

within 30 days prior to the Closing Date, as a Contract that Buyer will not assume or (iii) entered into with a physician or physician group, without the written consent of Buyer, after the receipt by Seller of the written notice described in subsection (ii) of this definition.

**Expended:** capital expenditures will be deemed “Expended” for purposes of the CapEx Commitment and the Anniversary Date CapEx Commitment if (a) Buyer, its Affiliates or a third party acting at the direction of Buyer has actually expended such capital or (b) to the extent of the value of any building materials, products and supplies relating to a capital project described on Schedule 12.4 or that has otherwise been approved in writing by DMC that have been delivered to any of the Hospital Businesses or work that has been performed on any capital project that has not yet been paid for by Buyer, its Affiliates or such third party.

**Financial Statements:** the Audited Financial Statements and the Unaudited Financial Statements.

**Force Majeure:** any period or periods of delay caused by reason of strikes, lockouts or other labor disputes; war or civil disorders; acts of any Governmental Authority (such as, and similar to, changes in Legal Requirements constituting a moratorium imposed against capital projects of the type included within the Specified Capital Projects), excluding acts of any Governmental Authority resulting or arising from the acts or omissions of Buyer; fire or other casualty; acts of God such as storms, floods or other inclement weather; terrorism, riots, insurrection or demonstrations; and shortages of materials that impact construction projects on a national basis or a regional basis that affects and includes Detroit and southeast Michigan.

**Governmental Authorities:** all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures and offices of any nature whatsoever of any federal, state, county, district, municipality, city, foreign or other government or quasi-government unit or political subdivision.

**Government Payment Programs:** federal and state Medicare, Medicaid and TRICARE plan programs, and similar or successor programs with or for the benefit of Governmental Authorities.

**Hill-Burton Act:** the Public Health Service Act, 42 U.S.C. 291, et seq.

**Hired Employees:** those employees of Seller who accept Buyer’s offer of employment as of the Closing Date and those employees of Seller employed by Buyer as of the Closing Date under written Assumed Contracts.

**Hospital Advisory Board:** defined in Section 12.1(c).

**Hospital Businesses:** all businesses, assets and properties, whether owned, leased or otherwise operated or conducted by Seller, including the business of the Hospitals and the Other Businesses; provided, however, that Hospital Businesses shall not include the businesses, assets or properties of the Joint Ventures.

**Hospitals:** the following hospitals located in southeastern Michigan: Harper-Hutzel Hospital (comprising Harper University Hospital, Hutzel Hospital, the CardioVascular Institute

and DMC Surgery Hospital), Detroit Receiving Hospital and University Health Center, Children's Hospital of Michigan, Rehabilitation Hospital of Michigan, Sinai Hospital of Greater Detroit, and Huron Valley-Sinai Hospital, in each case, as such hospitals may be expanded or replaced from time to time.

**HSR Act:** the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**Immediate Family Member:** any individual described in the definition of "Immediate Family Member" found at 42 C.F.R. §411.351.

**Indemnified Party:** any Person entitled to indemnification under Article 14.

**Indemnifying Party:** any Person obligated to indemnify another Person under Article 14.

**Indenture:** defined in Section 8.5.

**Independent Appraiser:** Murray Devine & Company, Inc.

**Information Systems:** the software (including object and source codes as applicable), hardware, application programs and similar systems described in Schedule 2.1(h) that are owned, licensed or leased by Seller and used in the ownership or operation of the Hospital Businesses, whether or not on a system-wide basis.

**Initiating Party:** defined in Section 15.2.

**Intellectual Properties:** (i) all inventions (whether or not patentable or reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (ii) all trademarks, service marks, trade dress, logos, trade names, corporate names, and domain names, including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, and (iv) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), that are owned, licensed or leased by Seller and used in the ownership or operation of the Hospital Businesses together with all rights to sue or make any claims for any past, present, or future infringement, misappropriation or unauthorized use of any of the foregoing rights and the right to all income, royalties, damages and other payments that are now or may hereafter become due or payable with respect to any of the foregoing rights, including without limitation damages for past, present or future infringement, misappropriation or unauthorized use thereof.

**Inventory:** all supplies, inventory and materials used or consumed in the Hospital Businesses, but excluding inventory held on consignment.

**Investments:** shares of capital stock of any corporation, interests in partnerships or limited liability companies, or other equity or debt instruments in any other Person, and proceeds from the sale thereof.

**Joint Ventures:** CareTech Solutions, Inc., Child Health Corporation of America, Child Health Investment I, LLC, Child Health Investment II, LLC, DMCare Express, Inc., DMC Partnership Imaging, LLC, Joint Venture Hospital Laboratories, LLC, Northwest Detroit Dialysis Center, LLC, Novi Regional Imaging, LLC, Premier, Inc., Michigan Regional Imaging, LLC, Premier Purchasing Partners, LP, Webber North, Hudson-Webber Condominium Association and JC Office I, LLC.

**Laundry Cooperative:** Associated Hospital Processing Facility d/b/a Total Linen Services, a joint tenancy.

**Laws:** defined in the definition of Environmental Laws.

**Legal Requirements:** with respect to any Person, all statutes, ordinances, codes, rules, regulations, restrictions, and final and uncontested orders, judgments, writs, injunctions, decrees, determinations or awards of any Governmental Authority having jurisdiction over such Person or any of such Person's assets or businesses.

**Losses:** any and all damages, claims, costs, losses, liabilities, expenses or obligations (including Taxes, interest, penalties, court costs, costs of investigation, costs of preparation and reasonable attorneys' accountants' and other professional advisor's fees and expenses).

**Material Adverse Effect:** a material adverse effect, either individually or in the aggregate, on the business, assets, liabilities, financial condition or results of operations of Seller or the Hospital Businesses, taken as a whole, but excluding the effect of (i) matters pertaining to the Hospital Businesses that are described in any Schedule, (ii) events or circumstances affecting or relating to the future prospects of Seller and the Hospital Businesses, (iii) changes in the economy of the United States in general, Michigan or southeast Michigan, including the greater Detroit metropolitan area, including without limitation, conditions, events or circumstances pertaining to the health care industry, (iv) changes in Legal Requirements that are not directed at Seller, Buyer or hospitals operated by for profit entities, in each instance to the exclusion of others, (v) the general state of the health care industry and market sectors in which Seller operates, (vi) the public announcement of the transactions described herein, (vii) seasonal fluctuations in the Hospital Businesses consistent with prior fiscal years, (viii) any changes in accounting standards and (ix) any material breach by Buyer or Vanguard of its obligations hereunder.

**Materials of Environmental Concern:** chemicals, pollutants, contaminants, wastes (including medical waste), toxic substances, petroleum and petroleum products, including hazardous wastes under RCRA, hazardous substances under CERCLA, asbestos, polychlorinated biphenyls and urea formaldehyde, low-level nuclear materials, special nuclear materials or nuclear-byproduct materials (all within the meaning of the Atomic Energy Act of 1954, as amended, and any rules, regulations or policies promulgated thereunder), and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to

human health or safety or to the environment, including without limitation, any material regulated by or subject to regulation or standards of liability under any Environmental Law.

**Multiemployer Plan:** defined in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA.

**Net Cost Report Receivable:** for a cost report period, the aggregate amount by which the Medicare reimbursement claimed by each Hospital for such period is in excess of, or less than, the actual amount of interim and other Medicare payments for such period.

**Neutral:** defined in Section 15.4.

**Not-for-Profit Corporations:** defined in Section 2.1(n).

**Note:** defined in Section 12.5(c).

**Other Asset Holding Entity:** defined in Section 16.10.

**Other Businesses:** the following healthcare and other businesses located in southeastern Michigan which are not among the Hospitals, but which are owned by wholly-owned Affiliates of DMC: billing and collection services for physicians and certified registered nurse anesthetists, third party administrator services, imaging services provided by Michigan Mobile PET and physician practice and employment services provided by PCS II.

**Party:** any party to this Agreement, its successors and permitted assigns.

**PBGC:** the Pension Benefit Guaranty Corporation.

**Permits:** defined in Section 3.16.

**Permitted Encumbrances:** the Permitted Personal Property Encumbrances and the Permitted Real Property Encumbrances.

**Permitted Personal Property Encumbrances:** those Encumbrances described in Schedule 3.11 that are described therein as being Permitted Personal Property Encumbrances.

**Permitted Real Property Encumbrances:** Encumbrances that (i) arise from Legal Requirements generally applicable to all real property in a particular jurisdiction (such as zoning, city ordinances, etc.), (ii) are easements, rights of way, restrictions, covenants or any other similar Encumbrances of record and in effect prior to the Effective Date or that are reflected in the Survey that do not materially interfere with the operation of any of the Hospital Businesses as currently conducted by Seller, (iii) secure any capital lease obligations or other indebtedness of Seller that is expressly assumed by Buyer pursuant to this Agreement, (iv) constitute taxes that are not yet due and payable, or (v) are described in Schedule 3.12 as being Permitted Real Property Encumbrances. Except for liens described in subsection (iii) of this definition, Permitted Real Property Encumbrances shall not include any lien that can be removed of record by the payment of the underlying obligation secured thereby.

**Permitted Transferee:** any one or more of (i) Vanguard, (ii) any wholly-owned or controlled Subsidiary of Vanguard, (iii) any Person that acquires all or substantially all of the shares of capital stock of Vanguard and its Subsidiaries (including by merger with or consolidation into such other Person), (iv) any Person that acquires all or substantially all of the assets and properties of Vanguard and its Subsidiaries, and (v) any Person who is a lender or other “Secured Creditor” under and pursuant to the Principal Credit Agreement.

**Person:** any individual, company, body corporate, association, partnership, limited liability company, firm, joint venture, trust, trustee or any other entity or organization, including a Governmental Authority.

**Principal Credit Agreement:** that certain Credit Agreement, dated as of January 29, 2010, by and among Vanguard Health Holding Company I, LLC, Vanguard Health Holding Company II, LLC, the lenders from time to time party thereto, Bank of America, N.A., as administrative agent and as collateral agent, and the other parties thereto, as the same is amended, modified, restated and/or supplemented from time to time, and includes any agreement extending the maturity of, refinancing or restructuring (including but not limited to additional borrowers or guarantors or increasing the amount borrowed under such agreement) all or any portion of the indebtedness under such agreement or any successor agreements, whether or not with the same agent, trustee, representative lenders or holders and all notes, guarantees, pledge agreements, security agreements, mortgages and other instruments, agreements, certificates or documents executed pursuant to any of the foregoing by Vanguard or by Buyer.

**Purchase Price:** determined in Section 2.5.

**RCRA:** defined in the definition of Environmental Laws.

**Real Property:** all real property legally owned or leased by Seller, as more particularly described on Schedule 2.1(a), together with all buildings, improvements and fixtures thereon that are owned or leased by Seller and all appurtenances and rights thereto.

**Release:** any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration in the indoor or outdoor environment, including the movement of Materials of Environmental Concern through or in the air, soil, surface water, ground water or property.

**Remaining CapEx Ratio:** the quotient of the Remaining CapEx Commitment and the CapEx Commitment.

**Remaining CapEx Commitment:** the CapEx Commitment less (i) any amounts of the CapEx Commitment Expended by Buyer pursuant to Section 12.4(b), (ii) any CapEx Shortfall amounts that have been timely deposited with the Escrow Agent, and (iii) any cash amounts deposited in an escrow account with an escrow agent and pursuant to an escrow agreement, each of which is reasonably satisfactory to DMC, Buyer and Vanguard which escrow account has been restricted for use only for the CapEx Commitment.

**Reportable Event:** defined in Section 4043 of ERISA.

**Responding Party:** defined in Section 15.2.

**Schedules:** the schedules attached to this Agreement and incorporated herein by reference, as same may be supplemented and any new Schedules delivered in accordance with Section 16.1.

**SEC:** the Securities and Exchange Commission.

**Securities Act:** the Securities Act of 1933, as amended.

**Sections:** sections of the Agreement.

**Seller:** defined in the Preamble.

**Seller Employee Benefit Plan:** Any Employee Benefit Plan sponsored, maintained, or contributed to by Seller or with respect to which Seller has any liability.

**Seller's Indemnified Persons:** Seller and its Affiliates, successors and assigns, and their respective Affiliates, directors, trustees, officers, employees, agents and representatives.

**Specified Capital Projects:** the capital projects described on Schedule 12.4.

**Submission Date:** defined in Section 15.3.

**Subsidiary:** with respect to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person, (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time and the management of which is controlled, directly or indirectly, by such Person or through one or more Subsidiaries of such Person and (iii) any entity that is organized as a not-for-profit business organization and whose accounts are required in accordance with generally accepted accounting principles to be consolidated with the accounts of such Person.

**Surveys:** defined in Section 9.6(c).

**Tax:** any income, unrelated business income, gross receipts, license, payroll, employment, excise, severance, occupation, privilege, premium, net worth, windfall profits, environmental (including taxes under section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, recording, stamp, sales, use, service, service use, transfer, registration, escheat, unclaimed property, value added, alternative or add-on minimum, estimated or other tax, assessment, charge, levy or fee of any kind whatsoever, including payments or services in lieu of Tax, interest or penalties on and additions to all of the foregoing, which are due or alleged to be due to any Governmental Authority, whether disputed or not.

**Tax Return:** any return, declaration, report, claim for refund, information return, any other filing obligation of any Code section 501(c)(3) organization, or statement, including schedules and attachments thereto and amendments, relating to Taxes.

**Trailing EBITDA:** defined in Section 9.5.

**Trailing Vanguard EBITDA:** defined in Section 8.10(b).

**Unaudited Financial Statements:** the unaudited consolidated balance sheets of Seller and its Affiliates as of April 30, 2010, and the unaudited consolidated statements of operations and changes in net assets and the unaudited consolidated statements of cash flows for the month then ended (all of which are attached as Schedule 3.6) and the financial statements described in Section 5.3(c).

**Unbooked Employee Benefits:** (i) any unaccrued extended illness bank liabilities, (ii) unaccrued contingent liabilities for recruitment bonuses for nurses and (iii) unaccrued commitments for tuition reimbursement.

**Underfunding Liability:** defined in Section 2.3(j).

**Vanguard:** Vanguard Health Systems, Inc., a Delaware corporation.

**Vanguard SEC Documents:** defined in Section 4.9.

**VHS of Michigan:** VHS of Michigan, Inc., a Delaware corporation.

**VHS Michigan Advisory Board:** defined in Section 12.1(a).

**WARN Act:** the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101-2109.

**Warrant Certificate:** defined in Section 12.4(h).

**Warrant Escrow Agreement:** defined in Section 12.4(h).

**Warrants:** the warrants represented by the Warrant Certificate.

**Warrant Shares:** shares of common stock of Vanguard having an aggregate value (as determined by the Independent Appraiser) at Closing of \$500,000,000 with an exercise price of \$.01 per share, which shares are issuable upon exercise of the Warrants, subject to adjustment and modification upon the happening of certain events, as set forth in the Warrant Certificate.

**1.2 Certain References.** As used in this Agreement, and unless the context requires otherwise

(a) References to “include” or “including” mean including, without limitation.

(b) References to “partners” include general and limited partners of partnerships and members of limited liability companies.

(c) References to “partnerships” include general and limited partnerships, joint ventures and limited liability companies.

(d) References to any document are references to that document as amended, consolidated, supplemented, novated or replaced by the parties thereto from time to time.

(e) References to any Legal Requirements or law are references to those Legal Requirements or that law as amended, consolidated, supplemented or replaced from time to time and all rules and regulations promulgated thereunder; provided that with respect to any representation and warranty hereunder, references to Legal Requirements or law shall be to those Legal Requirements or that law that is in effect on the date such representation and warranty is made, re-made or affirmed.

(f) References to time are references to Detroit, Michigan time.

(g) References to knowledge, including the qualification of any representation, warranty or other statement in the Agreement by the words “known” or “knowingly” or by the phrase “to the best knowledge” or by any variant thereof means as of the Effective Date (i) in the case of Seller, actual knowledge of each of the Persons whose names are set forth on Schedule 1.2(g)(i) after due inquiry by Seller of such Persons, but no further inquiry by such Persons, and (ii) in the case of Buyer or Vanguard, actual knowledge of each of the Persons whose names are set forth on Schedule 1.2(g)(ii) after due inquiry by Buyer or Vanguard of such Persons, but no further inquiry by such Persons.

(h) The gender of all words includes the masculine, feminine and neuter, and the number of all words includes the singular and plural.

(i) The Table of Contents, the division of this Agreement into Articles and Sections, and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

## **ARTICLE 2 PURCHASE AND SALE OF ASSETS AND RELATED MATTERS**

**2.1 Sale of Assets.** Subject to the terms and conditions of this Agreement at Closing Seller shall sell, assign, convey, transfer and deliver to Buyer, or cause to be sold, assigned, conveyed, transferred and delivered to Buyer, free and clear of all Encumbrances other than the Permitted Encumbrances, the Assets, including the following:

(a) The Real Property described in Schedule 2.1(a);

(b) All equipment (including medical and computer equipment at the Hospital Businesses), vehicles, furniture and furnishings and other tangible personal properties owned by Seller and used in the conduct of the Hospital Businesses;

(c) The current assets in existence as of Closing included in the balance sheet categories and line items listed on Schedule 2.1(c);

**(d)** The non-current assets in existence as of Closing included in balance sheet categories and line items listed on Schedule 2.1(d) (which includes those pertaining to the line items designated FICA refund fund - resident share and Wayne County Solvency Trust appearing in the balance sheet account Board Designated Funds for Endowments and Other Purposes);

**(e)** Except as described in Section 2.2(a), all financial, patient, medical staff, personnel and other records of the Hospital Businesses (including equipment records, medical/administrative libraries, medical records, documents, catalogs, books, records, files and operating manuals);

**(f)** All right, title and interest of Seller in the Assumed Contracts;

**(g)** All licenses, permits and other approvals (including pending approvals) of Governmental Authorities, to the extent legally assignable, relating to the ownership, development and operation of the Hospital Businesses;

**(h)** The Intellectual Properties and the Information Systems, including those trademarks as are described in Schedule 2.1(h);

**(i)** All property, real, personal or mixed, tangible or intangible, of Seller pertaining to or otherwise held in connection with the Hospital Businesses, to the extent arising or acquired between the Effective Date and the Closing Date;

**(j)** The ownership or investment interests, including all transferable rights relating thereto, of Seller in the Joint Ventures;

**(k)** All insurance proceeds with respect to the Assets or the Assumed Liabilities, including insurance proceeds received by Seller or payable to Seller and all deductibles, copayments and self-insurance requirements payable by Seller arising in connection with damage to the Assets occurring on or prior to the Closing Date, to the extent not expended for the repair or restoration of the Assets;

**(l)** Claims of Seller against third parties relating to the Assets, choate or inchoate, known or unknown, contingent or otherwise, but excluding such claims relating to the Excluded Assets and claims and legal rights of Seller relating to Excluded Liabilities;

**(m)** All right, title and interest of Seller in and to the Captive Insurance Companies;

**(n)** The membership interest in the following Persons: HealthSource, DMC Primary Care Services II, DMCare Express, Inc. and Webber North, Hudson-Webber Condominium Association (the "Not-for-Profit Corporations");

**(o)** All claims, rights, interests and proceeds with respect to refunds of Taxes (including property taxes) for periods ending on or prior to the Closing Date and all rights to pursue appeals of the same;

(p) Any assets held in trust for any Seller Employee Benefit Plan and any asset that would revert to Seller as employer upon the termination of any Employee Benefit Plan, including assets representing a surplus or overfunding of any Seller Employee Benefit Plan;

(q) All claims, rights, interests and proceeds pertaining to settlement and retroactive adjustments, if any, for all cost reports filed with the Medicaid program, TRICARE or non-governmental third party payers for cost reporting periods ending on or prior to the Closing Date; and

(r) Upon receipt by Seller, an amount equal to amounts received by Seller in respect of the Net Cost Report Receivable for Medicare cost report year 2010.

**2.2 Excluded Assets.** Notwithstanding the generality of Section 2.1, the following assets (the “Excluded Assets”) are not a part of the sale and purchase contemplated by this Agreement and are excluded from the Assets:

(a) Any records of Seller which by law Seller is required to retain in its possession, which records are described on Schedule 2.2(a);

(b) All corporate records and minute books of Seller;

(c) Inventory disposed of or exhausted after the Effective Date and on or prior to the Closing Date in the ordinary course of the Hospital Businesses, and Assets transferred or disposed of in accordance with Section 5.2(e);

(d) The assets and properties included in the balance sheet categories and line items listed on Schedule 2.2(d), which include the following: Board Designated Funds for Capital Improvements, Board Designated Funds for Endowments and Other Purposes (excluding those pertaining to the line items designated FICA refund fund-resident share and Wayne County Solvency Trust), Funds Held in Trust under Bond Agreements (current portion), Funds Held in Trust under Bond Agreements (long-term portion), Endowment Funds, Pledges Receivable and Other Donor Restricted Funds;

(e) Seller’s interest in, and any assets held by Del Harder Rehabilitation Fund;

(f) The membership or equity interest in each Seller and the equity, membership or other interest held by Seller in any Person, other than Seller’s equity, membership or other interest in the Captive Insurance Companies, the Joint Ventures and the Not-for-Profit Corporations;

(g) Any assets that are owned, leased or used by the Joint Ventures;

(h) Any other assets listed or described on Schedule 2.2(h) as Excluded Assets or excluded by mutual written agreement of the Parties.

(i) Seller’s provider agreements with Government Payment Programs (Seller’s Government Payment Program provider numbers include those that are set forth on Schedule 2.2(i));

(j) rights to settlement and retroactive adjustments, if any, for open cost reporting periods ending on or prior to the Closing Date (whether open or closed) arising from or against the U.S. Government under the terms of the Medicare program, including, without limitation, the Net Cost Report Receivable for Medicare cost report years 2008 and 2009;

(k) the Excluded Physician Contracts; and

(l) assets associated with the DMC Non-ERISA 403(b) Retirement Plan.

**2.3 Assumed Liabilities.** As of the Closing Date, Buyer shall assume the Assumed Liabilities, which include the following liabilities or obligations of Seller:

(a) All current liabilities of Seller included in the balance sheet categories or line items listed on Schedule 2.3(a);

(b) All long-term liabilities of Seller included in the balance sheet categories or line items listed on Schedule 2.3(b);

(c) The outstanding liabilities as of the Closing Date under all long-term indebtedness and capital lease obligations of Seller (including the current portions thereof and accrued interest payable thereunder), excluding the obligation to pay in full long-term debt and capital lease obligations of Seller (including the current portion thereof and accrued interest payable thereunder) described on Schedule 2.5(a)(i) (the "Assumed Debt") (other than the Discretionary Assumed Debt);

(d) Liabilities or obligations of Seller relating to Seller's compliance or failure to comply with Environmental Laws and the existence or presence of Materials of Environmental Concern in, on, under or near the Real Property;

(e) Liabilities or obligations of Seller for Taxes in respect of periods ending on or prior to the Closing Date or resulting from the consummation of the transactions contemplated herein;

(f) Liabilities or obligations of Seller arising under any Assumed Contract, whether arising prior to or after the Closing Date, resulting from any breach or default occurring on or prior to the Closing Date or arising out of the assignment to Buyer at Closing of any Assumed Contract;

(g) Liabilities, obligations and duties of Seller arising under, in connection with or relating to any Contract entered into with the City of Detroit or Wayne State University, or any resolution or ordinance adopted by the City of Detroit, in connection with the sale, purchase, transfer and assignment of Detroit Receiving Hospital and University Health Center to Seller, and any Legal Requirement pertaining to such sale and purchase of Detroit Receiving Hospital and University Health Center, in each case as identified in statutes and agreements, each as described in Schedule 2.3(g);

(h) Liabilities or obligations of Seller arising out of or in connection with claims, litigation or proceedings (whether instituted prior to or after Closing) for acts or omissions which

allegedly occurred on or prior to the Closing Date, including litigation and other actions arising from medical staff credentialing decisions at the Hospital Businesses on or prior to the Closing Date;

(i) Liabilities or obligations of Seller under the Hill-Burton Act or other restricted grant or loan programs with respect to restricted grants or loans granted or made prior to the Closing Date and to the extent such liabilities or obligations are attributable to events occurring on or before the Closing Date;

(j) Liabilities or obligations of Seller arising in connection with any current or former employee, independent contractor, officer, consultant or director of Seller (or their dependents and beneficiaries) or any Seller Employee Benefit Plan (including, without limitation, any Unbooked Employee Benefits, but excluding the DMC Non-ERISA 403(b) Retirement Plan), whether arising from or relating to periods prior to or after Closing, whether or not triggered by the transactions contemplated by this Agreement and whether or not imposed by Legal Requirements directly on Buyer as the transferee of the Assets, including, without limitation, liabilities or obligations of Seller to the Internal Revenue Service, the PBGC or any other Governmental Authority, liabilities or obligations of Seller to contribute to any Multiemployer Plan, and liabilities or obligations of Seller arising as a result of any underfunding of any Seller Employee Benefit Plan, including, without limitation, the Detroit Medical Center Consolidated Pension Plan (the "Underfunding Liability"), and any discrimination, harassment, or retaliation, unfair labor practice, occupational safety and health, workplace injury, wrongful discharge, denial of leave, unemployment compensation, breach of contract (express or implied), tort, and wage and hour claims resulting from or arising out of acts or omissions of Seller prior to Closing;

(k) Liabilities or obligations of Seller in respect of periods ending on or prior to the Closing Date arising under the terms of the Medicaid program, TRICARE or any non-governmental third-party payer programs including any recoupment rights of the State of Michigan under the Medicaid program, the U.S. Government under TRICARE and Blue Cross Blue Shield of Michigan, and any liability of Seller arising pursuant to the Medicaid program, TRICARE or any non-governmental third-party payer program as a result of the consummation of the transactions contemplated herein, including recapture of previously reimbursed expenses;

(l) Liabilities or obligations of Seller, if any, arising under any Contract between Seller and any Joint Venture, or arising under any written guarantee by Seller of any liability or obligation of the Joint Ventures;

(m) Penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by Seller of any Legal Requirement that occurred on or prior to the Closing Date, including any claims, litigation or other actions relating to Environmental Laws; and

(n) Capital leases and any other long-term debt of Seller described on Schedule 2.5(a)(i) that Buyer, in its sole discretion, elects to assume in a written notice delivered to Seller at least five days prior to Closing (the "Discretionary Assumed Debt").

**2.4 Excluded Liabilities.** Notwithstanding anything to the contrary set forth in this Agreement, under no circumstance shall Buyer assume or be obligated to pay, and none of the Assets shall be or become liable for or subject to any of the Excluded Liabilities.

**2.5 Purchase Price.**

(a) At Closing, Buyer shall assume the Assumed Liabilities and pay Seller a purchase price (the "Purchase Price") equal to:

(i) (A) the amount necessary to redeem, defease or otherwise satisfy and retire the long-term indebtedness and capital lease obligations of Seller described on Schedule 2.5(a)(i) (other than the Discretionary Assumed Debt), plus (B) \$4,500,000, which is the estimated amount of working capital needed by Seller to fund the operations of Seller (in its capacity as a public foundation), plus (C) an amount equal to all reasonable costs and expenses incurred by Seller, but not yet paid as of the Closing, in connection with the transactions described in this Agreement;

(ii) reduced by: (A) the amount included, as of the Closing Date, in each of the balance sheet accounts of Seller known as Funds Held in Trust under Bond Agreements (current portion), Funds Held in Trust under Bond Agreements (long-term portion), Board Designated Funds for Capital Improvements and Board Designated Funds for Endowments and Other Purposes minus (B) an amount equal to the difference between (I) the sum of (a) \$16,154,404 and (b) an amount equal to \$432,195 per month for each month in calendar year 2010 that ended on or prior to the Closing Date (and a prorated portion of such amount for the month in which Closing occurs if the Closing is effective as of a day other than the first day of a month), and (II) an amount equal to the Net Cost Report Receivable for Medicare cost report years 2008 (which is approximately \$7,060,597 as of December 31, 2009) and 2009 (which will be determined as of Closing), which amount specified in this subsection (B) shall be retained by Seller for purposes of satisfying the Excluded Liabilities that are not satisfied and discharged as of Closing.

Attached as Schedule 2.5 is an example, for illustrative purposes only, of the calculation of the Purchase Price as of April 30, 2010. On the Closing Date, Buyer shall tender to Seller an amount equal to the Purchase Price by wire transfer of immediately available funds to an account or accounts designated by Seller in writing.

(b) At least five Business Days prior to Closing, Seller shall deliver to Buyer a schedule setting forth Seller's calculation of the Purchase Price, which calculation shall be prepared in a manner consistent with (i) Seller's historical accounting policies and (ii) the terms of the indebtedness described on Schedule 2.5(a)(i) (insofar as they pertain to calculating the amount described in Section 2.5(a)(i)(A)). Seller shall promptly provide Buyer with any documentation reasonably requested by Buyer which supports Seller's calculation of the Purchase Price.

**2.6 Allocation of Purchase Price.** The Purchase Price shall be allocated among the Hospitals and the Assets as proposed by Buyer and approved by Seller, in accordance with their fair market values consistent with section 1060 of the Code and as set forth on Schedule 2.6

(which Schedule 2.6 shall be attached to this Agreement prior to Closing in a form mutually agreed by Seller and Buyer). Notwithstanding the foregoing and subject to the terms of Section 5.13, if the Parties agree to allocate a portion of the Purchase Price to the Harper Professional Office Building, such allocation shall be an amount agreed to by the Parties in their reasonable good faith discretion. Such allocation shall be binding upon the Parties for all applicable federal, state, local and foreign Tax purposes. Seller and Buyer shall report gain or loss or cost basis, as the case may be, in a manner consistent with such allocation on all Tax Returns filed by any of them after Closing and not voluntarily take any inconsistent position therewith in any administrative or judicial proceeding relating to such returns. Seller and Buyer shall exchange mutually acceptable and completed Internal Revenue Service Forms 8594 (including supplemental forms, if required), which they shall use to report the transaction contemplated hereunder to the Internal Revenue Service in accordance with such allocation.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as disclosed in the Schedules, Seller makes the following representations and warranties to Buyer on and as of the Effective Date and shall be deemed to make them again at and as of the Closing:

**3.1 Organization.** Each Seller (other than MTPAS, DMCOPA and MMPET) is a nonprofit corporation duly organized and validly existing in good standing under the laws of the State of Michigan. MTPAS is a corporation duly organized and validly existing in good standing under the laws of the State of Michigan. DMCOPA and MMPET are limited liability companies duly organized and validly existing in good standing under the laws of the State of Michigan. Except as set forth in Schedule 3.1, (a) no Seller is licensed, qualified or admitted to do business in any jurisdiction other than in the State of Michigan and (b) there is no other jurisdiction in which the ownership, use or leasing of any of Seller's assets or properties, or the conduct or nature of its business, makes such licensing, qualification or admission necessary.

**3.2 Powers; Consents; Absence of Conflicts, Etc.** Seller has the requisite power and authority to conduct the Hospital Businesses as now being conducted, to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Seller of this Agreement and the Closing Documents to which Seller is or becomes a party and the consummation by Seller of the transactions contemplated herein and therein:

(a) are within Seller's powers, and are not in contravention of the terms of (i) the articles of incorporation, bylaws and other governing documents, if any, as amended to date, of each Seller other than DMCOPA and MMPET, and (ii) the articles of organization, operating agreement and other governing documents, if any, as amended to date, of DMCOPA and MMPET;

(b) have been duly authorized by all appropriate corporate or limited liability company action;

(c) do not conflict with, result in any breach or contravention of, or permit the acceleration of the maturity of, any liabilities of Seller (other than Excluded Liabilities satisfied

as of the Closing Date), and do not create or permit the creation of any Encumbrance on or affecting any of the Assets;

(d) assuming receipt of the approval of the Attorney General of, or a determination from the Attorney General not to object to, the consummation of the transaction described herein, do not violate any Michigan law to which Seller or the Assets may be subject, other than such violations which would not have a Material Adverse Effect; and

(e) except as set forth on Schedule 3.2, do not conflict with or result in a breach or violation of any material Contract to which Seller is a party or by which Seller is bound, other than (i) Excluded Liabilities satisfied as of the Closing Date and (ii) breaches of Assumed Contracts resulting from the failure to obtain consent to the assignment thereof from the counterparty thereto.

**3.3 Binding Agreement.** This Agreement and each of the Closing Documents to which Seller is or becomes a party are (or upon execution will be) valid and legally binding obligations of Seller enforceable against Seller in accordance with the respective terms hereof or thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

**3.4 Subsidiaries and Third Party Rights.** Except as set forth on Schedule 3.4(a), there are no Contracts with or rights of any Person to acquire, directly or indirectly, any material assets, or any interest therein, including any of the Assets, other than Contracts entered into in the ordinary course of the Hospital Businesses. Seller holds no ownership, membership, equity or other interest in any Person other than those Persons identified on Schedule 3.4(b). Schedule 3.4(b) indicates for each Person identified thereon whether it is currently active or inactive and whether it, together with any consolidated Subsidiaries of such Person, has total assets of \$10,000 or more. Schedule 3.4(b) indicates, for each Joint Venture, whether or not each Joint Venture is an Affiliate of Seller and, if so, the reason therefore. Other than each Seller and those Persons as set forth on Schedule 3.4(b), (a) there are no other Persons which conduct the operation of any of the Hospitals or the Hospital Businesses and (b) no Seller holds any investments that are recorded as assets of the Hospital Businesses.

**3.5 Legal and Regulatory Compliance.** Seller complies in all material respects with, and during the past three (3) years has complied in all material respects with, all Legal Requirements and during the past three years has timely filed all material reports, data and other information required to be filed with Governmental Authorities. Seller has not received written notice from any Governmental Authority of any proceeding or investigation by Governmental Authorities alleging or based upon a violation of any Legal Requirements that has not expired. To Seller's knowledge, Seller has not been threatened by any Person with any proceeding or investigation by Governmental Authorities alleging a violation of any Legal Requirements. Seller has delivered to Buyer a complete and genuine copy of (i) any corporate integrity agreement with the Office of Inspector General of the United States Department of Health and Human Services or written agreement with such Governmental Authority to establish or maintain a corporate integrity policy or program applicable to any of the Hospital Businesses and (ii) any settlement or other agreement with any other Governmental Authority, other than participation