section 2.5(a).

“Estimated Closing Indebtedness” shall have the meaning set forth in Section 2.5(a).

“Estimated Company Transaction Expenses” shall have the meaning set forth in Section 2.5(a).

“Estimated Net Working Capital” shall have the meaning as set forth in Section 2.5(a).

“Facilities” shall mean, collectively, the hospitals operated by:

- (a) Advanced Care Hospital of Montana, Inc., a Delaware corporation;
- (b) Advanced Care Hospital of Northern Colorado, LLC, a Delaware limited liability company;
- (c) Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company.
- (d) Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company;
- (e) Greenwood Regional Rehabilitation Hospital LLC, a South Carolina limited liability company;
- (f) Laredo Specialty Hospital, LP, a Delaware limited partnership;
- (g) Mesquite Specialty Hospital, LP, a Delaware limited partnership;
- (h) Mountain Valley Regional Rehabilitation Hospital, Inc., a Delaware corporation;
- (i) New Braunfels Regional Rehabilitation Hospital, Inc., a Delaware corporation;
- (j) Northern Colorado Rehabilitation Hospital, Inc., a Colorado corporation;
- (k) Northern Idaho Advanced Care Hospital, Inc., a Delaware corporation;
- (l) Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company;
- (m) Rehabilitation Hospital of Southern New Mexico, Inc., a Delaware corporation;
- (n) South Texas Rehabilitation Hospital, LP, a Delaware limited partnership;
- (o) Southwest Idaho Advanced Care Hospital, Inc., a Delaware corporation;
- (p) Spartanburg Rehabilitation Institute, Inc., a Delaware corporation f/k/a Spartanburg Regional Rehabilitation Hospital, Inc.; and
- (q) Utah Valley Specialty Hospital, Inc., a Delaware corporation.

“FFC Funds” shall have the meaning as set forth in the Preamble of the Agreement.

“Final Closing Adjustment Amount” shall have the meaning as set forth in Section 2.5(b)(iv).

“Financial Statements” shall have the meaning as set forth in Section 4.5(a).

“Financing Documents” shall have the meaning as set forth in Section 4.1(b).

“FTC” shall have the meaning as set forth in Section 7.13.

“Fully Diluted Shares Outstanding” shall mean the sum, without duplication, of (i) the number of Common Shares (including Rollover Shares) issued and outstanding immediately prior to the Effective Time, plus (ii) the number of Common Shares issuable upon exercise of all Options outstanding immediately prior to the Effective Time.

“GAAP” shall mean U.S. generally accepted accounting principles, as applied on a basis that is consistent with the Company’s Financial Statements.

“Governmental Body” shall mean any United States federal, state or local, or any supra-national or non-U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self-regulatory organization, court, tribunal or judicial or arbitral body, including the Securities and Exchange Commission.

“Government Programs” shall mean the government programs under Title XVIII of the Social Security Act (“Medicare”), Title XIX of the Social Security Act (“Medicaid”) and the TRICARE/CHAMPUS Program.

“Health Benefit Laws” shall mean laws relating to the licensure, certification, qualification or authority to transact business relating to the provision of, or payment for, or both the provision of and payment for, health benefits, health care or insurance coverage, including ERISA, COBRA, HIPAA, SCHIP, Medicare, Medicaid, CHAMPUS/TriCare, and laws relating to the regulation of workers compensation, utilization review, third party administrative services, case management, and coordination of benefits.

“Health Compliance Laws” shall mean all applicable laws pertaining to billing, kickbacks, false claims, self-referral, claims processing, marketing, HIPAA security standards for the storage, maintenance, transmission, utilization and access to and privacy of patient information, and HIPAA and state standards for electronic transactions and data code sets, including, without limitation, the False Claims Act (31 U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section 51 et seq.), the Federal Health Care Programs Anti-Kickback Statute (42 U.S.C. Section 1320a-7a(b)), the Stark Law, the Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a), or the Truth in Negotiations (10 U.S.C. Section 2304 et seq.), Health Care Fraud (18 U.S.C. Section 1347), Mail Fraud (18 U.S.C. Section 1341), Wire Fraud (18 U.S.C. Section 1343), Theft or Embezzlement (18 U.S.C. Section 669), Fraud and False Statements (18 U.S.C. Section 1001), False Statements Relating to Health Care Matters (18 U.S.C. Section 1035), and any other applicable federal health care law or equivalent state statutes or any rule or regulation promulgated by a Governmental Body with respect to any of the foregoing, as any of the same may be amended, modified and/or restated from time to time.

“Healthcare Laws” shall mean Health Benefit Laws, Health Compliance Laws and Information Privacy and Security Laws.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the related regulations and published interpretations.

“Indebtedness” shall mean (i) any indebtedness of the Company or any of its Subsidiaries for borrowed money and accrued but unpaid interest, premiums and penalties relating thereto, (ii) any indebtedness of the Company or any of its Subsidiaries evidenced by a note, bond, debenture or other similar security, (iii) any lease that has been accounted for as a capital lease on the balance sheet of the Company or any of its Subsidiaries, as applicable, prepared in accordance with GAAP and (iv) any indebtedness referred to in clauses (i) through (iii) above of any Person which is either guaranteed by, or secured by an Encumbrance upon any property or asset owned by, the Company or any of its Subsidiaries; provided, however, that for the avoidance of doubt, Indebtedness shall exclude the amount of the Company Transaction Expenses, and shall further exclude the CIT Loan (as defined in the Real Property Asset Purchase Agreement) if and to the extent the CIT Loan is satisfied out of the proceeds payable to the Company pursuant to the Real Property Asset Purchase Agreement.

“Indemnified Parties” shall have the meaning as set forth in Section 7.7(a).

“Information Privacy or Security Laws” shall mean the HIPAA Laws and any other laws concerning the privacy and/or security of Personal Information, including but not limited to the Gramm-Leach-Bliley Act, state data breach notification laws, state health information privacy laws, the Federal Trade Commission Act and state consumer protection laws.

“Insolvency or Liquidation Proceeding” shall mean (a) any voluntary or involuntary case or proceeding under any debtor relief laws with respect to the Company or any of its Subsidiaries, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership or other similar case or proceeding with respect to the Company or any of its Subsidiaries, or with respect to any of their assets or properties, (c) any liquidation, dissolution, reorganization or winding up of the Company or any of its Subsidiaries, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any general assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company or any of its Subsidiaries.

“Insurance Policies” shall have the meaning as set forth in Section 4.14.

“Intellectual Property” shall mean (i) patents, registered and unregistered trademarks and service marks, brand names, trade names, domain names, copyrights, designs and trade secrets and (ii) applications for and registrations of such patents, trademarks, service marks, trade names, domain names, copyrights and designs.

“IRF Operators” shall mean, collectively:

- (a) Elkhorn Valley Rehabilitation Hospital, LLC, a Delaware limited liability company;
- (b) Greenwood Regional Rehabilitation Hospital LLC, a South Carolina limited liability company;
- (c) Mountain Valley Regional Rehabilitation Hospital, Inc., a Delaware corporation;
- (d) New Braunfels Regional Rehabilitation Hospital, Inc., a Delaware corporation;
- (e) Northern Colorado Rehabilitation Hospital, Inc., a Colorado corporation;
- (f) South Texas Rehabilitation Hospital, LP, a Delaware limited partnership;
- (g) Rehabilitation Hospital of Mesquite, LLC, a Delaware limited liability company;
- (h) Rehabilitation Hospital of Southern New Mexico, Inc., a Delaware corporation; and
- (i) Spartanburg Rehabilitation Institute, Inc., a Delaware corporation f/k/a Regional Rehabilitation Hospital, Inc.

“Joint Commission” shall mean The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations.

“Knowledge” or “Knowledge of the Company” shall mean with respect to the Company, the actual knowledge of a particular fact or matter, after due inquiry, of any of Darby Brockette, Keith Longson, Coe Schlicher, Tony Hernandez, David Fuller, or Denise Kann.

“Labor Proceeding” shall have the meaning as set forth in Section 4.11(e).

“Letter of Transmittal” shall have the meaning as set forth in Section 3.1(a).

“Liability” or “Liabilities” shall mean any direct or indirect liabilities, Indebtedness, commitments, obligations, duties or responsibilities of any kind or nature, whether accrued or fixed, absolute or contingent, determined or determinable, matured or unmatured due or to become due, asserted or unasserted or known or unknown and regardless of whether it is accrued or required to be accrued or disclosed pursuant to GAAP.

“Licenses” shall mean all notifications, licenses, permits, franchises, certificates, approvals, exemptions, classifications, registrations and other similar documents and authorizations issued by any Governmental Body (including, without limitation, all provider agreements), and applications, amendments and modifications of any of the foregoing.

“Litigation” shall mean any litigation, claims, disputes, suits, actions, proceedings, inquiries, arbitration, mediation, or investigations.

“Losses” shall mean any and all losses, damages, awards, judgments, costs and expenses actually suffered or incurred by a Person; provided, that Losses shall not include any consequential, incidental or indirect damages, diminution in value damages, lost profits or punitive, special or exemplary damages, and in particular, without limitation, no “multiple of profits” or “multiple of cash flow” or similar valuation methodology shall be used in calculating the amount of any Losses.

“LTCH Operators” shall mean, collectively:

- (a) Advanced Care Hospital of Montana, Inc., a Delaware corporation;
- (b) Advanced Care Hospital of Northern Colorado, LLC, a Delaware limited liability company;
- (c) Advanced Care Hospital of Southern New Mexico, LLC, a Delaware limited liability company.
- (d) Laredo Specialty Hospital, LP, a Delaware limited partnership;
- (e) Mesquite Specialty Hospital, LP, a Delaware limited partnership;
- (f) Northern Idaho Advanced Care Hospital, Inc., a Delaware corporation;
- (g) Southwest Idaho Advanced Care Hospital, Inc., a Delaware corporation; and
- (h) Utah Valley Specialty Hospital, Inc., a Delaware corporation.

“Management Agreement” shall have the meaning set forth in the Recitals.

“Management Company” means Guiding Health Management Group, LLC, a Delaware limited liability company.

“Material Contracts” shall have the meaning as set forth in Section 4.12(b).

“Merger” shall have the meaning as set forth in the Recitals.

“Merger Consideration” shall mean an amount equal to \$100,000,000.

“MPT Operating Partnership” shall have the meaning as set forth in Section 5.4.

“MPT TRS Entity” shall have the meaning as set forth in the Preamble.

“MPT TRS Subsidiaries” means, collectively, (i) MPT of Johnstown Hospital, LLC, a Delaware limited liability company, (ii) MPT of Post Falls Hospital, LLC, a Delaware limited liability company, (iii) MPT of Boise Hospital, LLC, a Delaware limited liability company, (iv)

MPT of Billings Hospital, LLC, a Delaware limited liability company, (v) MPT of Greenwood Hospital, LLC, a Delaware limited liability company, (vi) MPT of Comal County Hospital, LLC, a Delaware limited liability company, (vii) MPT of Mesquite Hospital, LLC, a Delaware limited liability company, (viii) MPT of Laredo Hospital, LLC, a Delaware limited liability company, (ix) MPT of Provo Hospital, LLC, a Delaware limited liability company, and (x) MPT of Casper Hospital, LLC, a Delaware limited liability company.

“Mutual Release” shall have the meaning as set forth in Section 8.1(e).

“Net Real Estate Proceeds” shall mean all cash consideration received by the Company in connection with the transactions contemplated by the Real Property Asset Purchase Agreement, net of (i) the portion of such cash consideration used to satisfy any of the outstanding Indebtedness of the Company and/or any of its Subsidiaries and (ii) the portion of such cash consideration that is subject to distribution by Elkhorn LLC to Wyoming Medical Center, a Wyoming nonprofit corporation, the holder of a 25% membership interest in Elkhorn LLC.

“Net Working Capital” shall mean, with respect to the Company and its Subsidiaries, the consolidated current assets less the consolidated current liabilities, all determined in accordance with GAAP consistent with the accounting methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Company’s audited Financial Statements; provided, however, that notwithstanding the foregoing, Net Working Capital shall specifically exclude (i) Cash and Cash Equivalents, (ii) any Indebtedness (including any current portion thereof), (iii) the Company Transaction Expenses, (iv) any deferred Tax assets or deferred Tax liabilities of the Company, (v) any Tax liability of the Company or any Subsidiary attributable to the transactions contemplated by the Real Property Asset Purchase Agreement, and (vi) the Stockholder Notes. For the avoidance of doubt, for purposes of determining Net Working Capital, all items of loss, deduction or credit resulting from or attributable to all payments in respect of Options and Company Transaction Expenses as contemplated by this Agreement shall be allocated to the taxable period or portion thereof ending on or before the Closing Date.

“OFAC” shall have the meaning as set forth in Section 4.19(a).

“Option” shall have the meaning as set forth in Section 2.3(a).

“Option Consideration” shall have the meaning as set forth in Section 2.3(a).

“Optionholder” shall have the meaning as set forth in Section 2.3(a).

“Option Plan” shall have the meaning as set forth in Section 2.3(a).

“Option Shares” shall have the meaning as set forth in Section 2.3(a).

“Ordinary Course of Business” shall mean the ordinary course of business of the Company and its Subsidiaries consistent with past practice.

“Patriot Act” shall have the meaning as set forth in Section 4.19(a).

“Payment Schedule” shall have the meaning as set forth in Section 3.1(b).

“Payor Contract” shall have the meaning as set forth in Section 4.16(e).

“Per Common Share Closing Date Merger Consideration” shall mean an amount equal to the quotient obtained by dividing (i) the Closing Date Merger Consideration, plus the Aggregate Option Exercise Amount, plus the Aggregate Promissory Note Proceeds Amount, plus the Net Real Estate Proceeds, minus the Aggregate Preferred Preference Amount by (ii) the Fully Diluted Shares Outstanding.

“Per Common Share Escrow Consideration” shall mean an amount equal to the quotient obtained by dividing (i) the portion of the Escrow Fund that is from time to time distributable to the Common Equity Holders and Rollover Holders in accordance with the terms of the Escrow Agreement, by (ii) the Fully Diluted Shares Outstanding.

“Per Common Share Final Closing Adjustment Amount” shall mean, if the Final Closing Adjustment Amount is payable by Buyer to the Common Equity Holders and Rollover Holders pursuant to Section 2.5(b)(iv), an amount equal to the quotient obtained by dividing (i) the Final Closing Adjustment Amount by (ii) the Fully Diluted Shares Outstanding.

“Per Common Share Stockholders’ Representative Expense Amount” shall mean an amount equal to the quotient obtained by dividing (i) the portion of the Stockholders’ Representative Expense Amount that is from time to time distributable to the Common Equity Holders and Rollover Holders in accordance herewith (after giving effect to all expenditure or disbursements therefrom) by (ii) the Fully Diluted Shares Outstanding.

“Per Share Series A Preferred Merger Consideration” shall mean an amount equal to (i) \$10.00, plus (ii) the Series A Preferred Dividend Payment Per Share.

“Per Share Series B Preferred Merger Consideration” shall mean an amount equal to (i) \$10.00, plus (ii) the Series B Preferred Dividend Payment Per Share.

“Per Share Series C Preferred Merger Consideration” shall mean an amount equal to (i) \$10.00, plus (ii) the Series C Preferred Dividend Payment Per Share.

“Permitted Encumbrance” shall mean each of (a) Encumbrances for or arising from current taxes not yet due and payable or which are being contested in good faith by appropriate proceedings; (b) carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s or other similar Encumbrances arising in the Ordinary Course of Business; (c) Encumbrances on any property acquired or held by the Company or its Subsidiaries in the Ordinary Course of Business, securing indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such property; (d) Encumbrances securing capital lease obligations; (e) easements, covenants, conditions and other restrictions, in each such case, of public record; (f) matters set forth in the Title Commitments issued by the Title Company in accordance with the Real Property Asset Purchase Agreement; (g) matters disclosed on the Surveys delivered pursuant to the Real Property Asset Purchase Agreement; and (h) other matters, encumbrances and defects approved by the Buyer in writing.



“Person” shall mean an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity or group (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended).

“Personal Information” shall mean the information pertaining to an individual that is regulated or protected by one or more of the Information Privacy and Security Laws.

“Personal Property” shall have the meaning as set forth in Section 4.7(a).

“Personal Property Leases” shall have the meaning as set forth in Section 4.7(c).

“Physician” shall have the meaning as defined in the Stark Law.

“Pre-Closing Statement” shall have the meaning as set forth in Section 2.5(a).

“Pro Rata Portion” shall mean the quotient, expressed as a percentage, obtained by dividing (i) the aggregate number of Common Shares held by a Common Equity Holder or Rollover Holder who contributed Common Shares, each as of immediately prior to the Effective Time (assuming the exercise of all Options as of immediately prior to the Effective Time), by (ii) Fully Diluted Shares Outstanding.

“Real Estate Loan Agreement” shall have the meaning set forth in the Recitals.

“Real Estate Loan Documents” shall have the meaning set forth in the Recitals.

“Real Property” shall have the meaning ascribed thereto in the Real Property Asset Purchase Agreement.

“Real Property Asset Purchase Agreement” shall have the meaning as set forth in the Recitals.

“Real Property Master Lease Agreement” shall have the meaning as set forth in the Recitals.

“Real Property Master Sublease Agreement” shall have the meaning as set forth in the Recitals.

“Re-characterization Restrictions” shall have the meaning as set forth in Section 7.7(d).

“Representatives” shall mean the directors, officers, employees, Affiliates, agents, investment bankers, financial advisors, attorneys, accountants, advisors, brokers, finders, consultants or representatives of the Company, Buyer, MergerCo, the Stockholders’ Representative or any of their respective Subsidiaries, as the case may be.

“Review Period” shall have the meaning as set forth in Section 2.5(b)(i).

“Rollover Holder” shall have the meaning as set forth in Section 2.2.

“Rollover Shares” shall have the meaning as set forth in Section 2.2.

“Schedule Supplement” has the meaning set forth in Section 11.2.

“Schedules” shall have the meaning as set forth in Section 11.2.

“Series A Preference Amount” shall mean an amount equal to the product of (i) the Per Share Series A Preferred Merger Consideration, times (ii) the number of Series A Preferred Shares outstanding immediately prior to the Effective Time.

“Series A Preferred Dividend Payment Per Share” shall mean, with respect to a share of Series A Preferred Stock, the total accumulated amount of accrued and unpaid dividends from the date of original issuance of such share of Series A Preferred Stock until immediately prior to the Effective Time.

“Series B Preference Amount” shall mean an amount equal to the product of (i) the Per Share Series B Preferred Merger Consideration, times (ii) the number of Series B Preferred Shares outstanding immediately prior to the Effective Time.

“Series B Preferred Dividend Payment Per Share” shall mean, with respect to a share of Series B Preferred Stock, the total accumulated amount of accrued and unpaid dividends from the date of original issuance of such share of Series B Preferred Stock until immediately prior to the Effective Time.

“Series C Preference Amount” shall mean an amount equal to the product of (i) the Per Share Series C Preferred Merger Consideration, times (ii) the number of Series C Preferred Shares outstanding immediately prior to the Effective Time.

“Series C Preferred Dividend Payment Per Share” shall mean, with respect to a share of Series C Preferred Stock, the total accumulated amount of accrued and unpaid dividends from the date of original issuance of such share of Series C Preferred Stock until immediately prior to the Effective Time.

“Series A Preferred Share” shall mean a share of the Company’s Series A Preferred Stock.

“Series B Preferred Share” shall mean a share of the Company’s Series B Preferred Stock.

“Series C Preferred Share” shall mean a share of the Company’s Series C Preferred Stock.

“Series A Preferred Stock” shall mean the Company’s Series A Redeemable Preferred Stock, par value \$.01 per share.

“Series B Preferred Stock” shall mean the Company’s Series B Redeemable Preferred Stock, par value \$.01 per share.

“Series C Preferred Stock” shall mean the Company’s Series C Redeemable Preferred Stock, par value \$.01 per share.

“Stark Law” shall mean the Ethics in Patient Referrals Act of 1989, as amended, 42 U.S.C. 1395nn.

“Stockholder” shall mean a holder of Preferred Stock and/or Common Stock, as applicable.

“Stockholder Note” shall mean each promissory note issued to the Company in connection with a Stockholder’s acquisition of Common Stock (whether pursuant to the exercise of Options or otherwise).

“Stockholders’ Representative” shall mean FFC Partners III, L.P., a Delaware limited partnership, and its successors and assigns.

“Stockholders’ Representative Expense Amount” shall have the meaning as set forth in Section 3.2(d).

“Stockholder Written Consent” shall mean the written consent of holders of Company Shares entitled to vote on this Agreement in an amount necessary, under applicable law and in accordance with the DGCL and the Certificate of Incorporation and Bylaws, as applicable, approving and adopting this Agreement, the Merger, the Real Property Asset Purchase Agreement, and the other transactions contemplated hereby and thereby, and approving the appointment of the Stockholders’ Representative.

“Subsidiaries’ Approvals” shall have the meaning as set forth in Section 7.1(b).

“Subsidiary” shall mean with respect to any entity, that such entity shall be deemed to be a “Subsidiary” of another Person if such other Person directly or indirectly owns, beneficially or of record, (i) an amount of voting securities or other interests in such entity that is sufficient to enable such Person to elect at least a majority of the members of such entity’s board of directors or other governing body, or (ii) at least a majority of the outstanding equity interests of such entity.

“Surviving Corporation” shall have the meaning as set forth in Section 1.1.

“Surviving Corporation Bylaws” shall have the meaning as set forth in Section 1.3.

“Surviving Corporation Charter” shall have the meaning as set forth in Section 1.3.

“Target Net Working Capital” shall mean Twelve Million Eight Hundred Thousand and No/100 Dollars (\$12,800,000.00).

“Tax Returns” shall mean any report, return, document or other filing (including any additional or supporting material and any amendments or supplements) required to be supplied to any Governmental Body with respect to Taxes.

“Taxes” shall mean any and all taxes, charges, fees, levies or other assessments, imposed by any taxing authority, and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies or other assessments.

“Termination Date” shall have the meaning as set forth in Section 9.1(c).

“Transaction Bonuses” shall mean all bonuses payable to senior management of the Company or other compensation expenses that become due and payable, in each case in connection with or as a result of the transactions contemplated by this Agreement.

“Transaction Documents” shall mean this Agreement, the Real Property Asset Purchase Agreement, the Contribution Agreement, the Buyer Operating Agreement, the Acquisition Promissory Note, the Management Agreement, the Real Property Master Lease Agreement, the Real Property Master Sublease Agreement, the Real Estate Loan Documents, the Escrow Agreement, the Letters of Transmittal and each other agreement entered into or document delivered in connection with the transactions contemplated by any of the foregoing.

“Transfer Taxes” means any transfer, sales, use, value added, excise, stock transfer, stamp, recording, registration and any similar Taxes that become payable in connection with the Merger and other transactions contemplated hereby.

“Working Capital Adjustment Amount” shall mean that amount (expressed as a positive number) equal to the difference between (i) the Target Net Working Capital and (ii) the Estimated Net Working Capital.

## Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" and to the incorporation by reference in the following Registration Statements of Medical Properties Trust, Inc., MPT Operating Partnership, L.P. and/or MPT Finance Corporation and in the related Prospectus and Prospectus Supplements of our report dated April 8, 2011, with respect to the consolidated financial statements of Ernest Health, Inc. and Subsidiaries, as of December 31, 2010 and 2009, and for each of the two years in the period ended December 31, 2010, included in the Current Report on Form 8-K, dated January 31, 2012:

- Form S-4, File No. 333-177186-57, related to the exchange offer for 6.875% Senior Note due 2021 issued by MPT Operating Partnership, L.P. and MPT Finance Corporation;
- Form S-3ASR, File No. 333-164889, related to the unspecified indeterminate shelf registration of common stock and preferred stock of Medical Properties Trust, Inc.;
- Form S-3, File No. 333-152301, related to the resale of common stock of Medical Properties Trust, Inc.;
- Form S-3, File No. 333-141100, related to the resale of common stock of Medical Properties Trust, Inc.;
- Form S-3, File No. 333-121883, related to the resale of common stock of Medical Properties Trust, Inc.;
- Form S-8, File No. 333-161409, related to the Second Amended and Restated Medical Properties Trust, Inc.'s 2004 Equity Incentive Plan;
- Form S-8, File No. 333-130337, related to the Amended and Restated Medical Properties Trust, Inc.'s 2004 Equity Incentive Plan; and
- Form S-8, File No. 333-126574, related to the Amended and Restated Medical Properties Trust, Inc.'s 2004 Equity Incentive Plan.

/s/ Ernst & Young LLP

Phoenix, Arizona  
January 31, 2012



# Medical Properties Trust

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## MEDICAL PROPERTIES TRUST, INC. REPORTS FOURTH QUARTER AND 2011 RESULTS

### *Will Discuss Major Acquisition on Conference Call*

**Birmingham, AL –January 31, 2012** – Medical Properties Trust, Inc. (the “Company”) (NYSE: MPW) today announced financial and operating results for the quarter and year ended December 31, 2011. The Company also disclosed that it will describe a major new acquisition on its scheduled conference call.

### FOURTH QUARTER AND RECENT HIGHLIGHTS

- Reported fourth quarter Normalized Funds from Operations (“FFO”) and Adjusted FFO (“AFFO”) per diluted share of \$0.19 and \$0.19, respectively, in-line with Company guidance;
- Completed more than \$311 million of investments in 2011;
- Closed the \$75.0 million Hoboken University Medical Center transaction in November;
- Entered into a \$30.0 million agreement with an affiliate of a national hospital operating company in October to acquire, provide for development funding and lease three emergency room-focused acute care hospitals in the San Antonio market;
- Sold two hospitals to tenants for \$41.1 million, resulting in gains of \$5.4 million; and
- Paid 2011 fourth quarter cash dividend of \$0.20 per share on January 5, 2012.

### OPERATING RESULTS

The Company reported fourth quarter 2011 Normalized FFO and AFFO of \$20.5 million and \$21.2 million, respectively, or \$0.19 per diluted share, for both measures. Normalized FFO and AFFO for the fourth quarter of 2010 were \$18.2 million and \$18.6 million, respectively, or \$0.17 per diluted share for both measures.

The Company recorded gains of \$5.4 million during the quarter, \$0.05 per diluted share, resulting from the sale of the real estate of the Sherman Oaks Hospital in California to an

affiliate of Prime Healthcare Services and the sale of the real estate of the HealthSouth Rehabilitation Hospital of Morgantown to an affiliate of HealthSouth Corporation. As a result of the Sherman Oaks Hospital sale, the Company wrote-off approximately \$1.2 million of accrued straight-line rent. In addition, \$1.3 million of straight-line rent was written-off related to a change in operator in the Company's long-term acute care hospital in Dallas pursuant to an exchange of licenses between Vibra Healthcare and LifeCare Holdings.

Net income for the fourth quarter of 2011 was \$12.7 million, or \$0.11 per diluted share, compared to \$10.6 million, or \$0.09 per diluted share, for the same period in 2010.

For the year ended December 31, 2011, Normalized FFO and AFFO were \$78.0 million and \$80.0 million, or \$0.71 and \$0.72 per diluted share, respectively. For the corresponding period in 2010, Normalized FFO and AFFO were \$66.6 million and \$81.5 million, or \$0.66 and \$0.81 per diluted share, respectively. Net income for 2011 was \$26.5 million, or \$0.23 per diluted share, compared to \$22.9 million or \$0.22 per diluted share in 2010.

A reconciliation of Normalized FFO and AFFO to net income is included in the financial tables accompanying this press release.

## **DIVIDEND**

The Company's Board of Directors declared a quarterly dividend of \$0.20 per share of common stock, which was paid on January 5, 2012 to stockholders of record on December 8, 2011.

## **PORTFOLIO UPDATE AND FUTURE OUTLOOK**

As previously disclosed, in October, the Company entered into agreements with a joint venture of Emerus Holding, Inc. and Baptist Health System, to acquire, provide for development funding and lease three acute care hospitals for \$30.0 million in the rapidly growing suburban markets of San Antonio, Texas. The three facilities will be leased under a master lease structure with an initial term of 15 years and three five-year extension options.

On November 4, 2011, the Company completed the previously announced transaction for Hoboken University Medical Center ("HUMC") in Hoboken, New Jersey, a 350-bed acute care facility. The total investment for this transaction was \$75.0 million comprising \$50.0 million for the acquisition of the real estate, a secured working capital loan of up to \$20.0 million, and a \$5.0 million convertible note which provides the Company with the option to acquire up to 25% of the hospital operator. The lease with the tenant has an initial term of 15 years and contains six five-year extension options.

At December 31, 2011, the Company had total real estate investments of approximately \$1.5 billion comprised of 62 healthcare properties in 21 states leased to 20 hospital operating companies. Two of these investments are in the form of mortgage loans.

Based solely on the portfolio as of December 31, 2011, and assuming the completion of the Florence hospital currently under construction in Florence, Arizona, as previously announced, the Company estimates that annualized Normalized FFO per share would approximate \$0.72 to \$0.76 per diluted share.

This estimate does not include the effects, if any, of real estate operating costs, litigation costs, debt refinancing costs, acquisition costs, new interest rate hedging activities, write-offs of straight-line rent or other non-recurring or unplanned transactions; nor do they include earnings, if any, from the Company's profits interests or other investments in lessees. This estimate will change if the Company acquires additional assets, market interest rates change, debt is refinanced, new common shares are issued, additional debt is incurred, assets are sold, the Company's River Oaks property is leased, other operating expenses vary or existing leases do not perform in accordance with their terms.

#### TAX TREATMENT OF 2011 DIVIDENDS

In 2011, Medical Properties Trust, Inc. declared total dividends of \$0.80 per share and paid total dividends of \$0.80 per share as follows:

| Amount | Date Declared     | Date of Record     | Date Paid        | Allocable to 2011 |                    |                             |                   | Allocable to 2012 |
|--------|-------------------|--------------------|------------------|-------------------|--------------------|-----------------------------|-------------------|-------------------|
|        |                   |                    |                  | Ordinary Income   | Total Capital Gain | Unrecaptured Sec. 1250 Gain | Return of Capital |                   |
| \$0.20 | November 11, 2010 | December 9, 2010   | January 6, 2011  | \$ 0.075211       | \$ 0.007849        | \$ 0.007849                 | \$ 0.116940       | —                 |
| \$0.20 | February 17, 2011 | March 17, 2011     | April 14, 2011   | \$ 0.075211       | \$ 0.007849        | \$ 0.007849                 | \$ 0.116940       | —                 |
| \$0.20 | May 19, 2011      | June 16, 2011      | July 14, 2011    | \$ 0.075211       | \$ 0.007849        | \$ 0.007849                 | \$ 0.116940       | —                 |
| \$0.20 | August 19, 2011   | September 15, 2011 | October 13, 2011 | \$ 0.075211       | \$ 0.007849        | \$ 0.007849                 | \$ 0.116940       | —                 |
| \$0.20 | November 10, 2011 | December 8, 2011   | January 5, 2012  | —                 | —                  | —                           | —                 | \$ 0.200000       |
|        |                   |                    | TOTAL            | \$ 0.300844       | \$ 0.031396        | \$ 0.031396                 | \$ 0.467760       | \$ 0.200000       |

The fourth quarter dividend declared on November 10, 2011, will not be taxable to stockholders as part of their 2011 dividend income and all will be allocable to 2012. Accordingly, dividends totaling \$0.300844 will be reported as ordinary dividends, and \$0.031396 will be reported as total capital gain, \$0.031396 of which is unrecaptured Sec. 1250 gain, on form 1099-Div for 2011. Also, \$0.467760 of dividends paid in 2011 will be treated as a return of capital.

#### CONFERENCE CALL AND WEBCAST

The Company has scheduled a conference call and webcast on Tuesday, January 31, 2012 at 4:30 p.m. Eastern Time to present the Company's financial and operating results for the



quarter and year ended December 31, 2011. The dial-in telephone numbers for the conference call 800-573-4842 (U.S.) and 617-224-4327 (International); using passcode 18361530. The conference call will also be available via webcast in the Investor Relations' section of the Company's website, [www.medicalpropiertiestrust.com](http://www.medicalpropiertiestrust.com).

A telephone and webcast replay of the call will be available from shortly after the completion through February 14, 2012. Telephone numbers for the replay are 888-286-8010 and 617-801-6888 for U.S. and International callers, respectively. The replay passcode is 57805063.

The Company's supplemental information package for the current period will also be available on the Company's website under the "Investor Relations" section.

#### **About Medical Properties Trust, Inc.**

Medical Properties Trust, Inc. is a Birmingham, Alabama based self-advised real estate investment trust formed to capitalize on the changing trends in healthcare delivery by acquiring and developing net-leased healthcare facilities. These facilities include inpatient rehabilitation hospitals, long-term acute care hospitals, regional acute care hospitals, ambulatory surgery centers and other single-discipline healthcare facilities, such as heart hospitals and orthopedic hospitals. For more information, please visit the Company's website at [www.medicalpropiertiestrust.com](http://www.medicalpropiertiestrust.com).

*The statements in this press release that are forward looking are based on current expectations and actual results or future events may differ materially. Words such as "expects," "believes," "anticipates," "intends," "will," "should" and variations of such words and similar expressions are intended to identify such forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results of the Company or future events to differ materially from those expressed in or underlying such forward-looking statements, including without limitation: the Company's ability to complete the acquisition announcement on the anticipated time schedule or terms or at all; the Company's ability to raise funds for such acquisition; the capacity of the Company's tenants to meet the terms of their agreements; annual Normalized FFO per share; the amount of acquisitions of healthcare real estate, if any; the repayment of debt arrangements; statements concerning the additional income to the Company as a result of ownership interests in certain hospital operations and the timing of such income; the restructuring of the Company's investments in non-revenue producing properties; the payment of future dividends, if any; completion of additional debt arrangements; and additional investments; national and economic, business, real estate and other market conditions; the competitive environment in which the Company operates; the execution of the Company's business plan; financing risks; the Company's ability to maintain its status as a REIT for federal income tax purposes; acquisition and development risks; potential environmental and other liabilities; and other factors affecting the real estate industry generally or healthcare real estate in particular. For further discussion of the factors that could affect outcomes, please refer to the "Risk factors" section of the Company's Annual Report on Form 10-K for the year ended December 31, 2010, as amended, and as updated by the Company's subsequently filed Quarterly Reports on Form 10-Q and other SEC filings. Except as*

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*otherwise required by the federal securities laws, the Company undertakes no obligation to update the information in this press release.*

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**MEDICAL PROPERTIES TRUST, INC. AND SUBSIDIARIES**

Consolidated Balance Sheets

|  | December 31, 2011<br>(Unaudited) | December 31, 2010<br>(A)      |
|--|----------------------------------|-------------------------------|
| <b>Assets</b>  |                                  |                               |
| Real estate assets   |                                  |                               |
| Land, buildings and improvements, and intangible lease assets  | \$1,275,398,732                  | \$ 990,548,549                |
| Real estate held for sale  | —                                | 37,513,429                    |
| Mortgage loans   | 165,000,000                      | 165,000,000                   |
| Gross investment in real estate assets   | 1,440,398,732                    | 1,193,061,978                 |
| Accumulated depreciation and amortization  | (103,737,665)                    | (71,787,046)                  |
| Net investment in real estate assets   | 1,336,661,067                    | 1,121,274,932                 |
| Cash and cash equivalents  | 102,725,906                      | 98,408,509                    |
| Interest and rent receivable   | 29,862,106                       | 26,175,635                    |
| Straight-line rent receivable  | 33,993,032                       | 28,911,861                    |
| Other loans  | 74,839,459                       | 50,984,904                    |
| Other assets   | 43,792,149                       | 23,057,868                    |
| <b>Total Assets</b>  | <b><u>\$1,621,873,719</u></b>    | <b><u>\$1,348,813,709</u></b> |
| <b>Liabilities and Equity</b>  |                                  |                               |
| Liabilities  |                                  |                               |
| Debt, net  | \$ 689,848,981                   | \$ 369,969,691                |
| Accounts payable and accrued expenses  | 51,124,723                       | 35,974,314                    |
| Deferred revenue   | 23,307,074                       | 23,136,926                    |
| Lease deposits and other obligations to tenants  | 28,777,787                       | 20,156,716                    |
| Total liabilities  | 793,058,565                      | 449,237,647                   |
| Equity   |                                  |                               |
| Preferred stock, \$0.001 par value. Authorized 10,000,000 shares; no shares outstanding  | —                                | —                             |
| Common stock, \$0.001 par value. Authorized 150,000,000 shares; issued and outstanding - 110,786,183 shares at December 31, 2011 and 110,225,052 shares at December 31, 2010 | 110,786                          | 110,225                       |
| Additional paid in capital   | 1,055,255,776                    | 1,051,785,240                 |
| Distributions in excess of net income  | (214,058,258)                    | (148,530,467)                 |
| Accumulated other comprehensive income (loss)  | (12,230,807)                     | (3,640,751)                   |
| Treasury shares, at cost   | (262,343)                        | (262,343)                     |
| Total Medical Properties Trust, Inc. stockholders' equity  | 828,815,154                      | 899,461,904                   |
| Non-controlling interests  | —                                | 114,158                       |
| Total Equity   | 828,815,154                      | 899,576,062                   |
| <b>Total Liabilities and Equity</b>  | <b><u>\$1,621,873,719</u></b>    | <b><u>\$1,348,813,709</u></b> |

(A) Financials have been derived from the prior year audited financials, however, we have classified the real estate (including accumulated depreciation) of certain properties sold in 2011 to Real Estate Held for Sale.

**MEDICAL PROPERTIES TRUST, INC. AND SUBSIDIARIES**

Consolidated Statements of Income

|   | For the Three Months Ended       |                                      | For the Twelve Months Ended      |                          |
|---|----------------------------------|--------------------------------------|----------------------------------|--------------------------|
|   | December 31, 2011<br>(unaudited) | December 31, 2010<br>(unaudited) (A) | December 31, 2011<br>(unaudited) | December 31, 2010<br>(A) |
| <b>Revenues</b>   |                                  |                                      |                                  |                          |
| Rent billed   | \$ 30,851,520                    | \$ 22,713,521                        | \$ 116,034,801                   | \$ 88,487,093            |
| Straight-line rent  | 260,670                          | 1,569,958                            | 5,794,013                        | 1,933,035                |
| Interest and fee income                                   | 5,690,028                        | 6,393,205                            | 21,490,103                       | 26,776,984               |
| <b>Total revenues</b>                                     | <b>36,802,218</b>                | <b>30,676,684</b>                    | <b>143,318,917</b>               | <b>117,197,112</b>       |
| <b>Expenses</b>   |                                  |                                      |                                  |                          |
| Real estate depreciation and amortization                 | 9,149,641                        | 6,062,701                            | 32,900,509                       | 22,830,002               |
| Impairment charge   | —                                | —                                    | 564,005                          | 12,000,000               |
| Property-related  | 468,518                          | 2,342,199                            | 1,089,709                        | 4,398,455                |
| Acquisition expenses                                      | 998,530                          | 712,858                              | 4,184,463                        | 2,026,490                |
| General and administrative                                | 6,790,296                        | 5,975,806                            | 27,219,303                       | 26,508,471               |
| <b>Total operating expenses</b>                           | <b>17,406,985</b>                | <b>15,093,564</b>                    | <b>65,957,989</b>                | <b>67,763,418</b>        |
| <b>Operating income</b>                                   | <b>19,395,233</b>                | <b>15,583,120</b>                    | <b>77,360,928</b>                | <b>49,433,694</b>        |
| <b>Other income (expense)</b>                             |                                  |                                      |                                  |                          |
| Interest and other income                                 | 38,741                           | 29,788                               | 96,194                           | 1,518,285                |
| Debt refinancing costs                                    | —                                | (159,353)                            | (14,214,036)                     | (6,715,638)              |
| Interest expense  | (11,351,762)                     | (7,886,772)                          | (43,811,906)                     | (33,987,988)             |
| <b>Net other expense</b>                                  | <b>(11,313,021)</b>              | <b>(8,016,337)</b>                   | <b>(57,929,748)</b>              | <b>(39,185,341)</b>      |
| <b>Income from continuing operations</b>                  | <b>8,082,212</b>                 | <b>7,566,783</b>                     | <b>19,431,180</b>                | <b>10,248,353</b>        |
| Income from discontinued operations                       | 4,657,541                        | 3,063,433                            | 7,282,924                        | 12,764,595               |
| <b>Net income</b>   | <b>12,739,753</b>                | <b>10,630,216</b>                    | <b>26,714,104</b>                | <b>23,012,948</b>        |
| Net income attributable to non-controlling interests      | (47,676)                         | (37,033)                             | (178,212)                        | (99,717)                 |
| <b>Net income attributable to MPT common stockholders</b> | <b>\$ 12,692,077</b>             | <b>\$ 10,593,183</b>                 | <b>\$ 26,535,892</b>             | <b>\$ 22,913,231</b>     |
| <b>Earnings per common share - basic and diluted:</b>     |                                  |                                      |                                  |                          |
| <b>Income from continuing operations</b>                  | <b>\$ 0.07</b>                   | <b>\$ 0.06</b>                       | <b>\$ 0.16</b>                   | <b>\$ 0.09</b>           |
| <b>Income from discontinued operations</b>                | <b>0.04</b>                      | <b>0.03</b>                          | <b>0.07</b>                      | <b>0.13</b>              |
| <b>Net income attributable to MPT common stockholders</b> | <b>\$ 0.11</b>                   | <b>\$ 0.09</b>                       | <b>\$ 0.23</b>                   | <b>\$ 0.22</b>           |
| <b>Dividends declared per common share</b>                | <b>\$ 0.20</b>                   | <b>\$ 0.20</b>                       | <b>\$ 0.80</b>                   | <b>\$ 0.80</b>           |
| <b>Weighted average shares outstanding - basic</b>        | <b>110,788,423</b>               | <b>110,103,292</b>                   | <b>110,622,820</b>               | <b>100,705,795</b>       |
| <b>Weighted average shares outstanding - diluted</b>      | <b>110,788,423</b>               | <b>110,108,250</b>                   | <b>110,628,944</b>               | <b>100,707,713</b>       |

(A) Financials have been restated to reclass the operating results of certain properties sold in 2011 to discontinued operations.

**MEDICAL PROPERTIES TRUST, INC. AND SUBSIDIARIES**  
**Reconciliation of Net Income to Funds From Operations**  
(Unaudited)

|  | For the Three Months Ended |                          | For the Twelve Months Ended |                          |
|--|----------------------------|--------------------------|-----------------------------|--------------------------|
|  | December 31, 2011          | December 31, 2010<br>(A) | December 31, 2011           | December 31, 2010<br>(A) |
| <b>FFO information:</b>                                      |                            |                          |                             |                          |
| Net income attributable to MPT common stockholders           | \$ 12,692,077              | \$ 10,593,183            | \$ 26,535,892               | \$ 22,913,231            |
| Participating securities' share in earnings                  | (229,415)                  | (259,595)                | (1,089,841)                 | (1,254,083)              |
| Net income, less participating securities' share in earnings | \$ 12,462,662              | \$ 10,333,588            | \$ 25,446,051               | \$ 21,659,148            |
| Depreciation and amortization                                |                            |                          |                             |                          |
| Continuing operations  | 9,149,641                  | 6,062,701                | 32,900,509                  | 22,830,002               |
| Discontinued operations                                      | 881,611                    | 450,181                  | 1,808,775                   | 3,008,114                |
| Gain on sale of real estate                                  | (5,426,067)                | (2,894,547)              | (5,431,391)                 | (10,566,279)             |
| Real estate impairment charge                                | —                          | —                        | 564,005                     | —                        |
| Funds from operations  | \$ 17,067,847              | \$ 13,951,923            | \$ 55,287,949               | \$ 36,930,985            |
| Write-off of straight line rent                              | 2,470,436                  | 998,822                  | 2,470,436                   | 3,693,871                |
| Acquisition costs  | 998,530                    | 712,858                  | 4,184,463                   | 2,026,490                |
| Debt refinancing costs                                       | —                          | 159,353                  | 14,214,036                  | 6,715,638                |
| Executive severance  | —                          | —                        | —                           | 2,830,221                |
| Loan impairment charge                                       | —                          | —                        | —                           | 12,000,000               |
| Write-off of other receivables                               | —                          | 2,400,000                | 1,845,966                   | 2,400,000                |
| Normalized funds from operations                             | \$ 20,536,813              | \$ 18,222,956            | \$ 78,002,850               | \$ 66,597,205            |
| Share-based compensation                                     | 1,690,793                  | 1,365,890                | 6,983,471                   | 5,695,239                |
| Debt costs amortization                                      | 766,608                    | 989,934                  | 3,537,876                   | 4,722,027                |
| Additional rent received in advance (B)                      | (300,000)                  | (300,000)                | (1,200,000)                 | 9,400,000                |
| Straight-line rent revenue                                   | (1,536,330)                | (1,645,838)              | (7,353,316)                 | (4,931,602)              |
| Adjusted funds from operations                               | <u>\$ 21,157,884</u>       | <u>\$ 18,632,942</u>     | <u>\$ 79,970,881</u>        | <u>\$ 81,482,869</u>     |
| <b>Per diluted share data:</b>                               |                            |                          |                             |                          |
| Net income, less participating securities' share in earnings | \$ 0.11                    | \$ 0.09                  | \$ 0.23                     | \$ 0.22                  |
| Depreciation and amortization                                |                            |                          |                             |                          |
| Continuing operations  | 0.08                       | 0.06                     | 0.30                        | 0.22                     |
| Discontinued operations                                      | 0.01                       | —                        | 0.02                        | 0.03                     |
| Gain on sale of real estate                                  | (0.05)                     | (0.02)                   | (0.05)                      | (0.10)                   |
| Real estate impairment charge                                | —                          | —                        | —                           | —                        |
| Funds from operations  | \$ 0.15                    | \$ 0.13                  | \$ 0.50                     | \$ 0.37                  |
| Write-off of straight line rent                              | 0.03                       | 0.01                     | 0.02                        | 0.03                     |
| Acquisition costs  | 0.01                       | 0.01                     | 0.04                        | 0.02                     |
| Debt refinancing costs                                       | —                          | —                        | 0.13                        | 0.07                     |
| Executive severance  | —                          | —                        | —                           | 0.03                     |
| Loan impairment charge                                       | —                          | —                        | —                           | 0.12                     |
| Write-off of other receivables                               | —                          | 0.02                     | 0.02                        | 0.02                     |
| Normalized funds from operations                             | <u>\$ 0.19</u>             | <u>\$ 0.17</u>           | <u>\$ 0.71</u>              | <u>\$ 0.66</u>           |
| Share-based compensation                                     | 0.01                       | 0.01                     | 0.06                        | 0.06                     |
| Debt costs amortization                                      | 0.01                       | —                        | 0.03                        | 0.05                     |
| Additional rent received in advance (B)                      | —                          | —                        | (0.01)                      | 0.09                     |
| Straight-line rent revenue                                   | (0.02)                     | (0.01)                   | (0.07)                      | (0.05)                   |
| Adjusted funds from operations                               | <u>\$ 0.19</u>             | <u>\$ 0.17</u>           | <u>\$ 0.72</u>              | <u>\$ 0.81</u>           |

(A) Financials have been restated to reclass the operating results of certain properties sold in 2011 to discontinued operations.

(B) Represents additional rent from one tenant in advance of when we can recognize as revenue for accounting purposes.

This additional rent is being recorded to revenue on a straight-line basis over the lease life.

Funds from operations, or FFO, represents net income (computed in accordance with GAAP), excluding gains (or losses) from sales of property, plus real estate related depreciation and amortization (excluding amortization of loan origination costs) and after adjustments for unconsolidated partnerships and joint ventures. Management considers funds from operations a useful additional measure of performance for an equity REIT because it facilitates an understanding of the operating performance of our properties without giving effect to real estate depreciation and amortization, which assumes that the value of real estate assets diminishes predictably over time. Since real estate values have historically risen or fallen with market conditions, we believe that funds from operations provides a meaningful supplemental indication of our performance. We compute funds from operations in accordance with standards established by the Board of Governors of the National Association of Real Estate Investment Trusts, or NAREIT, in its March 1995 White Paper (as amended in November 1999 and April 2002), which may differ from the methodology for calculating funds from operations utilized by other equity REITs and, accordingly, may not be comparable to such other REITs. FFO does not represent amounts available for management's discretionary use because of needed capital replacement or expansion, debt service obligations, or other commitments and uncertainties, nor is it indicative of funds available to fund our cash needs, including our ability to make distributions. Funds from operations should not be considered as an alternative to net income (loss) (computed in accordance with GAAP) as indicators of our financial performance or to cash flow from operating activities (computed in accordance with GAAP) as an indicator of our liquidity.

We calculate adjusted funds from operations, or AFFO, by subtracting from or adding to normalized FFO (i) straight-line rent revenue, (ii) non-cash share-based compensation expense, and (iii) amortization of deferred financing costs. AFFO is an operating measurement that we use to analyze our results of operations based on the receipt, rather than the accrual, of our rental revenue and on certain other adjustments. We believe that this is an important measurement because our leases generally have significant contractual escalations of base rents and therefore result in recognition of rental income that is not collected until future periods, and costs that are deferred or are non-cash charges. Our calculation of AFFO may not be comparable to AFFO or similarly titled measures reported by other

REITs. AFFO should not be considered as an alternative to net income (calculated pursuant to GAAP) as an indicator of our results of operations or to cash flow from operating activities (calculated pursuant to GAAP) as an indicator of our liquidity.



INVESTING IN THE FUTURE OF HEALTHCARE.



Medical Properties Trust

FOURTH QUARTER 2011

SUPPLEMENTAL INFORMATION

SUPPLEMENTAL INFORMATION



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The information in this supplemental information package should be read in conjunction with the Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other information filed with the Securities and Exchange Commission. You can access these documents free of charge at [www.sec.gov](http://www.sec.gov) and from the Company's website at [www.medicalpropertystrust.com](http://www.medicalpropertystrust.com). The information contained on the Company's website is not incorporated by reference into, and should not be considered a part of, this supplemental package.

**For more information, please contact Charles Lambert, Finance Director at (205) 397-8897.**







## Company Information

**Headquarters:** Medical Properties Trust, Inc.  
1000 Urban Center Drive, Suite 501  
Birmingham, AL 35242  
(205) 969-3755  
Fax: (205) 969-3756

**Website:** [www.medicalproptiestrust.com](http://www.medicalproptiestrust.com)

**Executive Officers:** Edward K. Aldag, Jr., Chairman, President and Chief Executive Officer  
R. Steven Hamner, Executive Vice President and Chief Financial Officer  
Emmett E. McLean, Executive Vice President, Chief Operating Officer, Secretary and Treasurer

**Investor Relations:** Medical Properties Trust, Inc.  
1000 Urban Center Drive, Suite 501  
Birmingham, AL 35242  
Attn: Charles Lambert  
(205) 397-8897  
[clambert@medicalproptiestrust.com](mailto:clambert@medicalproptiestrust.com)

**MPW**  
**LISTED**  
**NYSE**

**MEDICAL PROPERTIES TRUST, INC. AND SUBSIDIARIES**  
**Reconciliation of Net Income to Funds From Operations**  
**(Unaudited)**

|  | For the Three Months Ended |                          | For the Twelve Months Ended |                          |
|--|----------------------------|--------------------------|-----------------------------|--------------------------|
|  | December 31, 2011          | December 31, 2010<br>(A) | December 31, 2011           | December 31, 2010<br>(A) |
| <b>FFO information:</b>                                      |                            |                          |                             |                          |
| Net income attributable to MPT common stockholders           | \$ 12,692,077              | \$ 10,593,183            | \$ 26,535,892               | \$ 22,913,231            |
| Participating securities' share in earnings                  | (229,415)                  | (259,595)                | (1,089,841)                 | (1,254,083)              |
| Net income, less participating securities' share in earnings | <u>\$ 12,462,662</u>       | <u>\$ 10,333,588</u>     | <u>\$ 25,446,051</u>        | <u>\$ 21,659,148</u>     |
| Depreciation and amortization                                |                            |                          |                             |                          |
| Continuing operations  | 9,149,641                  | 6,062,701                | 32,900,509                  | 22,830,002               |
| Discontinued operations                                      | 881,611                    | 450,181                  | 1,808,775                   | 3,008,114                |
| Gain on sale of real estate                                  | (5,426,067)                | (2,894,547)              | (5,431,391)                 | (10,566,279)             |
| Real estate impairment charge                                | —                          | —                        | 564,005                     | —                        |
| Funds from operations  | <u>\$ 17,067,847</u>       | <u>\$ 13,951,923</u>     | <u>\$ 55,287,949</u>        | <u>\$ 36,930,985</u>     |
| Write-off of straight line rent                              | 2,470,436                  | 998,822                  | 2,470,436                   | 3,693,871                |
| Acquisition costs  | 998,530                    | 712,858                  | 4,184,463                   | 2,026,490                |
| Debt refinancing costs                                       | —                          | 159,353                  | 14,214,036                  | 6,715,638                |
| Executive severance  | —                          | —                        | —                           | 2,830,221                |
| Loan impairment charge                                       | —                          | —                        | —                           | 12,000,000               |
| Write-off of other receivables                               | —                          | 2,400,000                | 1,845,966                   | 2,400,000                |
| Normalized funds from operations                             | <u>\$ 20,536,813</u>       | <u>\$ 18,222,956</u>     | <u>\$ 78,002,850</u>        | <u>\$ 66,597,205</u>     |
| Share-based compensation                                     | 1,690,793                  | 1,365,890                | 6,983,471                   | 5,695,239                |
| Debt costs amortization                                      | 766,608                    | 989,934                  | 3,537,876                   | 4,722,027                |
| Additional rent received in advance (B)                      | (300,000)                  | (300,000)                | (1,200,000)                 | 9,400,000                |
| Straight-line rent revenue                                   | (1,536,330)                | (1,645,838)              | (7,353,316)                 | (4,931,602)              |
| Adjusted funds from operations                               | <u>\$ 21,157,884</u>       | <u>\$ 18,632,942</u>     | <u>\$ 79,970,881</u>        | <u>\$ 81,482,869</u>     |
| <b>Per diluted share data:</b>                               |                            |                          |                             |                          |
| Net income, less participating securities' share in earnings | \$ 0.11                    | \$ 0.09                  | \$ 0.23                     | \$ 0.22                  |
| Depreciation and amortization                                |                            |                          |                             |                          |
| Continuing operations  | 0.08                       | 0.06                     | 0.30                        | 0.22                     |
| Discontinued operations                                      | 0.01                       | —                        | 0.02                        | 0.03                     |
| Gain on sale of real estate                                  | (0.05)                     | (0.02)                   | (0.05)                      | (0.10)                   |
| Real estate impairment charge                                | —                          | —                        | —                           | —                        |
| Funds from operations  | <u>\$ 0.15</u>             | <u>\$ 0.13</u>           | <u>\$ 0.50</u>              | <u>\$ 0.37</u>           |
| Write-off of straight line rent                              | 0.03                       | 0.01                     | 0.02                        | 0.03                     |
| Acquisition costs  | 0.01                       | 0.01                     | 0.04                        | 0.02                     |
| Debt refinancing costs                                       | —                          | —                        | 0.13                        | 0.07                     |
| Executive severance  | —                          | —                        | —                           | 0.03                     |
| Loan impairment charge                                       | —                          | —                        | —                           | 0.12                     |
| Write-off of other receivables                               | —                          | 0.02                     | 0.02                        | 0.02                     |
| Normalized funds from operations                             | <u>\$ 0.19</u>             | <u>\$ 0.17</u>           | <u>\$ 0.71</u>              | <u>\$ 0.66</u>           |
| Share-based compensation                                     | 0.01                       | 0.01                     | 0.06                        | 0.06                     |
| Debt costs amortization                                      | 0.01                       | —                        | 0.03                        | 0.05                     |
| Additional rent received in advance (B)                      | —                          | —                        | (0.01)                      | 0.09                     |
| Straight-line rent revenue                                   | (0.02)                     | (0.01)                   | (0.07)                      | (0.05)                   |
| Adjusted funds from operations                               | <u>\$ 0.19</u>             | <u>\$ 0.17</u>           | <u>\$ 0.72</u>              | <u>\$ 0.81</u>           |

(A) Financials have been restated to reclass the operating results of certain properties sold in 2011 to discontinued operations.

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Funds from operations, or FFO, represents net income (computed in accordance with GAAP), excluding gains (or losses) from sales of property, plus real estate related depreciation and amortization (excluding amortization of loan origination costs) and after adjustments for unconsolidated partnerships and joint ventures. Management considers funds from operations a useful additional measure of performance for an equity REIT because it facilitates an understanding of the operating performance of our properties without giving effect to real estate depreciation and amortization, which assumes that the value of real estate assets diminishes predictably over time. Since real estate values have historically risen or fallen with market conditions, we believe that funds from operations provides a meaningful supplemental indication of our performance. We compute funds from operations in accordance with standards established by the Board of Governors of the National Association of Real Estate Investment Trusts, or NAREIT, in its March 1995 White Paper (as amended in November 1999 and April 2002), which may differ from the methodology for calculating funds from operations utilized by other equity REITs and, accordingly, may not be comparable to such other REITs. FFO does not represent amounts available for management's discretionary use because of needed capital replacement or expansion, debt service obligations, or other commitments and uncertainties, nor is it indicative of funds available to fund our cash needs, including our ability to make distributions. Funds from operations should not be considered as an alternative to net income (loss) (computed in accordance with GAAP) as indicators of our financial performance or to cash flow from operating activities (computed in accordance with GAAP) as an indicator of our liquidity.

We calculate adjusted funds from operations, or AFFO, by subtracting from or adding to normalized FFO (i) straight-line rent revenue, (ii) non-cash share-based compensation expense, and (iii) amortization of deferred financing costs. AFFO is an operating measurement that we use to analyze our results of operations based on the receipt, rather than the accrual, of our rental revenue and on certain other adjustments. We believe that this is an important measurement because our leases generally have significant contractual escalations of base rents and therefore result in recognition of rental income that is not collected until future periods, and costs that are deferred or are non-cash charges. Our calculation of AFFO may not be comparable to AFFO or similarly titled measures reported by other

REITs. AFFO should not be considered as an alternative to net income (calculated pursuant to GAAP) as an indicator of our results of operations or to cash flow from operating activities (calculated pursuant to GAAP) as an indicator of our liquidity.



**INVESTMENT AND REVENUE BY ASSET TYPE, OPERATOR AND BY STATE**

**Investments and Revenue by Asset Type - As of December 31, 2011**

|                                | <u>Total Invested<br/>Assets</u> | <u>Percentage<br/>of Total Assets</u> | <u>Total<br/>Revenue</u> | <u>Percentage<br/>of Total Revenue</u> |
|--------------------------------|----------------------------------|---------------------------------------|--------------------------|--|
| General Acute Care Hospitals   | \$ 948,354,481                   | 58.5%                                 | \$ 87,922,121            | 61.3%                                  |
| Long-Term Acute Care Hospitals | 343,882,959                      | 21.2%                                 | 35,615,274               | 24.9%                                  |
| Medical Office Buildings       | 15,795,436                       | 1.0%                                  | 1,731,018                | 1.2%                                   |
| Rehabilitation Hospitals       | 160,678,150                      | 9.9%                                  | 16,389,152               | 11.4%                                  |
| Wellness Centers               | 15,624,817                       | 1.0%                                  | 1,661,352                | 1.2%                                   |
| Net other assets               | 137,537,876                      | 8.4%                                  | —                        | —                                      |
| <b>Total</b>                   | <b>\$1,621,873,719</b>           | <b>100.0%</b>                         | <b>\$143,318,917</b>     | <b>100.0%</b>                          |

**Investments and Revenue by Operator - As of December 31, 2011**

|                          | <u>Total Invested<br/>Assets</u> | <u>Percentage<br/>of Total Assets</u> | <u>Total<br/>Revenue</u> | <u>Percentage<br/>of Total Revenue*</u> |
|--------------------------|----------------------------------|---------------------------------------|--------------------------|---|
| Prime Healthcare         | \$ 410,081,528                   | 25.3%                                 | \$ 43,147,291            | 30.1%                                   |
| IJKG/HUMC                | 128,050,000                      | 7.9%                                  | 7,415,933                | 5.2%                                    |
| Vibra Healthcare, LLC    | 127,447,241                      | 7.9%                                  | 17,183,091               | 12.0%                                   |
| Kindred Healthcare, Inc. | 83,434,567                       | 5.1%                                  | 8,243,418                | 5.8%                                    |
| HealthSouth              | 75,967,571                       | 4.7%                                  | 7,378,298                | 5.1%                                    |
| 15 other operators       | 659,354,936                      | 40.7%                                 | 59,950,886               | 41.8%                                   |
| Net other assets         | 137,537,876                      | 8.4%                                  | —                        | —                                       |
| <b>Total</b>             | <b>\$1,621,873,719</b>           | <b>100.0%</b>                         | <b>\$143,318,917</b>     | <b>100.0%</b>                           |

\* On an annual run-rate basis, Prime Healthcare represents 28.3% of total revenue.

**Investment and Revenue by State - As of December 31, 2011**

|                  | <u>Total Invested<br/>Assets</u> | <u>Percentage<br/>of Total Assets</u> | <u>Total<br/>Revenue</u> | <u>Percentage<br/>of Total Revenue</u> |
|------------------|----------------------------------|---------------------------------------|--------------------------|--|
| California       | \$ 435,192,028                   | 26.8%                                 | \$ 46,760,229            | 32.6%                                  |
| Texas            | 368,447,897                      | 22.7%                                 | 34,145,590               | 23.8%                                  |
| New Jersey       | 128,050,000                      | 7.9%                                  | 7,415,933                | 5.2%                                   |
| Utah             | 66,355,303                       | 4.1%                                  | 6,600,064                | 4.6%                                   |
| Missouri         | 60,921,029                       | 3.8%                                  | 5,969,714                | 4.2%                                   |
| 16 other states  | 425,369,586                      | 26.2%                                 | 42,427,387               | 29.6%                                  |
| Net other assets | 137,537,876                      | 8.5%                                  | —                        | —                                      |
| <b>Total</b>     | <b>\$1,621,873,719</b>           | <b>100.0%</b>                         | <b>\$143,318,917</b>     | <b>100.0%</b>                          |



**LEASE MATURITY SCHEDULE - AS OF December 31, 2011**

| <u>Total portfolio (1)</u> | <u>Total leases</u> | <u>Base rent (2)</u> | <u>Percent of total<br/>base rent</u> |
|----------------------------|---------------------|----------------------|---------------------------------------|
| 2012                       | 3                   | \$ 2,810,220         | 2.3%                                  |
| 2013                       | —                   | —                    | 0.0%                                  |
| 2014                       | 2                   | 4,770,708            | 4.0%                                  |
| 2015                       | 2                   | 3,940,954            | 3.3%                                  |
| 2016                       | 1                   | 2,250,000            | 1.9%                                  |
| 2017                       | 1                   | 1,861,601            | 1.5%                                  |
| 2018                       | 6                   | 12,901,435           | 10.7%                                 |
| 2019                       | 8                   | 9,692,443            | 8.1%                                  |
| 2020                       | 1                   | 1,019,335            | 0.8%                                  |
| 2021                       | 9                   | 25,610,619           | 21.3%                                 |
| Thereafter                 | 22                  | 55,420,128           | 46.1%                                 |
|                            | <u>55</u>           | <u>\$120,277,443</u> | <u>100%</u>                           |

- (1) Excludes our River Oaks facility, as it is currently under re-development and not subject to lease and our Florence and Emerus facilities that are under development.
- (2) The most recent monthly base rent annualized. Base rent does not include tenant recoveries, additional rents and other lease-related adjustments to revenue (i.e., straight-line rents and deferred revenues).



**DEBT SUMMARY AS OF December 31, 2011**

| <u>Instrument</u>                      | <u>Rate Type</u> | <u>Rate</u>          | <u>Balance</u>       | <u>2012</u>         | <u>2013</u>         | <u>2014</u>      | <u>2015</u>         | <u>2016</u>          | <u>Thereafter</u>    |
|--|------------------|----------------------|----------------------|---------------------|---------------------|------------------|---------------------|----------------------|----------------------|
| 6.875% Notes Due 2021                  | Fixed            | 6.88%                | \$450,000,000        | \$ —                | \$ —                | \$ —             | \$ —                | \$ —                 | \$450,000,000        |
| BB&T Revolver                          | Variable         | 1.74%                | 39,600,000           | 39,600,000          | —                   | —                | —                   | —                    | —                    |
| 2011 Credit Facility Revolver          | Variable         | 3.10% <sup>(1)</sup> | 50,000,000           | —                   | —                   | —                | 50,000,000          | —                    | —                    |
| 2016 Unsecured Notes                   | Fixed            | 5.59% <sup>(2)</sup> | 125,000,000          | —                   | —                   | —                | —                   | 125,000,000          | —                    |
| 2008 Exchangeable Notes                | Fixed            | 9.25%                | 11,000,000           | —                   | 11,000,000          | —                | —                   | —                    | —                    |
| Northland - Mortgage Capital Term Loan | Fixed            | 6.20%                | 14,429,270           | 231,787             | 249,384             | 265,521          | 282,701             | 298,582              | 13,101,295           |
|  |                  |                      | <u>\$690,029,270</u> | <u>\$39,831,787</u> | <u>\$11,249,384</u> | <u>\$265,521</u> | <u>\$50,282,701</u> | <u>\$125,298,582</u> | <u>\$463,101,295</u> |
|  |                  | Debt Discount        | (180,289)            |                     |                     |                  |                     |                      |                      |
|  |                  |                      | <u>\$689,848,981</u> |                     |                     |                  |                     |                      |                      |

(1) Represents a \$330 million unsecured revolving credit facility with spreads over LIBOR ranging from 2.60% to 3.40%. The \$50,000,000 balance was repaid on January 6, 2012.

(2) Represents the weighted-average rate for four tranches of the Notes at December 31, 2011 factoring in interest rate swaps in effect at that time.

The Company has entered into two swap agreements which began in July and October 2011. Effective July 31, 2011, the Company is paying 5.507% on \$65 million of the Notes and effective October 31, 2011, the Company is paying 5.675% on \$60 million of Notes.



**MEDICAL PROPERTIES TRUST, INC. AND SUBSIDIARIES**  
**Consolidated Balance Sheets**

|  | December 31, 2011<br>(Unaudited) | December 31, 2010<br>(A)      |
|--|----------------------------------|-------------------------------|
| <b>Assets</b>  |                                  |                               |
| Real estate assets   |                                  |                               |
| Land, buildings and improvements, and intangible lease assets  | \$ 1,275,398,732                 | \$ 990,548,549                |
| Real estate held for sale  | —                                | 37,513,429                    |
| Mortgage loans   | 165,000,000                      | 165,000,000                   |
| Gross investment in real estate assets   | 1,440,398,732                    | 1,193,061,978                 |
| Accumulated depreciation and amortization  | (103,737,665)                    | (71,787,046)                  |
| Net investment in real estate assets   | 1,336,661,067                    | 1,121,274,932                 |
| Cash and cash equivalents  | 102,725,906                      | 98,408,509                    |
| Interest and rent receivable   | 29,862,106                       | 26,175,635                    |
| Straight-line rent receivable  | 33,993,032                       | 28,911,861                    |
| Other loans  | 74,839,459                       | 50,984,904                    |
| Other assets   | 43,792,149                       | 23,057,868                    |
| <b>Total Assets</b>  | <b><u>\$1,621,873,719</u></b>    | <b><u>\$1,348,813,709</u></b> |
| <b>Liabilities and Equity</b>  |                                  |                               |
| Liabilities  |                                  |                               |
| Debt, net  | \$ 689,848,981                   | \$ 369,969,691                |
| Accounts payable and accrued expenses  | 51,124,723                       | 35,974,314                    |
| Deferred revenue   | 23,307,074                       | 23,136,926                    |
| Lease deposits and other obligations to tenants  | 28,777,787                       | 20,156,716                    |
| Total liabilities  | 793,058,565                      | 449,237,647                   |
| Equity   |                                  |                               |
| Preferred stock, \$0.001 par value. Authorized 10,000,000 shares; no shares outstanding  | —                                | —                             |
| Common stock, \$0.001 par value. Authorized 150,000,000 issued and outstanding - 110,786,183 shares at December 31, 2011 and 110,225,052 shares at December 31, 2010 | 110,786                          | 110,225                       |
| Additional paid in capital   | 1,055,255,776                    | 1,051,785,240                 |
| Distributions in excess of net income  | (214,058,258)                    | (148,530,467)                 |
| Accumulated other comprehensive income (loss)  | (12,230,807)                     | (3,640,751)                   |
| Treasury shares, at cost   | (262,343)                        | (262,343)                     |
| Total Medical Properties Trust, Inc. stockholders' equity  | 828,815,154                      | 899,461,904                   |
| Non-controlling interests  | —                                | 114,158                       |
| Total Equity   | 828,815,154                      | 899,576,062                   |
| <b>Total Liabilities and Equity</b>  | <b><u>\$1,621,873,719</u></b>    | <b><u>\$1,348,813,709</u></b> |

(A) Financials have been derived from the prior year audited financials, however, we have reclassified the real estate (including accumulated depreciation) of certain properties sold in 2011 to Real Estate Held for Sale.



**ACQUISITIONS FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2011**

| <u>Name</u>   | <u>Location</u>   | <u>Property Type</u> | <u>Investment / Commitment</u> |
|---|-------------------|----------------------|--------------------------------|
| Gilbert Hospital                                    | Gilbert, AZ       | General Acute Care   | \$ 17,100,000                  |
| Atrium Medical Center                               | Corinth, TX       | LTACH                | 30,000,000                     |
| Bayonne Medical Center                              | Bayonne, NJ       | General Acute Care   | 58,000,000                     |
| Alvarado Hospital                                   | San Diego, CA     | General Acute Care   | 70,000,000                     |
| Northland LTACH Hospital                            | Kansas City, MO   | LTACH                | 19,478,409                     |
| DeSoto Specialty Hospital                           | DeSoto, TX        | LTACH                | 18,025,608                     |
| Warm Springs Specialty Hospital<br>of New Braunfels | New Braunfels, TX | LTACH                | 13,400,000                     |
| Three Emerus Properties                             | San Antonio, TX   | General Acute Care   | 30,000,000                     |
| Hoboken University Medical<br>Center                | Hoboken, NJ       | General Acute Care   | 75,000,000                     |
| <b>Total Investments</b>                            |                   |                      | <b>\$ 331,004,017</b>          |







## Medical Properties Trust

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# Medical Properties Trust

Contact: Charles Lambert  
Finance Director  
Medical Properties Trust, Inc.  
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**MEDICAL PROPERTIES TRUST IN \$400 MILLION  
TRANSACTION WITH ERNEST HEALTH, INC. TO ADD 16  
HOSPITALS TO PORTFOLIO**

***FFO Accretion of 26%***

**Birmingham, AL –January 31, 2012** – Medical Properties Trust, Inc. (NYSE: MPW) today announced that it has agreed to a series of transactions with Ernest Health, Inc. that will add 16 existing post acute care hospitals to MPT’s investment portfolio for approximately \$300 million. In addition, the Company will acquire a significant percentage of Ernest Health’s operations, in partnership with Ernest Health’s management team. This \$400 million transaction increases Medical Properties Trust’s overall assets by 25 percent, to more than \$2.0 billion.

Upon completion of the transactions, which is subject to regulatory and other customary conditions, MPT is expected to have investments in 78 hospital facilities in 24 states, total assets of approximately \$2.0 billion and no tenant group that represents more than 20% of its total assets. The transactions are expected to add approximately \$0.19 per share in funds from operations in the 12 months following the closing, which is anticipated to occur during the first quarter of 2012. Based on MPT’s most recently disclosed expectations of future FFO, the incremental FFO from the Ernest transactions will represent an increase of 26%.

Founded in 2003, Ernest Health, Inc. is one of the nation’s leading operators of long-term acute care hospitals (“LTACHs”) and inpatient rehabilitation hospitals (“IRFs”). Headquartered in Albuquerque, New Mexico, Ernest operates 16 properties (8 LTACHs and 8 IRFs) with 606 beds across nine states. Subsequent to the transactions, Ernest will be managed pursuant to agreements with current executive management, including Darby Brockette, Ernest’s Chief Executive Officer.

“We are delighted to welcome Ernest Health to the MPT family of premier healthcare facilities,” said Edward K Aldag, Jr., chairman, president and CEO of Medical Properties Trust, Inc. “We have known the Ernest management team for a long time and we have watched the company grow from its inception during the same year MPT was founded. We have been very impressed with Ernest’s growth and with the management team’s dedication to the delivery of

high quality healthcare.” Aldag continued, “With transformative, highly accretive transactions like these, we continue to demonstrate our unique ability to create high quality long term sources of cash flow from hospital real estate. Completing these transactions will give MPT upside potential to the long term growth of Ernest, and adds another premiere post acute hospital operator to our relationships with others such as Vibra, Kindred, Healthsouth, LifeCare, Cornerstone and Post Acute.”

Among other benchmarks of quality, Aldag noted that Ernest Health’s inpatient rehabilitation facilities have been ranked among the top five percent of more than 800 IRFs in the United States – and that has held true of each Ernest rehabilitation hospital during each year of its operations. “This commitment to outstanding patient outcomes is only one of the many factors that make the acquisition of Ernest Health so attractive,” Aldag said.

#### **Transaction Details**

MPT will acquire the real estate assets of 12 Ernest facilities for an aggregate purchase price of \$200 million, and lease the properties back to Ernest under a master lease structure with an initial term of 20 years and three five-year extension options. The real estate of four other Ernest facilities will serve as first lien collateral under a \$100 million master mortgage loan with economic terms substantially similar to the master lease. The master lease, the master mortgage loan and the development agreements are all cross-defaulted and cross-collateralized.

A venture between an MPT affiliate and existing management of Ernest will acquire Ernest Health, Inc. for approximately \$100 million, including approximately \$96.5 million in MPT financing. MPT will have rights to a significant percentage of the profits and distributions of Ernest.

The Company intends to fund the acquisition with a combination of borrowings under MPT’s revolving credit facility, borrowings under a new term loan facility, as described below, net proceeds from other debt or equity capital market issuances, or a combination of the foregoing.

RBC Capital Markets, LLC acted as MPT’s exclusive financial advisor for this transaction.

#### **PORTFOLIO UPDATE AND FUTURE OUTLOOK**

Upon completion of this transaction, Medical Properties Trust’s portfolio metrics will approximate the following:

- Largest operator will comprise 20% of pro forma total assets;
- Assets in California will comprise 22% of pro forma total assets;
- MPT’s largest property will make up 4% of pro forma total assets;
- General acute care hospitals will comprise approximately 51% of total invested assets, LTACHs 27%, and IRFs 21%

At December 31, 2011, the Company had total real estate investments of approximately \$1.5 billion comprised of 62 healthcare properties in 21 states leased to 20 hospital operating

companies. Based solely on the portfolio as of December 31, 2011, the Ernest transactions, the related financing transactions, and the first quarter completion of the Florence hospital currently under construction, the Company estimates that annualized Normalized FFO per share would approximate \$0.88 to \$0.92 per diluted share. The Florence Hospital in Arizona, which is expected to open in the first quarter of 2012, will add approximately \$0.03 of FFO annually per diluted share, as previously announced. Such amounts do not include any amount for income from operating company equity.

This estimate will change if, among other things, the Ernest transactions are not completed, the Company acquires additional assets, market interest rates change, debt is refinanced, new shares of common stock are issued, additional debt is incurred, assets are sold, the River Oaks property is leased, other operating expenses vary or existing leases do not perform in accordance with their terms. In addition, these estimates do not include the effects, if any, of real estate operating costs, litigation costs, debt refinancing costs, acquisition costs, new interest rate hedging activities, write-offs of straight-line rent or other non-recurring or unplanned transactions; nor do they include earnings, if any, from the Company's profits interests or other investments in lessees.

"This is just the beginning of 2012 and there is still plenty of time left for making other investments this year," Aldag concluded. "There are many other opportunities to invest with other strong hospital operators like Ernest Health, and we are enthused about the additional growth possibilities in 2012 and beyond."

## **SENIOR CREDIT FACILITIES**

In connection with announcement of the Ernest transactions, on January 31, 2012, the Company received a commitment letter and term sheet for an \$80.0 million senior unsecured term loan facility from J.P. Morgan Chase Bank, N.A. and RBC Capital Markets, LLC. The term sheet provides for customary financial and operating covenants, substantially consistent with the Company's existing revolving credit facility, including covenants relating to total leverage ratio, fixed charge coverage ratio, mortgage secured leverage ratio, recourse mortgage secured indebtedness, consolidated adjusted net worth, unsecured leverage ratio and interest coverage ratio, and covenants restricting the incurrence of debt, imposition of liens, the payment of dividends and entering into affiliate transactions. The term sheet also provides for customary events of default, including among others, nonpayment of principal or interest, material inaccuracy of representations and failure to comply with our covenants.

The Company expects to close and fund the new term loan facility concurrently with the closing of the Ernest transactions. Effectiveness of the new term loan facility is subject to, among other things, definitive documentation and the satisfaction of customary closing conditions. The Company cannot guarantee that it will be able to successfully close the new term loan facility on the terms described herein or at all.

The Company's existing revolving credit facility includes an accordion feature pursuant to which borrowings thereunder can be increased up to \$400.0 million from \$330.0 million. The Company requested a \$70 million increase in its revolving credit facility contemporaneously with the closing of the new term loan facility. The Company expects that the administrative agent under the revolving credit facility will arrange a syndicate of lenders willing to hold the requested incremental revolving commitments but the Company cannot guarantee that commitments will be obtained for this incremental facility.

## CONFERENCE CALL AND WEBCAST

The Company has scheduled a conference call and webcast on Tuesday, January 31, 2012 at 4:30 p.m. Eastern Time to present the Company's financial and operating results for the quarter and year ended December 31, 2011 and to discuss this acquisition. The dial-in telephone numbers for the conference call 800-573-4842(U.S.) and 617-224-4327 (International); using passcode 18361530. The conference call will also be available via webcast in the Investor Relations' section of the Company's website, [www.medicalpropiertiestrust.com](http://www.medicalpropiertiestrust.com).

A telephone and webcast replay of the call will be available from shortly after the completion through February 14, 2012. Telephone numbers for the replay are 888-286-8010 and 617-801-6888 for U.S. and International callers, respectively. The replay passcode is 57805063.

### **About Medical Properties Trust, Inc.**

Medical Properties Trust, Inc. is a Birmingham, Alabama based self-advised real estate investment trust formed to capitalize on the changing trends in healthcare delivery by acquiring and developing net-leased healthcare facilities. These facilities include inpatient rehabilitation hospitals, long-term acute care hospitals, regional acute care hospitals, ambulatory surgery centers and other single-discipline healthcare facilities, such as heart hospitals and orthopedic hospitals. For more information, please visit the Company's website at [www.medicalpropiertiestrust.com](http://www.medicalpropiertiestrust.com).

*The statements in this press release that are forward looking are based on current expectations and actual results or future events may differ materially. Words such as "expects," "believes," "anticipates," "intends," "will," "should" and variations of such words and similar expressions are intended to identify such forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results of the Company or future events to differ materially from those expressed in or underlying such forward-looking statements, including without limitation: the possibility that the Ernest transactions are not consummated; if consummated, new risks related to integrating the Ernest assets and business; the potential adverse consequences related to financing the Ernest acquisitions with debt; the capacity of the Company's tenants to meet the terms of their agreements; annual Normalized FFO per share; the amount of acquisitions of healthcare real estate, if any; the repayment of debt arrangements; statements concerning the additional income to the Company as a result of ownership interests in certain hospital operations and the timing of such income; the restructuring of the Company's investments in non-revenue producing properties; the payment of future dividends, if any; completion of additional debt arrangements; and additional investments; national and economic, business, real estate and other market conditions; the competitive environment in which the Company operates; the execution of the Company's business plan; financing risks; the Company's ability to maintain its status as a REIT for federal income tax purposes; acquisition and development risks; potential environmental and other liabilities; and other factors affecting the real estate industry generally or healthcare real estate in particular. For further discussion of the factors that could affect outcomes, please refer to the "Risk factors" section of the Company's Form 10-K for the year ended December 31, 2010,*

as amended, and as updated by our subsequently filed Quarterly Reports on Form 10-Q and our other SEC filings. Except as otherwise required by the federal securities laws, the Company undertakes no obligation to update the information in this press release.

###

Ernest Health, Inc. and Subsidiaries  
Consolidated Financial Statements  
Years Ended December 31, 2010 and 2009

**Contents**

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Independent Auditors' Report

Board of Directors  
Ernest Health, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Ernest Health, Inc. and Subsidiaries (collectively, the Company) as of December 31, 2010 and 2009, and the related consolidated statements of operations, stockholders' deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company at December 31, 2010 and 2009, and the consolidated results of their operations and their cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Phoenix, Arizona  
April 8, 2011



## Ernest Health, Inc. and Subsidiaries

## Consolidated Balance Sheets

|  | December 31          |                      |
|--|----------------------|----------------------|
|  | 2010                 | 2009                 |
| <b>Assets</b>  |                      |                      |
| Current assets:  |                      |                      |
| Cash and cash equivalents  | \$ 17,567,797        | \$ 21,464,707        |
| Accounts receivable, net of allowance for bad debts of \$1,819,000 in 2010 and \$5,329,000 in 2009 | 30,677,579           | 37,992,426           |
| Inventories  | 1,367,411            | 1,285,061            |
| Prepaid expenses   | 1,120,181            | 995,805              |
| Short-term investments   | 150,000              | 350,000              |
| Other current assets   | 108,397              | 139,418              |
| <b>Total current assets</b>  | <b>50,991,365</b>    | <b>62,227,417</b>    |
| Property and equipment:  |                      |                      |
| Land   | 18,926,524           | 17,361,893           |
| Buildings, land improvements, and leasehold improvements   | 120,359,056          | 115,934,383          |
| Equipment  | 42,737,224           | 41,846,653           |
| Furniture and fixtures   | 5,037,457            | 4,772,759            |
| Computer equipment, hardware and software  | 17,005,759           | 14,230,632           |
| Construction in progress   | 4,206,795            | 1,385,238            |
|  | <b>208,272,815</b>   | <b>195,531,558</b>   |
| Accumulated depreciation   | <b>(55,150,713)</b>  | <b>(43,299,947)</b>  |
| <b>Total property and equipment, net</b>   | <b>153,122,102</b>   | <b>152,231,611</b>   |
| Other assets:  |                      |                      |
| Deferred financing fees, net   | 2,870,510            | 3,227,565            |
| Deposits and other   | 322,466              | 399,133              |
| <b>Total other assets</b>  | <b>3,192,976</b>     | <b>3,626,698</b>     |
|  | <b>\$207,306,443</b> | <b>\$218,085,726</b> |

|  | December 31           |                       |
|--|-----------------------|-----------------------|
|  | 2010                  | 2009                  |
| <b>Liabilities and stockholders' deficit</b>   |                       |                       |
| Current liabilities:   |                       |                       |
| Accounts payable   | \$ 6,804,175          | \$ 4,072,852          |
| Estimated third-party settlements  | 5,762,543             | 632,080               |
| Accrued compensation   | 9,710,102             | 13,220,329            |
| Current portion of long-term debt  | 7,709,798             | 6,719,164             |
| Other current liabilities  | 6,750,674             | 5,816,691             |
| Total current liabilities  | 36,737,292            | 30,461,116            |
| Long-term debt, net of current portion   | 162,749,049           | 185,043,889           |
| Preferred shares subject to mandatory redemption, including accrued interest (liquidation value of \$146,032,461)  | 120,835,995           | 137,157,512           |
| Deferred rent  | 84,352                | 56,235                |
| Total liabilities  | 320,406,688           | 352,718,752           |
| Stockholders' deficit:   |                       |                       |
| Controlling interest:  |                       |                       |
| Common stock, \$0.01 par value; 26,380,346 shares authorized; 24,773,841 and 24,255,091 issued; and 24,249,096 and 23,730,346 outstanding in 2010 and 2009, respectively | 247,739               | 242,551               |
| Additional paid-in capital   | 38,511,552            | 11,699,507            |
| Notes receivable attributable to common stock grants   | (503,637)             | (403,637)             |
| Treasury stock, 524,745 shares in 2010 and 2009, at cost   | (262,373)             | (262,373)             |
| Accumulated deficit  | (152,461,891)         | (147,092,730)         |
| Total controlling interest   | (114,468,610)         | (135,816,682)         |
| Non-controlling interest   | 1,368,365             | 1,183,656             |
| Total stockholders' deficit  | (113,100,245)         | (134,633,026)         |
| Total liabilities and stockholders' deficit  | <u>\$ 207,306,443</u> | <u>\$ 218,085,726</u> |

See accompanying notes.

Ernest Health, Inc. and Subsidiaries  
Consolidated Statements of Operations

|   | Year Ended December 31 |                       |
|---|------------------------|-----------------------|
|   | 2010                   | 2009                  |
| Net patient service revenue   | <b>\$212,394,999</b>   | \$216,595,514         |
| Other operating income  | <b>822,845</b>         | 1,407,570             |
| <b>Total operating income</b>                                       | <b>213,217,844</b>     | 218,003,084           |
| Operating expenses:   |                        |                       |
| Salaries and benefits   | <b>123,213,000</b>     | 121,373,553           |
| Depreciation and amortization                                       | <b>13,161,863</b>      | 13,400,963            |
| Supplies  | <b>19,059,624</b>      | 18,538,494            |
| Contract labor and services   | <b>15,825,445</b>      | 15,066,203            |
| Utilities   | <b>3,476,444</b>       | 3,273,214             |
| Insurance   | <b>1,978,340</b>       | 2,562,856             |
| Travel and transportation   | <b>2,455,151</b>       | 2,094,776             |
| Professional fees   | <b>2,847,035</b>       | 1,576,700             |
| Taxes (gross receipts, property and other)                          | <b>3,719,274</b>       | 3,664,904             |
| Bad debt (recovery) expense   | <b>(135,263)</b>       | 7,143,339             |
| Other fees, primarily management and medical director fees          | <b>4,780,412</b>       | 3,697,262             |
| Other patient related expenses                                      | <b>2,160,752</b>       | 2,237,464             |
| Recruiting and relocation   | <b>882,463</b>         | 940,466               |
| Minor equipment   | <b>242,195</b>         | 474,699               |
| Other   | <b>5,103,353</b>       | 3,870,735             |
| <b>Total operating expenses</b>                                     | <b>198,770,088</b>     | 199,915,628           |
| <b>Income from operations</b>                                       | <b>14,447,756</b>      | 18,087,456            |
| Nonoperating (income) and expense:                                  |                        |                       |
| Interest income and other   | <b>(290,256)</b>       | (229,868)             |
| Interest expense – preferred shares subject to mandatory redemption | <b>5,178,875</b>       | 12,275,802            |
| Interest expense – other  | <b>14,724,632</b>      | 15,777,445            |
| <b>Total nonoperating expense</b>                                   | <b>19,613,251</b>      | 27,823,379            |
| <b>Net loss before income tax expense</b>                           | <b>(5,165,495)</b>     | (9,735,923)           |
| <b>Income tax expense</b>   | <b>18,957</b>          | 115,000               |
| <b>Net loss</b>   | <b>(5,184,452)</b>     | (9,850,923)           |
| Less net income attributable to non-controlling interest            | <b>184,709</b>         | 12,176                |
| <b>Net loss attributable to controlling interest</b>                | <b>\$ (5,369,161)</b>  | <b>\$ (9,863,099)</b> |

See accompanying notes.

## Ernest Health, Inc. and Subsidiaries

## Consolidated Statements of Changes in Stockholders' Deficit

|   | Common Stock      |                   | Additional           | Notes   | Treasury            | Accumulated             | Total                   |
|---|-------------------|-------------------|----------------------|---|---------------------|-------------------------|-------------------------|
|   | Shares            | Par Value         | Paid-In<br>Capital   | Receivable<br>Attributable to<br>Common Stock<br>Grants | Stock               | Deficit                 |                         |
| Balance, January 1, 2009                  | 21,880,091        | \$ 218,801        | \$ 10,785,822        | \$ (403,637)  | \$ (262,373)        | \$ (137,229,631)        | \$ (126,891,018)        |
| Issuance of restricted common stock       | 575,000           | 5,750             | 12,578               | —   | —                   | —                       | 18,328                  |
| Conversion of debt to common stock        | 1,800,000         | 18,000            | 882,000              | —   | —                   | —                       | 900,000                 |
| Stock-based compensation                  | —                 | —                 | 19,107               | —   | —                   | —                       | 19,107                  |
| Net loss                                  | —                 | —                 | —                    | —   | —                   | (9,863,099)             | (9,863,099)             |
| Balance, December 31, 2009                | 24,255,091        | 242,551           | 11,699,507           | (403,637)   | (262,373)           | (147,092,730)           | (135,816,682)           |
| Issuance of restricted common stock       | 175,000           | 1,750             | 28,197               | —   | —                   | —                       | 29,947                  |
| Issuance of common stock                  | 343,750           | 3,438             | 168,438              | (100,000)   | —                   | —                       | 71,876                  |
| Interest forfeiture on preferred shares   | —                 | —                 | 4,957,194            | —   | —                   | —                       | 4,957,194               |
| Fair value adjustment on preferred shares | —                 | —                 | 24,506,065           | —   | —                   | —                       | 24,506,065              |
| Accretion on preferred shares             | —                 | —                 | (2,863,320)          | —   | —                   | —                       | (2,863,320)             |
| Stock-based compensation                  | —                 | —                 | 15,471               | —   | —                   | —                       | 15,471                  |
| Net loss                                  | —                 | —                 | —                    | —   | —                   | (5,369,161)             | (5,369,161)             |
| Balance, December 31, 2010                | <u>24,773,841</u> | <u>\$ 247,739</u> | <u>\$ 38,511,552</u> | <u>\$ (503,637)</u>                                     | <u>\$ (262,373)</u> | <u>\$ (152,461,891)</u> | <u>\$ (114,468,610)</u> |

See accompanying notes.

Ernest Health, Inc. and Subsidiaries  
Consolidated Statements of Cash Flows

|  | Year Ended December 31 |                      |
|--|------------------------|----------------------|
|  | 2010                   | 2009                 |
| <b>Operating activities</b>  |                        |                      |
| Net loss contributable to controlling interest   | \$ (5,369,161)         | \$ (9,863,099)       |
| Adjustments to reconcile net loss contributable to controlling interest to net cash provided by operations |                        |                      |
| Depreciation and amortization  | 13,161,863             | 13,400,963           |
| Bad debt (recovery) expense  | (135,263)              | 7,143,339            |
| Stock-based compensation expense   | 45,418                 | 37,435               |
| Interest on mandatorily redeemable preferred shares  | 5,178,875              | 12,275,802           |
| Non-controlling interest in consolidated subsidiary earnings   | 184,709                | 12,176               |
| Changes in assets and liabilities:   |                        |                      |
| Accounts receivable  | 7,450,110              | (17,086,270)         |
| Estimated third-party settlements  | 5,130,463              | 2,484,190            |
| Inventories  | (82,350)               | 550,122              |
| Prepaid expenses   | (124,376)              | (496,828)            |
| Deposits and other assets  | 307,688                | 302,282              |
| Accounts payable   | 1,704,732              | 406,564              |
| Accrued compension   | (3,510,227)            | 5,073,813            |
| Other liabilities  | 658,541                | 1,323,553            |
| Net cash provided by operating activities  | <u>24,601,022</u>      | <u>15,564,042</u>    |
| <b>Investing activities</b>  |                        |                      |
| Purchase of property and equipment   | (11,325,829)           | (3,434,920)          |
| Net cash used in investing activities  | <u>(11,325,829)</u>    | <u>(3,434,920)</u>   |
| <b>Financing activities</b>  |                        |                      |
| Proceeds from payment on notes receivable to officers  |                        | —                    |
| Proceeds from issuance of long-term debt   |                        | —                    |
| Payment on long-term debt  | (21,304,206)           | (5,342,024)          |
| Proceeds from issuance of short-term debt  | —                      | —                    |
| Payment on short-term debt   | —                      | —                    |
| Financing fees   | (939,773)              | (78,611)             |
| Proceeds from issuance of common stock   | 71,876                 | —                    |
| Proceeds from issuance of mandatorily redeemable preferred shares  | 5,000,000              | —                    |
| Net cash used in financing activities  | <u>(17,172,103)</u>    | <u>(5,420,635)</u>   |
| (Decrease) increase in cash and cash equivalents   | <u>(3,896,910)</u>     | <u>6,708,487</u>     |
| Cash and cash equivalents at beginning of year   | <u>21,464,707</u>      | <u>14,756,220</u>    |
| Cash and cash equivalents at end of year   | <u>\$ 17,567,797</u>   | <u>\$ 21,464,707</u> |

## Ernest Health, Inc. and Subsidiaries

## Consolidated Statements of Cash Flows (continued)

|   | Year Ended December 31 |                      |
|---|------------------------|----------------------|
|   | 2010                   | 2009                 |
| Interest paid   | <u>\$ 13,521,824</u>   | <u>\$ 17,160,017</u> |
| Schedule of noncash financing and investing activities:           |                        |                      |
| Interest on preferred stock capitalized to property and equipment | \$ 99,547              | \$ —                 |
| Interest on long-term debt capitalized to property and equipment  |                        | —                    |
| Exchange of notes receivable for treasury stock                   |                        | —                    |
| Issuance of preferred stock in exchange for accrued interest      |                        | —                    |
| Issuance of preferred stock in exchange for debt outstanding      | —                      | 8,100,000            |
| Issuance of common stock in exchange for debt outstanding         | —                      | 900,000              |
| Interest forfeiture on preferred shares                           | 4,957,194              | —                    |
| Fair value adjustment on preferred shares                         | 21,642,745             | —                    |
| Accrual of property and equipment invoices                        | 1,330,150              | —                    |

See accompanying notes.

December 31, 2010

## **1. Organization and Description of Business**

Ernest Health, Inc. (the Company) was incorporated in the state of Delaware on November 19, 2003. The corporate headquarters are located in Albuquerque, New Mexico. The Company develops and operates post-acute healthcare facilities dedicated to the recovery of individuals who have functional deficits as a result of injury or illness. The Company operates through various subsidiaries, including seven freestanding inpatient rehabilitation hospitals (IRF) in New Mexico, Texas, Arizona, South Carolina, Wyoming, and Colorado, (one of which is a multi-campus facility in Texas). The Company also operates eight freestanding long-term acute care (LTAC) hospitals in Idaho, Texas, Montana and Utah, (two of which are multi-campus facilities in New Mexico and Colorado). The Company's IRF facility located in Wyoming is 25% owned by an unrelated hospital. The Company has consolidated this joint venture. In addition, the Company is in the process of building an IRF in Texas which is expected to be completed in July 2011.

## **2. Financial Liquidity and Resources**

The Company has financed its development activities primarily through private placements of common stock and mandatorily redeemable preferred stock with various private equity funds and loans with various financial institutions. Collectively, the private equity funds have a controlling interest in the Company.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. The Company continues to produce operating cash flows sufficient to meet its operating expenses and debt service requirements. Management anticipates funding the future cash flow needs of the Company through the cash flow generated by existing mature hospitals, as well as, the continued maturation of the remaining hospitals. As the result of cash flow from operations, the Company has working capital of approximately \$14.3 million at December 31, 2010 available to fund future operations (subject to minimum liquidity requirements required by the term loan, see Note 8). Included in the statement of operations for the period ending December 31, 2010, are transactional costs of \$2.6 million related to certain transactions that were ultimately not consummated. In addition, the Company has recognized approximately \$1.4 million in pre-opening costs related to start-up operations and hospitals in the first year of operation.

**2. Financial Liquidity and Resources (continued)**

Management believes its existing working capital and expected operating cash flows during 2011 will be sufficient to finance its obligations into 2012. Redemption of the Company's preferred stock and accrued interest is scheduled in December 2013. If the Company is not able to pay the preferred stock redemption amount in 2013, the Company will request an extension of the redemption date from the preferred stockholders.

**3. Significant Accounting Policies**

**Principles of Consolidation**

The consolidated financial statements include the accounts of the Company, its wholly owned subsidiaries, and its controlled subsidiary. All significant intercompany balances and transactions have been eliminated in consolidation.

**Management's Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and the reported amount of revenues and expenses. Significant estimates include third-party settlements, allowances for contractual adjustments and bad debts and other loss accruals. Actual results could differ from these estimates.

For the year ended December 31, 2010, the Company recorded a change in estimate as a result of favorable collection experience on prior year patient accounts which resulted in a reduction to the bad debt expense of approximately \$2.7 million.

In addition, for the year ended December 31, 2010, the Company recorded a reduction to net patient revenue of approximately \$1.7 million relating to prior year estimated Idaho Medicaid cost report settlements.

**Fair Value of Financial Instruments**

The carrying value of the Company's financial instruments classified as current assets and current liabilities approximate fair value. The fair values of other financial instruments are disclosed in their respective notes.



**3. Significant Accounting Policies (continued)****Cash and Cash Equivalents**

Cash and cash equivalents consist of cash and highly liquid investments with original maturities of three months or less.

**Short-Term Investments**

Short-term investments consist of investments with original maturities greater than three months but less than or equal to one year. Short-term investments include monies restricted in connection with the Company's workers' compensation program.

**Accounts Receivable**

Accounts receivable consist primarily of amounts due from Medicare and various state Medicaid programs, managed care health plans, commercial insurance companies and individual patients. Net accounts receivable have been adjusted to the estimated amounts to be received. These estimates are subject to further adjustments upon review by third-party payors. An estimated allowance for bad debts and bad debt expense is recorded to the extent it is probable a portion or all of a particular account will not be collected. In evaluating the collectability of accounts receivable, the Company considers a number of factors, including historical collection experience, the age of the accounts, changes in collection patterns, the composition of patient accounts by payor type, the status of ongoing disputes with third-party payors and general economic conditions.

The composition of accounts receivable by payor as of December 31 is as follows:

|      | <u>Medicare</u> | <u>Medicaid</u> | <u>Commercial<br/>and Other</u> |
|------|-----------------|-----------------|---------------------------------|
| 2010 | 51%             | 12%             | 37%                             |
| 2009 | 58%             | 9%              | 33%                             |

Receivables from government programs are significant to the Company's operations. Management does not believe there are any significant concentrations from any particular payor which would subject the Company to any significant credit risks in the collection of its accounts receivable.

**3. Significant Accounting Policies (continued)****Inventories**

Inventories consists primarily of pharmaceutical and medical supplies. Inventories are presented at the lower of cost or market value. Cost is determined using the first-in, first-out method.

**Property and Equipment**

Property and equipment are recorded at cost and depreciated over their estimated useful lives using the straight-line method. Leasehold improvements are amortized over the term of the related lease or the estimated useful lives of the improvements, whichever is shorter. The range of estimated useful lives is as follows:

|                                      |               |
|--------------------------------------|---------------|
| Buildings and leasehold improvements | 5 to 40 years |
| Land improvements                    | 15 years      |
| Equipment                            | 3 to 15 years |
| Furniture and fixtures               | 3 to 15 years |
| Computers and hardware               | 5 years       |
| Software                             | 3 years       |

Maintenance and repairs are charged to operations when incurred. When property and equipment are sold or otherwise disposed of, the asset account and related accumulated depreciation account are relieved, and any gain or loss is included in income from operations.

Construction in progress (CIP) is recorded at cost and includes the accumulated costs of various information technology projects and hospital construction projects. All projects remain in CIP until such point the project is determined to be substantially ready for its intended use, at which point the accumulated costs are transferred to the appropriate asset category and depreciated.

**Deferred Financing Fees**

The Company has incurred fees in connection with debt financings. These fees are capitalized and amortized over the term of the underlying debt, using the straight line method, which approximates the effective interest method. Accumulated amortization of such costs was \$4.0 million at December 31, 2010 and \$2.8 million at December 31, 2009.

**3. Significant Accounting Policies (continued)****Concentration of Credit Risk**

Financial instruments that potentially subject the Company to significant concentration of credit risk consist principally of cash deposited with financial institutions in excess of amounts insured by the Federal Deposit Insurance Corporation (\$250,000) and by the Security Investor Protection Corporation (\$500,000). The Company believes it mitigates credit risk by depositing cash with major financial institutions. At December 31, 2010, the Company's uninsured balance was approximately \$17 million. Management monitors the financial condition of these financial institutions and does not believe any significant credit risk exists at this time.

**Impairment of Long-Lived Assets**

The Company evaluates the recoverability of its long-lived assets or asset groups whenever adverse events or changes in business climate indicate that their carrying value may not be recoverable. If the net book value of the related assets exceeds the undiscounted future cash flows of the assets, the carrying amount would be reduced to the present value of their expected future cash flows and an impairment loss would be recognized. There are no impairment losses in either 2010 or 2009.

**Income Taxes**

The Company provides for income taxes using the asset and liability method. The Company recognizes the amount of income taxes payable or refundable for the year as well as deferred tax assets and liabilities. Deferred income tax assets and liabilities arise from temporary differences associated with differences between the financial statements and tax basis of assets and liabilities, as measured by the enacted tax rates, which are expected to be in effect when these differences reverse. Deferred tax assets and liabilities are classified as current or noncurrent, depending on the classification of the assets or liabilities to which they relate. Deferred tax assets and liabilities not related to an asset or liability are classified as current or noncurrent depending on the periods in which the temporary differences are expected to reverse. Valuation allowances are recorded to reduce the amount of deferred tax assets when, based upon available objective evidence such as historical taxable income, the expected reversal of temporary differences, and projections of future taxable income, management cannot conclude it is "more likely than not" that some or all of the deferred tax assets will be realized.

**3. Significant Accounting Policies (continued)****Mandatorily Redeemable Preferred Stock**

All of the Company's preferred stock issuances have been determined to be mandatorily redeemable financial instruments, and accordingly, are classified as debt. The Preferred Series A and B include a cumulative dividend of 10%, compounded annually through January 1, 2010 at which time the Preferred Series A and B no longer earned dividends. The Preferred Series C includes a cumulative dividend of 15% for one year after the original issue date and 18% until redemption in December 2013.

**Net Patient Service Revenue**

Net patient service revenue is recorded during the period the health care services are provided, based upon the estimated amounts due from the patients and third-party payors. The Company has agreements with third-party payors that provide for payments to each of its hospitals. These payment agreements may be based upon prospective rates, reimbursable costs, established charges, discounted charges or per diem payments. Net patient service revenue is reported at the estimated net realizable amounts from Medicare, Medicaid, other third-party payors and individual patients for services rendered. Retroactive adjustments which may result from future examinations by third-party payors are accrued on an estimated basis in the period the related services are rendered and adjusted as necessary in future periods based upon final settlements. The composition of net patient service revenue by significant payor for the years ended December 31, are as follows:

|      | <u>Medicare</u> | <u>Medicaid</u> | <u>Commercial<br/>and Other</u> |
|------|-----------------|-----------------|---------------------------------|
| 2010 | 70%             | 4%              | 26%                             |
| 2009 | 67%             | 6%              | 27%                             |

From time to time, the Company provides care to patients who are financially unable to pay for their health care services. The Company does not pursue collection from patients who qualify as charity care, accordingly, such amounts are not recorded as revenue.

Most services rendered to Medicare and Medicaid beneficiaries are reimbursed at prospectively determined rates per discharge. These rates vary according to a patient classification system that is based on clinical and diagnostic factors. Certain services of the Medicare program and certain

**3. Significant Accounting Policies (continued)**

state Medicaid programs are paid on a cost reimbursement methodology. The Company is reimbursed for cost reimbursement items at a tentative rate, with final settlement determined after submission of annual cost reports and audits are performed by the intermediary. The Company has recorded the estimated amounts owed under these cost reimbursed programs as estimated third-party settlements. Laws and regulations governing the Medicare and Medicaid programs are extremely complex and subject to interpretation. As a result, there is at least a reasonable possibility that recorded third-party payor settlement estimates may change by a material amount as cost report adjustments become known or cost report years are no longer subject to audit.

**Stock-Based Compensation**

The Company recognizes compensation expense for share-based payment transactions with employees, such as grants of stock options and restricted stock, as services are provided based on the estimated fair value at the grant date over their vesting periods. The Company uses the Black-Scholes method to estimate the fair value of stock options as of the date of grant and estimates the fair value of restricted stock based on the determined current fair value of the Company's common stock.

**Risk Management**

The Company's professional risk policy is a claims-made policy with first level coverage per incident of \$1 million, and \$3 million in the aggregate. In addition, the Company purchased excess insurance, which covers individual losses up to \$10 million, subject to an aggregate of \$10 million. The Company retains a self-insured retention of \$25,000 per occurrence under the professional risk policy.

Management accrues for the Company's self-insured retention limit relating to the estimated ultimate cost of settling claims, which includes costs associated with litigating or settling claims, when the incidents that give rise to the claims occur. Management's estimate of the ultimate costs of the claims is based on the nature and volume of claim activity during the period, as well as trends and developments in claim activity. Management's accrual includes an estimate of the losses that will result from unreported incidents which are probable of having occurred before the end of the reporting period.

**3. Significant Accounting Policies (continued)**

The Company maintains a certificate of deposit to serve as collateral for a letter of credit available related to the Company's 2007 workers compensation policy. At December 31, 2010, the certificate of deposit is \$150,000. The certificate earns interest at a variable rate and matures in January 2012, unless released earlier by the insurance carrier.

For 2010 and 2009, the Company insured its workers' compensation risk under a \$1 million per employee and per accident policy, with no underlying retention.

The Company self-insures for the cost of employee's healthcare coverage and assumes liability for healthcare claims, limited by a stop loss limit of \$300,000 per claim. The Company records the estimated liability utilizing actuarial methods. At December 31, 2010 and 2009, the Company has recorded a liability of \$1.8 million and \$ 1.9 million, respectively.

**Subsequent Events**

Management is required to assess events or transactions that occur after the balance sheet date, but before the financial statements are issued. There are two types of subsequent events: recognized subsequent events, which provide additional evidence about conditions which existed at the balance sheet date, and non-recognized subsequent events, which provide evidence about conditions that did not exist at the balance sheet date, but arose before the financial statements were issued. Recognized subsequent events are required to be recognized in the financial statements, and non-recognized subsequent events are required to be disclosed. The Company has evaluated subsequent events through the date of issuance, April 8, 2011.

**Reclassifications**

Certain reclassifications have been made to the 2009 financial statements to conform to the 2010 presentation.

#### 4. Fair Value Measurements

Fair value is defined as an exit price and represents the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the Company utilizes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

- *Level 1.* Pricing inputs into the determination of fair value are generally observable inputs such as quoted prices in active markets. Financial assets in Level 1 include cash, certificates of deposit and money market accounts.
- *Level 2.* Pricing inputs are based on quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the asset or liability.
- *Level 3.* Pricing inputs are generally unobservable and include situations where there is little, if any, market activity for the investment. The inputs into the determination of fair value require management's judgment or estimation using assumptions that market participants would use in pricing the assets or liabilities. The fair values are, therefore, determined using factors that involve considerable judgment and interpretations, including but not limited to private and public comparables, third party appraisals, and discounted cash flow models.

Assets and liabilities measured at fair value are based on one or more of three valuation techniques identified in the tables below. Where more than one technique is noted, individual assets or liabilities were valued using one or more of the noted techniques. The valuation techniques are as follows:

- (a) *Market approach.* Prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.

## Notes to Consolidated Financial Statements (continued)

**4. Fair Value Measurements (continued)**

- (b) *Cost approach.* Amount that would be required to replace the service capacity of an asset or liability (replacement cost).
- (c) *Income approach.* Techniques to convert future amounts to a single present amount based on market expectations (including present value techniques, option-pricing and excess earnings models).

|  | Balance at<br>December 31 | Quoted Prices in<br>Active Markets<br>for Identical<br>Assets<br>(Level 1) | Significant<br>Other<br>Observable<br>Inputs<br>(Level 2) | Significant<br>Unobservable<br>Inputs<br>(Level 3) | Valuation<br>Technique<br>(a,b,c) |
|--|---------------------------|--|---|--|-----------------------------------|
| <b>December 31, 2010</b>                                     |                           |  |   |  |                                   |
| Cash   | \$ 4,872,154              | \$ 4,872,154   | \$ —  | \$ —   | a                                 |
| Money market   | <u>12,695,643</u>         | <u>12,695,643</u>  | —   | —  | a                                 |
| Total cash and cash equivalents                              | 17,567,797                | 17,567,797   | —   | —  |                                   |
| Certificate of deposit – included in short –term investments | <u>150,000</u>            | <u>150,000</u>   | —   | —  | a                                 |
|  | <u>\$17,717,797</u>       | <u>\$ 17,717,797</u>   | <u>\$ —</u>   | <u>\$ —</u>  |                                   |
| <b>December 31, 2009</b>                                     |                           |  |   |  |                                   |
| Cash   | \$ 1,909,319              | \$ 1,909,319   | \$ —  | \$ —   | a                                 |
| Money market   | <u>19,555,388</u>         | <u>19,555,388</u>  | —   | —  | a                                 |
| Total cash and cash equivalents                              | 21,464,707                | 21,464,707   | —   | —  |                                   |
| Certificate of deposit – included in short –term investments | <u>350,000</u>            | <u>350,000</u>   | —   | —  | a                                 |
|  | <u>\$21,814,707</u>       | <u>\$ 21,814,707</u>   | <u>\$ —</u>   | <u>\$ —</u>  |                                   |

The Company estimated the fair value of long term debt using a discounted cash flow approach, applying rates currently offered in modification of the original rate and considered the Company's non-performance risk. The estimated fair value of the Company's long-term debt approximated \$167 million and \$192 million as of December 31, 2010 and 2009, respectively.



**5. Recent Accounting Pronouncements**

In January 2010, an accounting standard was released that provided additional clarification as to the fair value measurements and disclosures. The accounting standard requires companies to disclose the amounts of significant transfers into and out of Levels 1 and 2 and separate disclosures about purchases, sales, issuances, and settlements relating to level 3 measurements. It also provides clarification for existing disclosures about the level of disaggregation for each class of asset and liability, and about inputs and valuation techniques used to measure fair value. The accounting standard is effective for fiscal years beginning after December 15, 2009, except for the requirements to provide the level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which will be effective for fiscal years beginning after December 15, 2010. The adoption of the accounting standard did not have a material impact on the Company's consolidated financial statements.

In August 2010, an accounting standard was released relating to the accounting and disclosure of insurance claims and related insurance recoveries. The accounting standard will require companies to report the estimated ultimate cost of malpractice claims as a liability and any anticipated insurance recoveries will be reported as an asset on the statement of financial position. The malpractice liability cannot be reported net of anticipated insurance recoveries. The accounting standard will be effective for the Company on January 1, 2011. Management is currently evaluating the effect of adopting this accounting standard on the consolidated financial statements.

In August 2010, an accounting standard was released relating to charity care disclosures. The accounting standard will require companies to disclose the amount and methods used to determine the cost of charity care provided. Charity care will be measured based on the direct and indirect costs of providing charity care. The accounting standard will be effective for the Company on January 1, 2011. Management is currently evaluating the effect of adopting this accounting standard on the consolidated financial statements.

**6. Loans to Officers**

During 2006, 2005 and 2004, the Company entered into note receivable agreements with officers of the Company in exchange for the purchase of common shares in the Company.

In November 2010, the Company entered into an agreement with an officer of the Company to purchase 325,000 common shares at \$0.50 per common share, partially funded by a \$100,000 note receivable to the officer.

## Notes to Consolidated Financial Statements (continued)

**6. Loans to Officers (continued)**

At December 31, 2010, the notes receivable balance was \$503,637, of which \$100,000 relates to a 2010 note and \$403,637 relates to 2006 and prior notes. The 2010 and prior notes accrue interest at 3.11% per annum. The 2010 and 2004 notes are scheduled to mature in 2013. The 2006 and 2005 notes are scheduled to mature in 2012. The notes require annual interest-only payments through the date of maturity. The notes are presented as a component of stockholders' deficit as the notes are related to the sale of common stock and are not required to be repaid within a short period of time.

**7. Other Current Liabilities**

Other current liabilities consist of the following at December 31:

|                          | <u>2010</u>               | <u>2009</u>               |
|--------------------------|---------------------------|---------------------------|
| Accrued property taxes   | <b>\$1,988,350</b>        | \$1,952,920               |
| Accrued health insurance | <b>1,829,836</b>          | 1,879,505                 |
| Accrued interest         | <b>1,218,434</b>          | —                         |
| Other                    | <b>1,714,054</b>          | 1,984,266                 |
|                          | <b><u>\$6,750,674</u></b> | <b><u>\$5,816,691</u></b> |

**8. Long-Term Debt**

Long-term debt consists of the following at December 31:

|   | <u>2010</u>                 | <u>2009</u>                 |
|---|-----------------------------|-----------------------------|
| Variable-rate facility term loans, due December 2012  | <b>\$159,199,387</b>        | \$165,249,788               |
| Variable-rate revolving loan, repaid in 2010          | —                           | 14,998,250                  |
| Variable-rate Wyoming term loan, due August 2015      | <b>8,782,550</b>            | 8,900,000                   |
| Variable-rate Wyoming equipment loan, due August 2016 | <b>2,476,910</b>            | 2,600,000                   |
| Other   | —                           | 15,015                      |
| Total long-term debt                                  | <b>170,458,847</b>          | 191,763,053                 |
| Less current portion                                  | <b>(7,709,798)</b>          | (6,719,164)                 |
| Long-term debt, net of current portion                | <b><u>\$162,749,049</u></b> | <b><u>\$185,043,889</u></b> |

**8. Long-Term Debt (continued)**

The future maturities of long-term debt at December 31, 2010 are as follows:

|                          |                      |
|--------------------------|----------------------|
| Year ending December 31, |                      |
| 2011                     | \$ 7,709,798         |
| 2012                     | 153,101,174          |
| 2013                     | 889,332              |
| 2014                     | 889,332              |
| 2015                     | 7,495,744            |
| Thereafter               | 373,467              |
|                          | <u>\$170,458,847</u> |

**Variable Rate Facility Term Loans and Revolving Loan**

The Company has entered into an agreement with Ally Commercial Finance (Ally), formerly GMAC, for term loans with an aggregate commitment of \$175 million plus a revolving loan of \$5 million. These term loans are secured by the underlying real and personal property of each hospital. The term loans require monthly principal and interest payments. The remaining principal balance on the \$175 million term loans was approximately \$159 million and \$165 million at December 31, 2010 and 2009, respectively. The term loans mature in December 2012.

During 2008, the Company amended the original agreement with Ally to release the Company's joint venture hospital in Wyoming as collateral to the agreement, allowing the Company to seek other financing for the Wyoming hospital. The amendment lowered the minimum liquidity requirement to \$2.5 million for the remaining period of the term loans and modified the interest rate on the term loans to include monthly interest payments at a rate of LIBOR plus 5.00% with a floor of 8.00%. The interest rate at December 31, 2010 and 2009 was 8.00%.

During 2009, the Company entered into a Limited Consent with Ally to create a newly formed limited liability company and engage in the expansion of one of the Company's LTAC hospitals in Texas. The project was completed in the third quarter of 2010.

During July 2010, the Company entered into an amended agreement with Ally. The agreement removes original restrictions requiring approval for the creation of any new corporate entity and approves the use of existing corporate shells for board approval projects. The amendment

**8. Long-Term Debt (continued)**

provides the Company with the flexibility to expand its current operating facilities, either through construction or acquisition. The Company incurred a fee of approximately \$900,000 in connection with the amendment which has been recorded as deferred financing fees.

The July 2010 amendment also required the Company and Ally to begin the process of syndicating the term loans in the first quarter of 2011, with the following provisions; a) interest may be increased by 125 basis points if such change is necessary to ensure full syndication; b) if syndication is achieved, the Company will pay to Ally a fee in an amount equal to the highest participating lender fee; c) if the syndication is not achieved, the Company will be liable to pay approximately \$3.2 million to Ally and the interest rate on all term loans will immediately increase 125 basis points over the existing interest rate in effect. The Company is in the process of refinancing the term loans with a potential lender (see Note 14).

Through the original Ally term loans commitment, the Company had a \$15 million revolving loan available to draw upon at an 85% advance rate on qualified facility accounts receivable due from third-party payors. The Company maintains a lockbox account to which all qualified collections must be remitted. In connection with the July 2010 amendment, the Company was required to pay down the existing \$15 million revolver by \$10 million, and subsequently paid down the remaining \$5 million. After the pay-down, the total amount available was \$5 million. At December 31, 2010, the Company had no advances on the revolver. The revolving loan terminates in December 2012. Interest on the revolving loan bears interest at a rate of LIBOR plus 5.00% or a floor of 8.00%. Interest on the revolving loan at December 31, 2010 and 2009 was 8.00%.

The terms of the Ally agreements require the Company to meet certain financial covenants including an interest coverage ratio and fixed charge coverage ratio at each hospital, excluding the Wyoming hospital, and a minimum liquidity ratio at the consolidated level. At December 31, 2010 and 2009, the Company was in compliance with all of the required financial covenants.

During the first quarter of 2011, the Company determined that one of its hospitals did not meet certain covenant requirements. However, in accordance with the terms of the Ally agreement, the Company has cured the covenant violation as of March 31, 2011.

## Notes to Consolidated Financial Statements (continued)

**8. Long-Term Debt (continued)****Wyoming Term Loan and Equipment Loan**

The Company has entered into various term loan agreements with Stillwater National Bank and Trust (SNB) secured by real estate, equipment and accounts receivable. The Company borrowed \$8.9 million, with another \$2.5 million eligible for borrowing based on predefined performance levels. The loan bears interest at the prime rate + 1% with a minimum rate of 5.50% per annum and a maximum rate of 10.00% per annum. Interest is payable monthly until the earlier of 24 months from the date the term loan was executed, or the date the loan is fully funded. Installments of principal and interest are paid monthly with the balance due and payable in August 2015. The interest rate at December 31, 2010 and 2009 was 5.50%.

In addition, the Company has a \$2.6 million equipment loan with SNB that was fully drawn at closing in August 2008. The loan bears interest at the prime rate + 1% with a floor of 5.50% and a ceiling of 10.00%. Installments of principal and interest are based on a 6-year amortization with the balance due and payable in August 2016. The interest rate at December 31, 2010 and 2009 was 5.50%.

**9. Income Taxes**

Income tax expense, for the year ended December 31, consists of the following:

|                    | <u>2010</u>            | <u>2009</u>             |
|--------------------|------------------------|-------------------------|
| Current:           |                        |                         |
| State expense      | <b><u>\$18,957</u></b> | <b><u>\$115,000</u></b> |
| Income tax expense | <b><u>\$18,957</u></b> | <b><u>\$115,000</u></b> |

## Notes to Consolidated Financial Statements (continued)

**9. Income Taxes (continued)**

A reconciliation of the Company's effective income tax rate to the federal statutory rate, for the year ended December 31, follows:

|   | 2010                    | 2009                     |
|---|-------------------------|--------------------------|
| Federal statutory rate                      | <b>\$(1,825,515)</b>    | \$(3,411,835)            |
| Nondeductible items                         | <b>1,849,954</b>        | 4,384,838                |
| True-up of net operating loss carryforwards | <b>1,161,935</b>        | 3,638,357                |
| Rate change                                 | <b>984,207</b>          | —                        |
| Change in valuation allowance               | <b>(2,173,126)</b>      | (4,650,509)              |
| State tax benefit, net                      | <b>21,502</b>           | 154,149                  |
| Income tax expense                          | <b><u>\$ 18,957</u></b> | <b><u>\$ 115,000</u></b> |

Deferred tax assets and liabilities at December 31, consist of the following components:

|   | 2010                     | 2009               |
|---|--------------------------|--------------------|
| Deferred tax assets:                              |                          |                    |
| Account receivable allowance                      | <b>\$ 682,918</b>        | \$ 2,023,183       |
| Startup costs                                     | <b>3,248,685</b>         | 3,264,341          |
| Contributions                                     | <b>163,919</b>           | 47,493             |
| Accrued expenses                                  | <b>2,335,878</b>         | 5,094,488          |
| Net operating loss carryforwards                  | <b>36,729,660</b>        | 34,725,784         |
| Total deferred tax assets                         | <b><u>43,161,060</u></b> | <u>45,155,289</u>  |
| Deferred tax liabilities:                         |                          |                    |
| Property and equipment                            | <b>5,335,631</b>         | 5,245,476          |
| Prepays and other                                 | <b>466,810</b>           | 378,068            |
| Total deferred tax liabilities                    | <b><u>5,802,441</u></b>  | <u>5,623,544</u>   |
| Net deferred tax assets                           | <b>37,358,619</b>        | 39,531,745         |
| Valuation allowance                               | <b>(37,358,619)</b>      | (39,531,745)       |
| Net deferred tax assets after valuation allowance | <b><u>\$ —</u></b>       | <b><u>\$ —</u></b> |

The Company has federal net operating loss carryforwards (NOL) at December 31, 2010 of approximately \$100.7 million. The federal net operating loss carryforwards begin to expire in 2024.

**9. Income Taxes (continued)**

The Company has approximately \$61.3 million of available net operating loss carryforwards for state tax purposes, which may be carried forward to offset future state taxable income, subject to legislative restrictions which vary by state. However, the New Mexico net operating loss carryforward began to expire in 2009 and will continue to expire through 2013, if not utilized. Management does not believe the future utilization of the federal net operating loss carryforwards will be limited by the provisions of Internal Revenue Code, Section 382.

The Company recorded valuation allowances of approximately \$37 million and \$40 million as of December 31, 2010 and 2009, respectively, to fully reserve net deferred tax assets as the realization criteria has not been met. In the future, should management conclude that these deferred tax assets are, at least in part, realizable; the valuation allowance will be reduced to the extent of such realization and recognized as a deferred income tax benefit in the statement of operations.

The Company has not recorded any expense or accrued for any related expense for any uncertain tax positions. The Company's 2006 – 2010 years remain subject to examination for federal income tax purposes, whereas the 2005 – 2010 years remain subject to examination for certain state taxing jurisdictions where the Company operates.

**10. Commitments and Contingencies**

**Construction Commitment**

The Company commenced construction in September 2010 on a new IRF project in Texas and is expected to be completed in July 2011. The project will be self-funded, with an estimated construction cost of approximately \$9.6 million.

**Operating Leases**

The Company has entered into various operating leases for its corporate offices and warehouse, an Alabama office, and land for its joint venture hospital.

## Notes to Consolidated Financial Statements (continued)

**10. Commitments and Contingencies (continued)**

In December 2007, the Company, through its Wyoming joint venture, entered into a long-term lease with the local county for the land on which the hospital is located. The lease has an initial term of 49 years, and beginning in January 2008 requires annual payments of \$114,375 for the first four years, and annual rent increases of 1% for each of the years thereafter. The lease allows for a total of five extension periods to the initial 49-year term, at 10 years per extension period. Lease expense is accounted for using the straight line method over the term of the lease. Amounts accrued for future rents at December 31, 2010 amounted to \$84,352.

Future noncancelable payments under the Company's outstanding operating lease commitments as of December 31, 2010 are as follows:

| Year ending December 31, |                    |
|--------------------------|--------------------|
| 2011                     | \$ 366,376         |
| 2012                     | 372,601            |
| 2013                     | 365,710            |
| 2014                     | 358,975            |
| 2015                     | 340,403            |
| Thereafter               | <u>6,174,589</u>   |
| Total                    | <u>\$7,978,654</u> |

Rental expense under operating lease commitments was \$424,408 and \$370,900 for 2010 and 2009, respectively.

**Compliance with Laws and Regulations**

The health care industry is subject to numerous laws and regulations of federal, state and local governments. These laws and regulations include, but are not necessarily limited to, matters such as licensure, accreditation, government health care program participation requirements, reimbursement for patient services, and Medicare and Medicaid fraud and abuse. Violations of these laws and regulations could result in expulsion from government health care programs, together with the imposition of significant fines and penalties as well as significant repayments for patient services previously billed. Management believes that the Company is in material compliance with fraud and abuse laws and regulations. Compliance with such laws and regulations can be subject to future review and interpretation as well as regulatory actions unknown or unasserted at this time.



**10. Commitments and Contingencies (continued)**

In addition to the general and professional liability claims, the Company is involved in litigation and regulatory investigations arising in the ordinary course of business. In the opinion of management, after consultation with legal counsel, these matters are expected to be resolved without material adverse effect on the Company's consolidated financial position, results of operations, or cash flows.

**11. Common Stock and Mandatorily Redeemable Preferred Stock**

At December 31, 2010, the Company is authorized to issue 26.4 million shares of common stock, par value \$0.01 per share, 3.6 million shares of mandatorily redeemable preferred stock, par value \$0.01 per share, designated as Series A Redeemable Preferred Shares, 5.9 million shares of mandatorily redeemable preferred stock, par value \$0.01 per share, designated as Series B Redeemable Preferred Shares, and 1.5 million shares of mandatorily redeemable preferred stock, par value \$0.01 per share, designated as Series C Redeemable Preferred Shares (collectively referred to as the Preferred Shares).

In connection with the Ally July 2010 amendment (see Note 8), the Company's principal investor agreed to invest additional equity, up to \$15 million, in the Company in exchange for the issuance of Series C Preferred Shares. In July 2010, the Company received \$5 million related to the issuance of 500,000 Series C Preferred Shares. The shares were issued at \$10 per share. In addition, the Company agreed to pay its principal investor a 2% commitment fee per annum of the outstanding, undrawn commitment, compounded quarterly and payable in cash. For the year ended December 31, 2010, the Company paid \$97,000 in commitment fees to its principal investor.

**Parity Stock**

The Preferred Shares rank on a parity with each other and have the same powers, preferences and rights.

**11. Common Stock and Mandatorily Redeemable Preferred Stock (continued)**

**Voting Rights**

The holders of the common shares are entitled to one vote per share on all matters to be voted on by the stockholders of the Company. The Preferred Shares are nonvoting.

**Dividend Rights**

Except as otherwise provided by the terms of the Preferred Shares agreement, the holders of the common shares shall be entitled to share equally, share for share, in any dividends. Holders of the Series A and B Preferred Shares, in preference to the holders of any other stock of the Company, including the common shares, were entitled to receive cumulative cash dividends at the rate of 10% of the original issue price (\$10) per annum, compounded annually through January 1, 2010. On May 14, 2010, the Company filed the Third Amended and Restated Certificate of Incorporation to cease the accrual of dividends, on the Series A and B Preferred Shares, retroactive to January 1, 2010. Dividends on the Series A and B Preferred Shares that were accrued during the period from January 1, 2010 through May 14, 2010, amounting to \$4.9 million, were forgiven and recorded as an increase to additional paid-in capital.

The Series C Preferred Shares accrue dividends at the rate of 15% of the original issue price (\$10) per annum, compounded quarterly for one year after the original issue date, and thereafter at the rate of 18% of the original issue price per annum, compounded quarterly. Cumulative preferred dividends in the amount of \$321,000 were accrued as of December 31, 2010.

**Liquidation**

Upon any liquidation, dissolution, or winding up of the Company, before any distribution or payment shall be made to the holders of any common shares, the holders of the Preferred Shares will be entitled to be paid out of the assets of the Company an amount per share equal to the sum of the Original Issue Price plus all accrued and unpaid dividends payable on the preferred stock (Liquidation Preference).

**11. Common Stock and Mandatorily Redeemable Preferred Stock (continued)**

**Mandatory Redemption of Preferred Shares**

The Third Amended and Restated Certificate of Incorporation also removed the mandatory redemption date of the Series A and B Preferred Shares, which was February 1, 2011. The effect of this amendment resulted in a reclassification of the estimated fair value of the Series A and B Preferred Shares subject to mandatory redemption, and the related accrued dividends, from liabilities to mezzanine equity.

In July 2010, the Company filed the First Amendment to the Third Amended and Restated Certificate of Incorporation, which reinstated the mandatory redemption date for all of the Preferred Shares to be December 31, 2013. This modification required the Company to record the estimated fair value of the Preferred Shares as debt since the shares are subject to mandatory redemption. The recorded value of the Preferred Shares prior to the modification amounted to \$137.2 million, which includes accrued dividends of \$43 million. At the modification date, the Company recorded the Preferred Shares at the estimated fair value of \$112.7 million. The difference between the carrying value of the Preferred Shares and the fair value of the Preferred Shares, of \$24.5 million, has been recorded in additional paid-in capital and will be accreted over the redemption period ending December 31, 2013. The Company has recorded accretion of \$2.9 million for the year ending December 31, 2010.

If the Company is not able to pay the preferred stock redemption amount of \$146,032,461 in December 2013, the Company will request an extension of the redemption date from the preferred stockholders.

**Anti-Dilution Provisions**

In the event the Company decides to issue additional common or preferred shares, the Company must first provide notice and opportunity to sell such shares to current shareholders.

**12. Stock-Based Compensation**

On January 12, 2004, the Board of Directors approved the Company's 2004 Stock Option Plan (Option Plan). The Option Plan provides for the issuance of a maximum of 2.0 million shares of common stock to executives, employees, non-employee directors, and consultants of the Company. The options under the Option Plan typically vest over a four-year period. All options expire ten years from their date of issuance, and are granted at no less than the fair market value of the Company's common stock at the date of grant.

**Graded Vesting Options**

Options granted on a graded vesting schedule become exercisable with respect to one-quarter of the total number of shares subject to the option 12 months after the date of its grant and with respect to an additional one-quarter at the end of each 12-month period thereafter during the succeeding three years.

The Company recorded \$15,471 and \$19,107 of stock-based compensation expense for graded vesting options in 2010 and 2009, respectively. Stock-based compensation expense is included in salaries and benefits operating expense. Unrecognized compensation expense associated with awards not yet vested as of December 31, 2010 and 2009 is \$66,696 and \$49,583, respectively, and is expected to be recognized over a weighted average period of two years.

The following table sets forth information about the weighted-average fair value of graded vesting options granted during 2010 and 2009 using the Black-Scholes pricing model and the weighted-average assumptions used for such grants.

|  | 2010      | 2009      |
|--|-----------|-----------|
| Weighted average fair value of options at grant date | \$ 0.11   | \$ 0.10   |
| Dividend yields                                      | 0%        | 0%        |
| Expected volatility                                  | 53.08%    | 50.50%    |
| Risk-free interest rates                             | 4.01%     | 2.03%     |
| Expected lives                                       | 5.9 years | 6.5 years |

The Company's estimate of the volatility of its shares is based on reference to the historical volatility of two similar public companies as the Company has no trading history of its shares.

**12. Stock-Based Compensation (continued)****Liquidity Event Vesting Options**

The options will not vest or be exercisable unless and until a liquidity event that meets the requirements has occurred. A liquidity event is defined as any event or series of events which result in the primary preferred shareholder receiving a return on their total capital investment in the Company, which may include (i) a redemption or purchase of 50% or more of the total capital investment held by the primary preferred shareholder in the Company either by the Company or a third party investor, (ii) receipt by the primary preferred shareholder of equity in any purchaser or successor in a business combination involving the Company, or (iii) an initial public offering of equity of the Company in which the primary preferred shareholder is allowed to sell shares.

If a liquidity event has occurred, the liquidity event options vest and will be exercisable for a percentage of the aggregate number of shares covered by the option based on the investment multiple. The investment multiple is defined as the total cash or other value received by the primary preferred shareholders upon any liquidity event divided by the total capital investment made by the primary preferred shareholder in common and preferred stock of the Company taking into account all vested and vesting options. The following table lists the vesting percentages by investment multiple:

|                      | <b>Percentage of<br/>Shares That<br/>May be<br/>Purchased</b> |
|----------------------|---|
| Investment multiple: |   |
| 2.5x                 | 100%  |
| 2.0x                 | 50  |
| 1.75x                | 25  |
| less than 1.75x      | 0   |

If investment multiples are between 1.75x and 2.0x, or 2.0x and 2.5x, a proration of the relevant vesting percentage would be made. Compensation expense will be recorded when it is probable that a liquidity event resulting in an investment multiple of at least 1.75x will occur. The Company has granted 200,000 liquidity event vesting options as of December 31, 2010. As of December 31, 2010, management has not determined that such a liquidity event is probable, and accordingly, no compensation expense has been recorded on liquidity event vesting options.

**12. Stock-Based Compensation (continued)****Restricted Stock Grants**

In April 2009, the Company approved the Ernest Health, Inc. Restricted Stock Plan (the Plan). In accordance with the Plan, the Company is permitted to grant restricted common stock to officers and other key employees as a means to encourage stock ownership and proprietary interest in the Company.

On April 16, 2009, the Company awarded four key officers shares of the Company's restricted common stock amounting to 575,000 shares. The grants are restricted with no shares vesting until the 6<sup>th</sup> anniversary of the grant date or full vesting in the event of a change in control. The Company has recorded compensation expense, using the grant date fair value of \$0.27 per share, ratably over the vesting period of 6 years. The amount of compensation recorded for the year ended December 31, 2010 and 2009, respectively, amounted to \$25,875 and \$18,328. As of December 31, 2010, the total amount of unrecognized compensation cost related to restricted stock grants was approximately \$111,047, which is expected to be recognized over 4.5 years.

During November 2010, the Company granted 175,000 shares of restricted common stock. The grants are restricted with no shares vesting until the 4<sup>th</sup> anniversary of the grant date or full vesting in the event of a change in control. The Company has recorded compensation expense, using the grant date fair value of \$0.51 per share, ratably over the vesting period of 4 years. The amount of compensation recorded for the year ended December 31, 2010 amounted to \$4,072. As of December 31, 2010, the total amount of unrecognized compensation cost related to restricted stock grants was approximately \$85,178, which is expected to be recognized over 3.9 years.

**12. Stock-Based Compensation (continued)****Option Disclosures**

The following table summarizes information about stock option activity and stock options outstanding:

|  | Graded<br>Vesting<br>Options | Weighted<br>Average<br>Exercise Price<br>Per Share |
|--|------------------------------|--|
| Outstanding at January 1, 2009   | 1,081,250                    | \$ 0.50  |
| Granted  | 305,000                      | 0.50   |
| Terminated/forfeited   | (31,250)                     | 0.50   |
| Outstanding at December 31, 2009   | 1,355,000                    | 0.50   |
| Granted  | <b>160,000</b>               | <b>0.49</b>  |
| Exercised/Converted  | <b>(18,750)</b>              | <b>0.50</b>  |
| Terminated/forfeited   | <b>(56,250)</b>              | <b>0.50</b>  |
| Outstanding at December 31, 2010   | <b><u>1,440,000</u></b>      | <b><u>\$ 0.50</u></b>                              |
| Weighted average remaining contractual life of options outstanding at<br>December 31, 2010 | <b><u>5.9 years</u></b>      |  |
| Number vested and exercisable at December 31, 2010   | <b><u>1,001,250</u></b>      | <b><u>\$ 0.50</u></b>                              |
| Weighted average remaining contractual life of vested options at December 31,<br>2010      | <b><u>5.10 years</u></b>     |  |
| Available for grant at December 31, 2010   | <b><u>360,000</u></b>        |  |

**13. 401(k) Retirement Plan**

The Company sponsors a 401(k) retirement plan (401(k) Plan) covering all eligible employees as defined by the 401(k) Plan. Contributions to the 401(k) Plan are based upon the amount of the employees' deferrals and the employer's matching formula. The Company made contributions to the 401(k) Plan during 2010 and 2009 of \$463,161 and \$473,520, respectively.

**14. Subsequent Event**

**Term Loan Proposal**

In February 2011, the Company entered into a letter of intent with a potential lender to refinance all of the outstanding Ally and SNB debt, which is expected to close in April 2010. The final loan amount will include a term loan and a revolver, along with a mezzanine loan. The Company would be subject to fees which vary upon final loan agreements.



## Ernest Health, Inc. and Subsidiaries

## Condensed Consolidated Financial Statements (Unaudited)

Nine Months Ended September 30, 2011 and 2010

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Ernest Health, Inc. and Subsidiaries  
Condensed Consolidated Balance Sheets

|  | <u>September 30</u><br><u>2011</u> | <u>December 31</u><br><u>2010</u> |
|--|------------------------------------|-----------------------------------|
|  | <i>(Unaudited)</i>                 |                                   |
| <b>Assets</b>  |                                    |                                   |
| Current assets:  |                                    |                                   |
| Cash and cash equivalents  | \$ 12,150,988                      | \$ 17,567,797                     |
| Accounts receivable, net of allowance for bad debts of \$1,287,000 in 2011 and \$1,819,000 in 2010 | 30,039,781                         | 30,677,579                        |
| Inventories  | 1,371,463                          | 1,367,411                         |
| Prepaid expenses   | 1,586,611                          | 1,120,181                         |
| Short-term investments   | 150,000                            | 150,000                           |
| Other current assets   | 27,745                             | 108,397                           |
| <b>Total current assets</b>  | <b>45,326,588</b>                  | <b>50,991,365</b>                 |
| Property and equipment:  |                                    |                                   |
| Land   | 18,926,524                         | 18,926,524                        |
| Buildings, land improvements, and leasehold improvements   | 132,406,214                        | 120,359,056                       |
| Equipment  | 44,046,564                         | 42,737,224                        |
| Furniture and fixtures   | 5,765,907                          | 5,037,457                         |
| Computer equipment, hardware, and software   | 17,781,066                         | 17,005,759                        |
| Construction in progress   | 927,095                            | 4,206,795                         |
|  | <b>219,853,370</b>                 | <b>208,272,815</b>                |
| Accumulated depreciation   | <b>(63,824,580)</b>                | <b>(55,150,713)</b>               |
| <b>Total property and equipment, net</b>   | <b>156,028,790</b>                 | <b>153,122,102</b>                |
| Other assets:  |                                    |                                   |
| Deferred financing fees, net   | 3,974,910                          | 2,870,510                         |
| Other noncurrent assets  | 1,343,975                          | 322,466                           |
| <b>Total other assets</b>  | <b>5,318,885</b>                   | <b>3,192,976</b>                  |
|  | <b><u>\$206,674,263</u></b>        | <b><u>\$207,306,443</u></b>       |

|   | September 30<br>2011<br><i>(Unaudited)</i> | December 31<br>2010   |
|---|--|-----------------------|
| <b>Liabilities and stockholders' deficit</b>  |  |                       |
| Current liabilities:  |  |                       |
| Accounts payable  | \$ 5,162,805                               | \$ 6,804,175          |
| Estimated third-party settlements   | 5,028,044                                  | 5,762,543             |
| Accrued compensation  | 10,287,563                                 | 9,710,102             |
| Current portion of long-term debt   | 4,200,000                                  | 7,709,798             |
| Other current liabilities   | 5,239,945                                  | 6,750,674             |
| Total current liabilities   | 29,918,357                                 | 36,737,292            |
| Long-term debt, net of current portion  | 166,308,779                                | 162,749,049           |
| Preferred shares subject to mandatory redemption, including accrued interest  | —  | 120,835,995           |
| Other noncurrent liabilities  | 1,233,278                                  | 84,352                |
| Total liabilities   | 197,460,414                                | 320,406,688           |
| Redeemable Series A preferred stock, \$0.01 par value; 3,600,000 shares authorized and outstanding (liquidation value \$58,700,000)                                     | 48,204,000                                 | —                     |
| Redeemable Series B preferred stock, \$0.01 par value; 5,900,000 shares authorized; 5,772,913 shares issued and outstanding (liquidation value \$78,500,000)            | 64,483,446                                 | —                     |
| Redeemable Series C preferred stock, \$0.01 par value; 1,500,000 shares authorized and 500,000 shares outstanding (liquidation value \$5,970,000)                       | 5,854,442                                  | —                     |
| Stockholders' deficit:  |  |                       |
| Controlling interest:   |  |                       |
| Common stock, \$0.01 par value; 26,380,346 shares authorized; 24,963,841 and 24,773,841 issued and 24,439,096 and 24,249,096 outstanding in 2011 and 2010, respectively | 249,639                                    | 247,739               |
| Additional paid-in capital  | 41,230,112                                 | 38,511,552            |
| Notes receivable attributable to common stock grants  | (503,637)                                  | (503,637)             |
| Treasury stock, 524,745 shares in 2011 and 2010, at cost  | (262,373)                                  | (262,373)             |
| Accumulated deficit   | (151,324,884)                              | (152,461,891)         |
| Total controlling interest  | (110,611,143)                              | (114,468,610)         |
| Noncontrolling interest   | 1,283,104                                  | 1,368,365             |
| Total stockholders' deficit   | (109,328,039)                              | (113,100,245)         |
| Total liabilities and stockholders' deficit   | <u>\$ 206,674,263</u>                      | <u>\$ 207,306,443</u> |

See accompanying notes.

## Ernest Health, Inc. and Subsidiaries

## Condensed Consolidated Statements of Operations (Unaudited)

|  | Nine Months Ended<br>September 30 |                       |
|--|-----------------------------------|-----------------------|
|  | 2011                              | 2010                  |
| Net patient service revenue                                      | <b>\$164,370,500</b>              | \$159,678,984         |
| Other operating income   | <b>1,303,960</b>                  | 610,812               |
| <b>Total operating income</b>                                    | <b>165,674,460</b>                | 160,289,796           |
| Operating expenses:  |                                   |                       |
| Salaries and benefits  | <b>95,228,002</b>                 | 92,530,827            |
| Depreciation and amortization                                    | <b>9,499,574</b>                  | 9,757,509             |
| Supplies   | <b>13,593,133</b>                 | 14,186,140            |
| Contract labor and services                                      | <b>11,454,440</b>                 | 10,786,705            |
| Utilities  | <b>2,906,605</b>                  | 2,588,386             |
| Insurance  | <b>2,361,477</b>                  | 1,553,554             |
| Travel and transportation  | <b>1,802,145</b>                  | 1,881,424             |
| Professional fees  | <b>1,272,366</b>                  | 2,396,689             |
| Taxes (gross receipts, property, and other)                      | <b>2,992,217</b>                  | 2,759,288             |
| Bad debt expense (recovery)                                      | <b>255,807</b>                    | (589,559)             |
| Other fees, primarily management and medical director fees       | <b>3,571,869</b>                  | 3,975,266             |
| Other patient-related expenses                                   | <b>1,541,081</b>                  | 1,672,346             |
| Recruiting and relocation  | <b>1,098,050</b>                  | 697,452               |
| Minor equipment  | <b>169,956</b>                    | 165,095               |
| Other  | <b>3,125,108</b>                  | 3,238,343             |
| <b>Total operating expenses</b>                                  | <b>150,871,830</b>                | 147,599,465           |
| <b>Income from operations</b>                                    | <b>14,802,630</b>                 | 12,690,331            |
| Nonoperating (income) and expense:                               |                                   |                       |
| Interest income  | <b>(88,548)</b>                   | (230,959)             |
| Interest expense – redeemable preferred shares                   | <b>51,600</b>                     | 5,018,373             |
| Interest expense – other   | <b>10,432,481</b>                 | 11,172,725            |
| Gain on disposal of assets                                       | <b>—</b>                          | (400)                 |
| Loss on extinguishment of long-term debt                         | <b>3,325,666</b>                  | —                     |
| <b>Total nonoperating expense</b>                                | <b>13,721,199</b>                 | 15,959,739            |
| <b>Net income (loss) before income tax expense (benefit)</b>     | <b>1,081,431</b>                  | (3,269,408)           |
| <b>Income tax expense (benefit)</b>                              | <b>29,686</b>                     | (21,810)              |
| <b>Net income (loss) before noncontrolling interest</b>          | <b>1,051,745</b>                  | (3,247,598)           |
| <b>Net loss (income) attributable to noncontrolling interest</b> | <b>85,262</b>                     | (185,835)             |
| <b>Net income (loss) attributable to controlling interest</b>    | <b>\$ 1,137,007</b>               | <b>\$ (3,433,433)</b> |

See accompanying notes.

## Ernest Health, Inc. and Subsidiaries

## Condensed Consolidated Statement of Changes in Stockholders' Deficit (Unaudited)

Nine Months Ended September 30, 2011

|   | Common Stock      |                  | Additional          | Notes               | Treasury           | Accumulated            | Total                  |
|---|-------------------|------------------|---------------------|---------------------|--------------------|------------------------|------------------------|
|   | Shares            | Par Value        | Paid-In             | Receivable          | Stock              | Deficit                |                        |
|   |                   |                  | Capital             | Attributable to     |                    |                        |                        |
|   |                   |                  |                     | Common Stock        |                    |                        |                        |
|   |                   |                  |                     | Grants              |                    |                        |                        |
| Balance, January 1, 2011                        | 24,773,841        | \$247,739        | \$38,511,552        | \$ (503,637)        | \$(262,373)        | \$(152,461,891)        | \$(114,468,610)        |
| Issuance of common stock                        | <b>190,000</b>    | <b>1,900</b>     | <b>93,100</b>       | —                   | —                  | —                      | <b>95,000</b>          |
| Preferred shares accretion                      | —                 | —                | (2,567,114)         | —                   | —                  | —                      | (2,567,114)            |
| Fair value adjustment on preferred shares       | —                 | —                | 5,143,833           | —                   | —                  | —                      | 5,143,833              |
| Stock-based compensation                        | —                 | —                | 48,741              | —                   | —                  | —                      | 48,741                 |
| Net income attributable to controlling interest | —                 | —                | —                   | —                   | —                  | 1,137,007              | 1,137,007              |
| Balance, September 30, 2011                     | <u>24,963,841</u> | <u>\$249,639</u> | <u>\$41,230,112</u> | <u>\$ (503,637)</u> | <u>\$(262,373)</u> | <u>\$(151,324,884)</u> | <u>\$(110,611,143)</u> |

*See accompanying notes.*

## Ernest Health, Inc. and Subsidiaries

## Condensed Consolidated Statements of Cash Flows (Unaudited)

|   | Nine Months Ended September 30 |                      |
|---|--------------------------------|----------------------|
|   | 2011                           | 2010                 |
| <b>Operating activities</b>   |                                |                      |
| Net income (loss) attributable to controlling interest  | \$ 1,137,007                   | \$ (3,433,433)       |
| Adjustments to reconcile net income (loss) attributable to controlling interest to net cash provided by operating activities: |                                |                      |
| Depreciation and amortization   | 9,499,574                      | 9,757,509            |
| Bad debt expense (recovery)   | 255,807                        | (589,559)            |
| Loss on extinguishment of long-term debt  | 3,325,666                      | —                    |
| Stock-based compensation expense  | 48,741                         | 30,337               |
| Interest on redeemable preferred shares   | 51,600                         | 5,018,373            |
| Amortization of long-term debt discount   | 168,779                        | —                    |
| Fair value adjustment on interest rate cap  | 225,000                        | —                    |
| Noncontrolling interest in consolidated subsidiary earnings   | (85,262)                       | 185,835              |
| Changes in assets and liabilities:  |                                |                      |
| Accounts receivable   | 381,991                        | 4,492,299            |
| Estimated third-party settlements   | (734,499)                      | 4,991,137            |
| Inventories   | (4,052)                        | (12,715)             |
| Prepaid expenses  | (466,430)                      | (84,747)             |
| Other assets  | (940,857)                      | 278,263              |
| Accounts payable  | (1,641,370)                    | 1,467,675            |
| Accrued compensation  | 577,461                        | (2,327,396)          |
| Other liabilities   | (586,802)                      | (245,297)            |
| Net cash provided by operating activities   | <u>11,212,354</u>              | <u>19,528,281</u>    |
| <b>Investing activities</b>   |                                |                      |
| Purchase of property and equipment  | (11,350,045)                   | (8,929,003)          |
| Net cash used in investing activities   | <u>(11,350,045)</u>            | <u>(8,929,003)</u>   |
| <b>Financing activities</b>   |                                |                      |
| Payment on long-term debt   | (172,775,479)                  | (14,378,305)         |
| Financing fees incurred   | (4,288,639)                    | (913,858)            |
| Proceeds from issuance of long-term debt  | 171,690,000                    | —                    |
| Issuance of redeemable preferred shares   | —                              | 5,000,000            |
| Proceeds from issuance of common stock  | 95,000                         | 9,375                |
| Net cash used in financing activities   | <u>(5,279,118)</u>             | <u>(10,282,788)</u>  |
| Net change in cash and cash equivalents   | (5,416,809)                    | 316,490              |
| Cash and cash equivalents at beginning of period  | 17,567,797                     | 21,464,707           |
| Cash and cash equivalents at end of period  | <u>\$ 12,150,988</u>           | <u>\$ 21,781,197</u> |
| Interest paid   | \$ 11,590,006                  | \$ 10,018,907        |
| Income taxes paid   | \$ 53,000                      | \$ —                 |
| <b>Schedule of noncash financing and investing activities</b>   |                                |                      |
| Interest forfeiture on preferred shares   | \$ —                           | \$ 4,957,194         |
| Interest on preferred shares capitalized to property and equipment  | 231,012                        | 66,217               |
| Accretion of preferred shares to redemption value   | (2,567,114)                    | (1,046,593)          |
| Fair value adjustment on preferred shares   | 5,143,833                      | 24,506,064           |

See accompanying notes.

September 30, 2011

## 1. Organization and Description of Business

Ernest Health, Inc. (the Company) was incorporated in the state of Delaware on November 19, 2003. The corporate headquarters are located in Albuquerque, New Mexico. The Company develops and operates post-acute health care facilities dedicated to the recovery of individuals who have functional deficits as a result of injury or illness. The Company operates through various subsidiaries, including eight freestanding inpatient rehabilitation facilities (IRF) in New Mexico, Texas, Arizona, South Carolina, Wyoming, and Colorado (one of which is a multi-campus facility in Texas). The Company also operates eight freestanding long-term acute care (LTAC) hospitals in Idaho, Texas, Montana, and Utah, including two multi-campus facilities in New Mexico and Colorado. The Company's IRF located in Wyoming is 25% owned by an unrelated hospital. The Company has consolidated this joint venture.

## 2. Significant Accounting Policies

### Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (GAAP) for interim financial reporting and applied on a basis substantially consistent with the December 31, 2010, audited consolidated financial statements of the Company. These financial statements do not include all of the information and notes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, all adjustments considered necessary for a fair presentation have been included. Operating results for the nine months ended September 30, 2011, are not necessarily indicative of the results to be expected for the year ending December 31, 2011. For more information, refer to the audited consolidated financial statements and notes thereto as of and for the year ended December 31, 2010.

The condensed consolidated balance sheet at December 31, 2010, was derived from the audited consolidated financial statements at that date but does not include all of the information and footnotes required by GAAP for complete financial statements.

Subsequent events have been evaluated through January 18, 2012, the date of the issuance of the accompanying condensed consolidated financial statements. There were no recognized subsequent events requiring recognition in the accompanying condensed consolidated financial statements, and there were no nonrecognized subsequent events that were required to be disclosed.

## 2. Significant Accounting Policies (continued)

### Principles of Consolidation

The condensed consolidated financial statements include the accounts of the Company, its wholly owned subsidiaries, and its controlled joint venture. All significant intercompany balances and transactions have been eliminated in consolidation.

### Management's Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and the reported amount of revenues and expenses. Significant estimates include third-party settlements, allowances for contractual adjustments and doubtful accounts, and other loss contingency accruals. Actual results could differ from these estimates.

### Fair Value of Financial Instruments

The carrying value of the Company's financial instruments classified as current assets and current liabilities approximates fair value. The fair values of other financial instruments are disclosed in their respective notes.

### Accounts Receivable

Accounts receivable consist primarily of amounts due from the Medicare program and various state Medicaid programs, managed care health plans, commercial insurance companies, and individual patients. Net accounts receivable have been adjusted to the estimated amounts to be received. These estimates are subject to further adjustments upon review by third-party payors. An estimated allowance for doubtful accounts and bad debt expense is recorded to the extent it is probable a portion or all of a particular account will not be collected. In evaluating the collectibility of accounts receivable, the Company considers a number of factors, including historical collection experience, the age of the accounts, changes in collection patterns, the composition of patient accounts by payor type, the status of ongoing disputes with third-party payors, and general economic conditions.



## Notes to Consolidated Financial Statements (Unaudited) (continued)

**2. Significant Accounting Policies (continued)**

The composition of accounts receivable by payor is as follows:

|                    | <u>Medicare</u> | <u>Medicaid</u> | <u>Commercial<br/>and Other</u> |
|--------------------|-----------------|-----------------|---------------------------------|
| September 30, 2011 | 51%             | 8%              | 41%                             |
| December 31, 2010  | 51%             | 12%             | 37%                             |

Receivables from government agencies are significant to the Company's operations. Management does not believe there are any significant concentrations from any particular payor that would subject the Company to significant credit risks in the collection of its accounts receivable.

**Concentration of Credit Risk**

Financial instruments that potentially subject the Company to significant concentration of credit risk consist principally of cash deposited with financial institutions in excess of amounts insured by the Federal Deposit Insurance Corporation (\$250,000) and by the Security Investor Protection Corporation (\$500,000). The Company believes it mitigates credit risk by depositing cash with major financial institutions. At September 30, 2011, the Company's uninsured balance was approximately \$10 million. Management monitors the financial condition of these financial institutions and does not believe any significant credit risk exists at this time.

**Income Taxes**

The Company provides for income taxes using the asset and liability method. The Company recognizes the amount of income taxes payable or refundable for the year, as well as deferred tax assets and liabilities. Deferred income tax assets and liabilities arise from temporary differences associated with differences between the financial statements and tax bases of assets and liabilities, as measured by the enacted tax rates that are expected to be in effect when these differences reverse. Deferred tax assets and liabilities are classified as current or noncurrent, depending on the classification of the assets or liabilities to which they relate. Deferred tax assets and liabilities not related to an asset or liability are classified as current or noncurrent, depending on the periods in which the temporary differences are expected to reverse. Valuation allowances are recorded to reduce the amount of deferred tax assets when, based upon available objective

## Notes to Consolidated Financial Statements (Unaudited) (continued)

**2. Significant Accounting Policies (continued)**

evidence such as historical taxable income, the expected reversal of temporary differences, and projections of future taxable income, management cannot conclude that it is “more likely than not” that some or all of the deferred tax assets will be realized.

**Net Patient Service Revenue**

Net patient service revenue is recorded during the period the health care services are provided, based upon the estimated amounts due from the patients and third-party payors. The Company has agreements with third-party payors that provide for payments to each of its hospitals. These payment agreements may be based upon prospective rates, reimbursable costs, established charges, discounted charges, or per diem payments. Net patient service revenue is reported at the estimated net realizable amounts from Medicare, Medicaid, other third-party payors, and individual patients for services rendered. Retroactive adjustments, which may result from future examinations by third-party payors, are accrued on an estimated basis in the period the related services are rendered and adjusted as necessary in future periods based upon final settlements. The composition of net patient service revenue by significant payor for the nine months ended September 30 is as follows:

|                      | Nine Months Ended<br>September 30 |             |
|----------------------|-----------------------------------|-------------|
|                      | <u>2011</u>                       | <u>2010</u> |
| Medicare             | 71%                               | 70%         |
| Medicaid             | 4%                                | 5%          |
| Commercial and other | 25%                               | 25%         |

Most services rendered to Medicare and Medicaid beneficiaries are reimbursed at prospectively determined rates per discharge. These rates vary according to a patient classification system that is based on clinical and diagnostic factors. Certain services of the Medicare program and certain state Medicaid programs are paid on a cost reimbursement methodology. The Company is reimbursed for cost reimbursement items at a tentative rate, with final settlement determined after submission of annual cost reports and audits are performed by the intermediary. The Company has recorded the estimated amounts owed under these cost-reimbursed programs as estimated third-party settlements. Laws and regulations governing the Medicare and Medicaid programs are extremely complex and subject to interpretation. As a result, there is at least a

**2. Significant Accounting Policies (continued)**

reasonable possibility that recorded third-party payor settlement estimates may change by a material amount as cost report adjustments become known or cost report years are no longer subject to audit.

**Stock-Based Compensation**

The Company recognizes compensation expense for share-based payment transactions with employees, such as grants of stock options and restricted stock, based on the estimated fair value at the grant date over the shares' vesting periods. The Company uses the Black-Scholes method to estimate the fair value of stock options as of the date of grant and estimates the fair value of restricted stock based on the determined current fair value of the Company's common stock.

**Recent Accounting Policies**

In August 2010, an accounting standard was released relating to the accounting and disclosure of insurance claims and related insurance recoveries. The accounting standard requires companies to report the estimated ultimate cost of insurance claims as a liability and to report any anticipated insurance recoveries as an asset on the statement of financial position. This standard was adopted by the Company on January 1, 2011. As of September 30, 2011, the Company has recorded a liability in the amount of \$1.5 million in other current and other noncurrent liabilities and a corresponding insurance recovery of \$1.1 million in other noncurrent assets for the estimated ultimate costs of its insurance programs relating primarily to workers' compensation and professional and general liability claims.

In July 2011, an accounting standard was released relating to the presentation and disclosure of patient service revenue, provision for bad debts, and the allowance for doubtful accounts for certain health care entities. The accounting standard will require health care providers to report the provision for bad debts as a reduction of net patient service revenue in the statement of operations. In addition, the notes to the financial statements will include additional disclosures relating to the methods used to recognize net patient service revenue, amount of net patient service revenue recognized by major payor source, methods used to analyze the allowance for doubtful accounts by major payor source, and any significant changes to the allowance for doubtful accounts. The accounting standard is effective for fiscal years beginning after December 15, 2011, with early adoption permitted. Management is currently evaluating the effect of adopting this accounting standard in the condensed consolidated financial statements.

**3. Long-Term Debt**

Long-term debt consists of the following:

|  | <u>September 30</u><br><u>2011</u> | <u>December 31</u><br><u>2010</u> |
|--|------------------------------------|-----------------------------------|
| First Lien variable-rate loan, due May 2016  | <b>\$ 117,267,500</b>              | \$ —                              |
| Second Lien variable-rate loan, due May 2017 | <b>53,241,279</b>                  | —                                 |
| Variable-rate facility term loans            | —                                  | 159,199,387                       |
| Variable-rate Wyoming term loan              | —                                  | 8,782,550                         |
| Variable-rate Wyoming equipment loan         | —                                  | 2,476,910                         |
| Total long-term debt                         | <b>170,508,779</b>                 | 170,458,847                       |
| Less current portion                         | <b>(4,200,000)</b>                 | (7,709,798)                       |
| Long-term debt, net of current portion       | <b><u>\$166,308,779</u></b>        | <b><u>\$162,749,049</u></b>       |

In May 2011, the Company entered into agreements with CIT Capital Securities, LLC (CIT) and Fifth Street Finance Corp., as Administrative Agents, for two term loans in the amount of \$120 million (First Lien) and \$54 million (Second Lien), respectively. These term loans are secured by substantially all the underlying real and personal property of each hospital. The proceeds from the two term loans were used to extinguish the variable-rate facility term loans, the variable-rate Wyoming term loan, and the variable-rate Wyoming equipment loan. The aggregate amount of the existing debt extinguished was approximately \$168.3 million, including \$967,000 in prepayment penalties. In addition, \$2.4 million in unamortized deferred financing fees associated with the extinguished debt were written off. The total loss on extinguishment of long-term debt approximated \$3.3 million. Financing fees capitalized in connection with the First Lien and Second Lien loans amounted to approximately \$4.3 million.

The Company estimated the fair value of long-term debt using a discounted cash flow approach and considering the Company's nonperformance risk. The estimated fair value of the Company's long-term debt was \$168 million and \$167 million as of September 30, 2011 and December 31, 2010, respectively.

**3. Long-Term Debt (continued)****First Lien Variable-Rate Term Loan**

The First Lien term loan was issued at a discount of \$1.5 million. The original issue discount is recorded as a reduction to long-term debt and amounted to \$1.4 million at September 30, 2011. The discount is being amortized using the straight-line method, which approximates the effective interest method, to interest expense over the five-year term. The First Lien requires quarterly payments of principal and interest, based on LIBOR rates, with a floor of 1.50%, plus 4.75%. The interest rate for the nine months ended September 30, 2011 was 6.25%. The First Lien expires May 13, 2016.

**Second Lien Variable-Rate Term Loan**

The Second Lien term loan was issued at a discount of \$810,000. The original issue discount is recorded as a reduction to long-term debt and amounted to \$757,000 at September 30, 2011. The discount is being amortized using the straight-line method, which approximates the effective interest method, to interest expense over the six-year term. The Second Lien requires interest-only payments until maturity. Interest on the term loan is based on LIBOR rates, with a floor of 1.75%, plus 8.50%. The interest rate for the nine months ended September 30, 2011 was 10.25%. The Second Lien expires May 13, 2017.

The Company is required to meet certain financial covenants that include a leverage ratio, fixed charge coverage ratio, and capital expenditure requirements. At September 30, 2011, the Company was in compliance with all of the required financial covenants.

Future maturities of long-term debt at September 30, 2011, are as follows:

|            |                             |
|------------|-----------------------------|
| 2012       | <b>\$ 4,200,000</b>         |
| 2013       | <b>5,400,000</b>            |
| 2014       | <b>6,000,000</b>            |
| 2015       | <b>6,000,000</b>            |
| 2016       | <b>97,050,000</b>           |
| Thereafter | <b>51,858,779</b>           |
|            | <b><u>\$170,508,779</u></b> |

**3. Long-Term Debt (continued)****Revolving Loan**

The agreement with CIT includes a \$30 million revolver from which the Company has incurred no draws as of September 30, 2011. The Company is required to pay a monthly unused commitment fee of 0.75% of the average daily amount. However, if the outstanding amount is greater than one-half of the total commitment, the unused fee is 0.25% of the outstanding amount. Total commitment fees amounted to \$87,500 for the nine months ended September 30, 2011. The revolver has a five-year term and expires on May 13, 2016.

**Interest Rate Cap**

On June 13, 2011, the Company entered into an interest rate cap agreement to mitigate risk occurring from potential changes in variable interest rates. The interest rate cap does not qualify for hedge accounting under accounting standards for derivative instruments and hedging activities. Accounting standards require derivative instruments to be recorded at fair value. For derivatives not designated as a hedging instrument, gains or losses resulting from fair value changes are recorded in net income (loss) in the period of change.

The objective for entering into the interest rate cap arrangement is to minimize the Company's exposure to cash flow volatility, while still maintaining liquidity and flexibility. The interest rate cap was purchased for \$325,000 (representing the estimated fair value of the interest rate cap instrument). The interest rate cap agreement will limit the Company's interest rate yield to 3.5% on a notional balance of \$87 million. The rate adjusts the first day of each month, based on the one-month LIBOR/BBA. The interest rate cap agreement terminates on June 1, 2014. The estimated fair value of the interest rate cap at September 30, 2011, was \$100,000, which is included in other noncurrent assets, and was estimated based on the forward LIBOR curve with a blended average duration of three years. The adjustment to fair value, amounting to \$225,000, is recorded as a component of interest expense for the nine months ended September 30, 2011. There were no payments received under the interest rate cap agreement as of September 30, 2011.

**4. Income Taxes**

For the nine months ended September 30, 2011 and 2010, the Company recognized \$29,686 and \$(21,810), respectively, in income tax expense (benefit). For both years, these amounts relate to state income taxes.

The Company's deferred tax assets result primarily from financial statement accruals not currently deductible for tax purposes and net operating loss carryforwards, and its deferred tax liabilities result primarily from depreciation of property and equipment. The Company's net deferred tax assets as of September 30, 2011, amounted to approximately \$37.4 million and are offset by a full valuation allowance. In the future, should management conclude that these deferred tax assets are, at least in part, realizable, the valuation allowance will be reduced to the extent of such realization and recognized as a deferred income tax benefit in the statement of operations.

The Company accounts for income taxes using the minimum recognition threshold that a tax position is required to meet before being recognized in the financial statements. Tax accounting standards also provide guidance on de-recognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company has not recorded any expense in the condensed consolidated statements of operations or accrued for any related expense in the condensed consolidated balance sheets for any uncertain tax positions.

The Company's 2006–2011 years remain subject to examination for federal income tax purposes, whereas the 2005–2011 years remain subject to examination for certain state taxing jurisdictions where the Company operates.

**5. Common Stock and Redeemable Preferred Shares**

As of September 30, 2011, the Company is authorized to issue 26.4 million shares of common stock, par value \$0.01 per share; 3.6 million shares of redeemable preferred stock, par value \$0.01 per share, designated as Series A Redeemable Preferred Shares; 5.9 million shares of redeemable preferred stock, par value \$0.01 per share, designated as Series B Redeemable Preferred Shares; and 1.5 million shares of redeemable preferred stock, par value \$0.01 per share, designated as Series C Redeemable Preferred Shares (collectively referred to as the Preferred Shares).

**5. Common Stock and Redeemable Preferred Shares (continued)**

**Parity Stock**

The Preferred Shares rank on a parity with each other and have the same powers, preferences, and rights.

**Voting Rights**

The holders of the common shares are entitled to one vote per share on all matters to be voted on by the stockholders of the Company. The Preferred Shares are nonvoting.

**Dividend Rights**

The Series A Preferred Shares and Series B Preferred Shares accrued dividends at the rate of 10% of the original issue price (\$10) per annum, compounded quarterly on each outstanding share from the date of original issuance through January 1, 2010. Cumulative dividends through January 1, 2010, for the Series A Preferred Shares and Series B Preferred Shares amounted to \$23 million and \$21 million, respectively.

The Series C Preferred Shares accrue dividends at the rate of 15% of the original issue price (\$10) per annum, compounded quarterly on each outstanding share for one year after the original issue date, and thereafter at the rate of 18% of the original issue price per annum, compounded quarterly on each outstanding share. Cumulative dividends through September 30, 2011, for the Series C Preferred Shares amounted to \$700,000.

**Liquidation**

Upon any liquidation, dissolution, or winding up of the Company, before any distribution or payment shall be made to the holders of any common shares, the holders of Preferred Shares shall be entitled to be paid out of the assets of the Company an amount per share equal to the sum of the original issue price plus all accrued and unpaid dividends payable on the preferred stock (Liquidation Preference).



**5. Common Stock and Redeemable Preferred Shares (continued)****Redemption of Preferred Shares**

In July 2010, the Company filed the First Amendment to the Third Amended and Restated Certificate of Incorporation, which reinstated the mandatory redemption date for all of the Preferred Shares to December 31, 2013. This modification required the Company to record the estimated fair value of the Preferred Shares as a liability since the shares were subject to mandatory redemption. The recorded value of the Preferred Shares prior to the modification amounted to \$137.2 million, which included accrued dividends of \$44 million. At the modification date, the Company recorded the Preferred Shares at the estimated fair value of \$112.7 million. The difference between the carrying value of the Preferred Shares and the fair value of the Preferred Shares, amounting to \$24.5 million, was recorded in additional paid-in capital. The Preferred Shares' fair value was being accreted to the redemption amount over the redemption period ending on December 31, 2013. The Company recorded accretion of \$2.6 million for the period from January 1, 2011 through the May 2011 amendment date.

In May 2011, the Third Amendment to the Third Amended and Restated Certificate of Incorporation removed the mandatory redemption date of the Preferred Shares of December 31, 2013. The effect of this amendment resulted in a modification to the Preferred Shares that required reclassification of the estimated fair value of the Preferred Shares from liabilities to mezzanine equity. The recorded value of the Preferred Shares prior to the modification amounted to \$123.8 million. At the modification date of May 10, 2011, the Company recorded the Preferred Shares at the estimated fair value of \$118.7 million. The difference between the carrying value of the Preferred Shares and the fair value, \$5.1 million, has been recorded in additional paid-in capital. Since the redemption date has been removed, accretion of the Preferred Shares' fair value to the redemption amount, including recognition of the Series C Preferred Shares' cumulative dividends, will not occur until the redemption date is certain. Management does not have any knowledge of a probable future event that will trigger redemption.

**Anti-Dilution Provisions**

In the event the Company decides to issue additional common or preferred shares, the Company must first provide notice and opportunity to purchase such shares to current shareholders.