

(c) The execution, delivery and performance by Vanguard and Buyer of this Agreement and each of the Closing Documents to which each of them is a party does not violate any provision of their respective articles of incorporation or bylaws or, to the knowledge of such counsel, of any indenture or other material Contract to which it is a party;

(d) This Agreement and each of the respective Closing Documents to which it is a party constitutes a valid and binding obligation of each of Vanguard and Buyer, enforceable against each of them in accordance with the respective terms of this Agreement and the Closing Documents, subject, as to enforcement of remedies, to (i) applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other laws affecting creditors' rights generally from time to time in effect; (ii) limitations on the enforcement of equitable remedies; and (iii) such other qualifications as counsel to the Parties may mutually agree upon;

(e) To such counsel's knowledge, the consummation of the transactions described in this Agreement will not result in a violation, breach or default by Vanguard or Buyer under any material Delaware law;

(f) The Warrants and the Warrant Shares (or Adjusted Warrant Shares, as applicable) to be issued by Vanguard have been duly authorized for issuance, and the Warrant Shares (or Adjusted Warrant Shares, as applicable), when issued and delivered by Vanguard pursuant to this Agreement, will be validly issued, fully paid and nonassessable;

(g) The issuance of the Warrants and the Warrant Shares (or Adjusted Warrant Shares, as applicable) by Vanguard are not subject to any preemptive or other similar rights of any security holder of Vanguard;

(h) The issuance of the Warrant Shares by Vanguard will not violate any provision of Vanguard's certificate of incorporation or bylaws, or to the knowledge of such counsel, of any indenture or other material contract identified by such counsel and reasonably acceptable to Seller to which Vanguard is a party on the Closing Date;

(i) To such counsel's knowledge, the issuance of the Warrant Shares by Vanguard will not result in a violation, breach or default by Vanguard under any material Delaware law; and

(j) No consent, approval, license or authorization of, or designation, declaration or filing with any court or Governmental Authority is or will be required on the part of Vanguard in connection with the issuance of the Warrants and the Warrant Shares.

In rendering such opinion(s), such counsel may rely upon certificates of governmental officials and may place reasonable reliance as to factual matters (subject to any contrary actual knowledge of counsel) upon certificates of officers of Vanguard and Buyer.

**8.9 Delivery of Closing Documents.** Vanguard and Buyer shall have delivered at Closing (to the Person or Persons designated therein) the Closing Documents required by, and otherwise have fully complied with, the provisions of Section 10.4.

### **8.10 No Material Adverse Change; EBITDA.**

(a) Since December 31, 2009, no material adverse change in the results of operations, financial condition or businesses of Vanguard and its Affiliates, taken as a whole, shall have occurred, and no events or circumstances which, individually or in the aggregate, reasonably could be expected to have a material adverse effect on the results of operations, financial condition or businesses of Vanguard and its Affiliates, taken as a whole, shall have occurred except for events occurring on or prior to the Effective Date disclosed herein, or events occurring after the Effective Date as to which Seller consents in writing.

(b) EBITDA of Vanguard and its consolidated subsidiaries for the period from January 1, 2010 through the date of the most recent publicly reported financial statements of Vanguard and its consolidated subsidiaries, as adjusted so as to be presented in a manner consistent with Vanguard's and its consolidated subsidiaries' most recent publicly reported audited financial statements (collectively, the "Trailing Vanguard EBITDA"), shall be no less than 80% of the Trailing Vanguard EBITDA which Vanguard and its consolidated subsidiaries reported for the same period in the prior year.

(c) Vanguard shall not be in default under the Principal Credit Agreement, and no event shall have occurred which, upon the receipt of notice or the passage of time, constitutes an event of default under the Principal Credit Agreement.

## **ARTICLE 9 CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER**

The obligations of Buyer hereunder are subject to the satisfaction on or prior to the Closing Date of the following conditions, unless waived in writing by Buyer:

### **9.1 Representations and Warranties; Covenants.**

(a) The representations and warranties of Seller contained in this Agreement shall be true and correct, disregarding all qualifiers and exceptions relating to materiality or Material Adverse Effect on and as of the Effective Date (taking into consideration all matters described in the Schedules as of the Effective Date) and as of the Closing Date as though made on and as of the Closing Date (or, if given as of a specific date, at and as of such specific date) (taking into consideration all matters described in the Schedules as of the Effective Date), except where the failure to be true and correct has not resulted in, and would not reasonably be expected to result in, individually or in the aggregate, (i) Losses of \$25,000,000 or more, (ii) an adverse effect on EBITDA of the Hospital Businesses of at least \$10,000,000 on an annualized basis or (iii) a breach of the Principal Credit Agreement (assuming that Buyer had consummated the transactions described herein and the underlying facts and circumstance causing the breach of Seller's representations and warranties would constitute a breach under the Principal Credit Agreement), that is not cured (if such breach is susceptible of cure) by Seller to the reasonable satisfaction of Buyer within 15 Business Days after receipt of written notice from Buyer that identifies the breach.

(b) Each and all of the terms, covenants and agreements to be complied with or performed by Seller on or before the Closing Date shall have been complied with and performed in all material respects.

**9.2 Adverse Action or Proceeding.** There shall not be in effect any order restraining, enjoining or otherwise preventing consummation of the sale of the Assets and other transactions contemplated hereunder.

**9.3 Pre-Closing Confirmations and Contractual Consents.** Buyer shall have obtained documentation or other evidence reasonably satisfactory to Buyer that:

(a) Buyer has received reasonable assurances from the Michigan Department of Community Health and other applicable licensure agencies that, effective as of Closing, all material licenses required by law to operate the Hospital Businesses in substantially the same manner as such Hospital Businesses are currently operated by Seller will be transferred to or issued in the name of Buyer, without the imposition of any condition that is materially burdensome to the operation of the Hospital Businesses after Closing; and

(b) All necessary applications for Government Payment Program certifications, provider agreements and related provider numbers, with respect to each of the Hospital Businesses that as of the Effective Date has a Medicare or Medicaid provider agreement, shall have been filed with, and Buyer shall have received reasonable assurances that such applications have been reviewed and determined to be complete by, each Governmental Authority with jurisdiction or authority concerning such matters, and Buyer shall have reasonably and in good faith determined that a survey of the Hospitals for Medicare certification purposes will occur within a reasonable period of time after the Closing Date and that, assuming no deficiencies, requirements for improvements or other matters that would require further action by Buyer in order to successfully complete all survey certification requirements, certification in the Medicare program would be effective no later than the day after the survey is completed.

(c) As of the Closing, Buyer shall have received written assurances from CMS, in a form reasonably acceptable to Buyer, that the Seller's Direct Graduate Medical Education (GME) and Indirect Medical Education (IME) full-time equivalent resident caps shall transfer to Buyer upon Buyer's receipt of certification in the Medicare program relating to the Hospitals.

(d) Buyer shall have received reasonable assurances that, upon Buyer's receipt of certification in the Medicare program and enrollment in the Medicaid program, in each case relating to the Hospitals, Buyer will thereafter receive (i) periodic interim payments from the Medicare and Medicaid programs and Blue Cross Blue Shield of Michigan, all in a manner consistent with the periodic interim payments received by Seller from the Medicare and Medicaid programs and Blue Cross Blue Shield of Michigan as of the Effective Date and (ii) supplemental payments from the Medicaid program, disproportionate share hospital payments from the Medicare and Medicaid programs and SSI payments from the Medicare and Medicaid programs.

(e) All applicable waiting periods under the HSR Act have expired.

(f) The counterparties to certain of the Assumed Contracts identified by Buyer, in its reasonable discretion, in a written notice to Seller, shall have consented to the assignment to Buyer of the Assumed Contracts to which they are a party.

**9.4 Extraordinary Events.** Seller shall not: (a) be in receivership or dissolution; (b) have made any assignment for the benefit of creditors; (c) have been adjudicated a bankrupt; (d) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against any of them, or (e) have entered into any Contract to do or permit the doing of any of the foregoing on or immediately after the Closing Date.

**9.5 No Material Adverse Change; EBITDA.**

(a) Since December 31, 2009 no event or circumstance shall have occurred which had, or reasonably could be expected to have, a Material Adverse Effect, except for events occurring on or prior to the Effective Date disclosed herein, or events occurring after the Effective Date as to which Buyer consents in writing.

(b) EBITDA of the Hospital Businesses for the period from January 1, 2010 through the date of the most recent financial statements provided to Buyer pursuant to Section 5.3(c), as adjusted so as to be presented in a manner consistent with the presentation of EBITDA of the Hospital Businesses in the Audited Financial Statements, but excluding any expenses recorded for the Detroit Medical Center Consolidated Pension Plan, as further reduced by the effect of any breach of this Agreement by Seller under Article 3 (disregarding all qualifiers and exceptions relating to materiality or Material Adverse Effect), as though the effect of such breach had been incurred effective as of January 1, 2010, or as applicable, for the period from January 1, 2010 through the date of the most recent financial statements provided to Buyer pursuant to Section 5.3(c) (collectively, the "Trailing EBITDA"), shall be no less than 80% of the Trailing EBITDA which Seller had budgeted for such period, as reflected in the budget attached as Schedule 9.5(b), excluding any expenses recorded for the Detroit Medical Center Consolidated Pension Plan. For purposes of this Section 9.5(b), Trailing EBITDA shall be increased by an amount equal to \$3,858,700 plus an amount equal to \$259,000 per month for each month from and including May 2010 through and including the month of the most recent financial statements provided to Buyer pursuant to Section 5.3(c) prior to Closing, to reflect a non-recurring, one-time 2010 bonus payment and to restore reductions in 403(b) plan match and CTO accruals to 2009 levels.

**9.6 Title Insurance Policies and Surveys;** Buyer shall have received:

(a) Commitments from Chicago Title Insurance Company to issue to Buyer as of the Closing Date one or more 1992 ALTA Extended Coverage Owner's or Leasehold Title Insurance Policies for the Real Property that is owned or leased by Seller, subject to only the Permitted Real Property Encumbrances and such Encumbrances as Buyer consents to in writing, in amounts to be reasonably determined by Buyer, and with endorsements as Buyer may request;

(b) Commitments from Chicago Title Insurance Company to issue to Buyer's mortgagee as of the Closing Date one or more ALTA extended coverage lender's title insurance policies for the Real Property that is owned or leased by Seller, subject to only the Permitted Real Property Encumbrances and such Encumbrances as Buyer consents to in writing, in amounts acceptable to the mortgagee, with such endorsements as the mortgagee reasonably requires; and

(c) ALTA surveys of the Real Property and improvements thereon (the "Surveys"), from an engineering firm selected by Buyer and certified to Buyer, Seller, the title insurance company, the mortgagee and such other Persons as Buyer may designate. The Surveys shall comply in all respects with the minimum detail requirements of the American Land Title Association/American Congress on Survey and Mapping as such requirements are in effect on the date of preparation of the Surveys and sufficient for Chicago Title Insurance Company to remove all standard survey exceptions from the title insurance policy and issue a survey endorsement acceptable to Buyer.

**9.7 Opinion of Seller's Counsel.** Buyer shall have received an opinion from counsel to Seller (who may be in-house counsel) dated as of the Closing Date and addressed to Buyer, in form and substance reasonably satisfactory to Buyer, to substantially the following effect:

(a) Each Seller (other than MTPAS, DMCOPA and MMPET) is a nonprofit corporation duly incorporated and validly existing in good standing under the laws of the State of Michigan with full corporate power to carry on its business as it is now being conducted. MTPAS is a corporation duly incorporated and validly existing in good standing under the laws of the State of Michigan with full corporate power to carry on its business as it is now being conducted. Each of DMCOPA and MMPET is a limited liability company duly organized and validly existing in good standing under the laws of the State of Michigan with full limited liability company power to carry on its business as now being conducted. Seller has full power and authority to execute and deliver this Agreement and each of the Closing Documents to which it is a party and to perform its obligations herein and therein. All proceedings required to be taken by Seller to authorize the execution and delivery of this Agreement and each of the Closing Documents to which it is a party and to authorize the performance of its obligations herein and therein, have all been duly and properly taken;

(b) The execution, delivery and performance by Seller of this Agreement and each of the Closing Documents to which it is a party does not violate (i) any provision of the articles of incorporation or bylaws of any Seller or (ii) to such counsel's knowledge, of any Assumed Contract listed on Schedule 3.18 to which Seller is a party (excluding any violation attendant to the assignment of a Contract without the consent of the counterparties, thereto);

(c) This Agreement and each of the Closing Documents to which it is a party constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms, subject, as to enforcement of remedies, to (i) applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other laws affecting creditors' rights generally from time to time in effect; (ii) limitations on the enforcement of equitable remedies; and (iii) such other qualifications as counsel to the Parties may mutually agree upon; and

(d) To such counsel's knowledge, the consummation of the transactions described in the Agreement will not result in a violation, breach or default by Seller under any material Michigan law.

In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance as to factual matters (subject to any contrary actual knowledge of counsel) upon certificates of officers of Seller.

**9.8 The Indenture.** The Indenture and all liens created by or in connection with the Indenture shall have been satisfied, discharged and terminated, and Buyer shall be entitled to rely on the opinion of Seller's bond counsel described in Section 8.5.

**9.9 Lien Terminations.** Seller shall have delivered to a Person acting as an escrow agent for Closing UCC termination statements or other releases or reconveyances for all Encumbrances associated with the long-term indebtedness and capital lease obligations described in Schedule 2.5(a)(i) (other than those securing the Discretionary Assumed Debt), which termination statements and releases will be effective as of Closing.

**9.10 Hill-Burton.** There shall be no Encumbrance on or affecting any of the Assets or Hospital Businesses relating to or arising under the Hill-Burton Act.

**9.11 Captive Insurance Companies.** All action required to be taken and all consents and approvals of Governmental Authorities required to be obtained in connection with the transfer to Buyer of all right, title and interest of Seller in and to the Captive Insurance Companies shall have been taken and obtained.

**9.12 Attorney General Approval.** Seller shall have received all approvals from the Attorney General that are necessary or appropriate in order for the Parties to consummate the transactions described herein or a determination from the Attorney General that the Attorney General does not object to the consummation of the transactions described herein, in either instance, without the imposition of any condition that is materially burdensome to the operation of the Hospital Businesses after Closing.

**9.13 Insurance.** No later than the Closing Date, Buyer shall have received evidence, in a form reasonably satisfactory to Buyer, that Buyer has been named as an additional insured and loss payee on all insurance arrangements set forth on Schedule 3.15.

**9.14 Delivery of Closing Documents.** Seller shall have delivered at Closing (to the Person or Persons designated therein) the Closing Documents required by, and otherwise have fully complied with, the provisions of Section 10.3.

**9.15 Renaissance Zone.** The subzone in the Wayne County Renaissance Zone known as the Midtown Hospital Campus Subzone as described in that certain Renaissance Zone Development Agreement: New Subzone (the "Development Agreement"), by and among the Michigan Strategic Fund, DMC and VHS of Michigan shall be in full force and effect on the Closing Date in accordance with all of the terms thereof which were in effect as of the Effective Date; provided, however, that if the Midtown Hospital Campus Subzone is modified or

terminated as a consequence of any act or omission of Buyer or Vanguard constituting a breach of the Development Agreement, this condition shall be deemed to have been waived by Buyer.

## **ARTICLE 10 CLOSING; TERMINATION OF AGREEMENT**

**10.1 Closing.** Consummation of the sale and purchase of the Hospital Businesses and the other transactions contemplated by and described in this Agreement (the “Closing”) shall take place at the offices of Miller, Canfield, Paddock and Stone, P.L.C., Detroit, Michigan, at 10:00 a.m. on or before 30 days after satisfaction of the conditions specified in Sections 8.4 and 9.12, or if at such time any other conditions to Closing set forth in Article 8 or Article 9 have not been satisfied, on the fifth Business Day following satisfaction or waiver of such conditions, or at such other time or place as the Parties may mutually agree. Unless otherwise agreed in writing by the Parties at Closing, the Closing shall be effective for all purposes as of 12:01 a.m. on the day immediately following the Closing Date.

**10.2 Pre-Closing.** A pre-closing of the transactions contemplated hereunder may, if the Parties so agree, be held at a time and place mutually agreeable to the Parties on one or more Business Days preceding the Closing Date.

**10.3 Deliverables of Seller at Closing.** At the Closing and unless otherwise waived in writing by Buyer, Seller shall deliver or cause to be delivered to Buyer:

(a) Special warranty deeds fully executed by Seller, and in recordable form, conveying to Buyer fee title to the owned Real Property, free and clear of all Encumbrances other than the Permitted Real Property Encumbrances;

(b) Bills of sale and assignment, fully executed by Seller, in form and substance reasonably acceptable to Buyer, conveying to Buyer good and valid title to all Assets other than the Real Property, free and clear of all Encumbrances other than the Permitted Personal Property Encumbrances;

(c) Assignments, fully executed by Seller, in form and substance reasonably acceptable to Buyer, conveying to Buyer Seller’s interest in the Assumed Contracts;

(d) Assignment and assumption agreements with respect to the Real Property which is leased by, or to, Seller;

(e) One or more wire transfers of immediately available funds of cash balances which are among the Assets, including security or other deposits held by Seller for the account of third parties, to the account or accounts designated in writing by Buyer to Seller;

(f) The Warrant Escrow Agreement, fully executed by Seller;

(g) Copies of resolutions duly adopted by the board of trustees, members or managers, as appropriate, of each Seller authorizing and approving the execution and delivery of this Agreement and the Closing Documents and the consummation of the transactions

contemplated hereby and thereby, certified as true and in full force and effect as of the Closing Date by the appropriate officers of Seller;

**(h)** Certificates of the duly authorized officer of Seller certifying that each of the representations and warranties of Seller contained in this Agreement that is qualified as to materiality, when read in light of any Schedules that have been updated or written disclosures that have been made, in each instance in accordance with Section 16.1, is true and correct on and as of the Closing Date, that each of the other representations and warranties of Seller contained in this Agreement, when read in light of any Schedules that have been updated or written disclosures that have been made, in each instance in accordance with Section 16.1, is true and correct in all material respects on and as of the Closing Date, and that each and all of the terms, covenants and agreements to be complied with or performed by Seller on or before the Closing Date have been complied with and performed in all material respects;

**(i)** Certificates of incumbency for the officers of Seller executing the Agreement and the Closing Documents, dated as of the Closing Date;

**(j)** Certificates of existence and good standing from the state in which Seller is incorporated or organized, each dated the most recent practical date prior to Closing;

**(k)** Stock certificates, duly endorsed for transfer to Buyer and with all stamps or evidence of other documentary and transfer taxes affixed, and certificates or other appropriate instruments of transfer of the ownership interests in the Captive Insurance Companies and the Joint Ventures, duly endorsed for transfer to Buyer and, to the extent obtained prior to Closing, an amendment to the operating agreement, bylaws or other governing documents of each Joint Venture which is necessary, as determined by Buyer in its reasonable discretion, in order to fully effectuate the transfer of the ownership interest in the Joint Ventures to Buyer and to effectuate Buyer's pledge of such interests under the Principal Credit Agreement;

**(l)** Written resignations of the directors and officers of (or persons holding comparable positions in) the Captive Insurance Companies and the Not-for-Profit Corporations, effective on and as of the Closing Date;

**(m)** Possession and custody of the original minute books and transfer ledgers of the Captive Insurance Companies, the original minute books for each of the Not-for-Profit Corporations, and, to the extent in Seller's possession, of the similar organizational books of the Joint Ventures;

**(n)** Limited powers of attorney to permit Buyer to utilize Seller's DEA registration numbers on a temporary basis until such time as Buyer obtains its own DEA registration numbers;

**(o)** Certificates of non-foreign status from any Seller conveying real property assets to Buyer;

**(p)** A list of source or access codes to computers, combinations to safe(s) and the location of and keys to safe deposit boxes, if any; and

(q) Such other Closing Documents as Buyer or Vanguard reasonably deems necessary to effect the transactions contemplated hereby.

**10.4 Vanguard's and Buyer's Deliverables at Closing.** At the Closing and unless otherwise waived in writing by Seller, Vanguard and Buyer shall deliver or cause to be delivered to Seller:

(a) An amount equal to the Purchase Price by wire transfer of immediately available funds to an account designated by Seller;

(b) The Warrant Escrow Agreement, fully executed by Vanguard;

(c) The Warrant Certificate, fully executed by Vanguard (which will be delivered by Vanguard to the Escrow Agent);

(d) An assumption agreement, fully executed by Buyer, in form and substance acceptable to Seller, pursuant to which Buyer shall assume the Assumed Liabilities;

(e) Copies of resolutions duly adopted by the boards of directors of Vanguard and Buyer authorizing and approving the execution and delivery of this Agreement and the Closing Documents and the consummation of the transactions contemplated hereby and thereby, certified as true and in full force and effect as of the Closing Date by appropriate officers of Vanguard or Buyer, as the case may be;

(f) Certificates of the duly authorized President or a Vice President of Vanguard and Buyer certifying that each of the representations and warranties of Vanguard and Buyer contained in this Agreement that is qualified as to materiality is true and correct on and as of the Closing Date, that each of the other representations and warranties of Vanguard and Buyer contained in this Agreement is true and correct in all material respects on and as of the Closing Date, and that each and all of the terms, covenants and agreements to be complied with or performed by Vanguard and Buyer on or before the Closing Date have been complied with and performed;

(g) Certificates of incumbency for the officers of Vanguard and Buyer executing this Agreement and the Closing Documents, dated as of the Closing Date;

(h) Certificates of existence and good standing of Vanguard and Buyer from the states in which they are incorporated or organized, as the case may be, dated the most recent practical date prior to Closing; and

(i) Such other Closing Documents as Seller reasonably deems necessary to effect the transactions contemplated hereby.

**10.5 Termination Prior to Closing.**

(a) Notwithstanding anything herein to the contrary, this Agreement may be terminated, and the transactions contemplated by this Agreement abandoned, upon notice by the terminating Party to the other Parties: (i) at any time before the Closing, by mutual written

consent of Buyer and Seller; (ii) by Buyer in accordance with Section 10.6; (iii) at any time before the Closing, by Buyer on the one hand, or by Seller on the other hand, in the event of a material breach of this Agreement (other than under Article 3 or Article 4, as applicable) by the non-terminating party which includes the failure of a Party to satisfy its obligations on the Closing Date after all conditions precedent to such Party's obligations hereunder have been satisfied and which material breach has not been cured by the non-terminating party to the reasonable satisfaction of the terminating party within 15 Business Days after service by the terminating party upon the non-terminating party of a written notice which describes the nature of such breach; (iv) at any time before the Closing, by Buyer in the event of a breach of this Agreement by Seller under Article 3 (disregarding all qualifiers and exceptions relating to materiality or Material Adverse Effect, but taking into consideration all matters described in the Schedules as of the Effective Date), which breach results in, or could reasonably be expected to result in, individually or in the aggregate (A) Losses of \$25,000,000 or more, (B) an adverse effect on EBITDA of the Hospital Businesses of at least \$10,000,000 on an annualized basis or (C) a breach of the Principal Credit Agreement (assuming that Buyer had consummated the transactions described herein and the underlying facts and circumstances causing Seller's breach of this Agreement would constitute a breach under the Principal Credit Agreement), which breach has not been cured (if such breach is susceptible of cure) by Seller to the reasonable satisfaction of Buyer within 15 Business Days after service by Buyer upon Seller of a written notice which describes the nature of such breach; (v) at any time before the Closing, by Seller in the event of a breach of this Agreement by Buyer under Article 4 (disregarding all qualifiers and exceptions relating to materiality or Material Adverse Effect), which breach results in, or could reasonably be expected to result in, individually or in the aggregate (A) Losses of \$25,000,000 or more, or (B) an adverse effect on EBITDA of Vanguard and its consolidated subsidiaries of at least \$10,000,000 on an annualized basis, and which breach has not been cured by Buyer to the reasonable satisfaction of Seller within 15 Business Days after service by Seller upon Buyer of a written notice which describes the nature of such breach; (vi) if the satisfaction of any condition to such Party's obligations under this Agreement becomes impossible or impracticable with the use of Commercially Reasonable Efforts and the failure of such condition to be satisfied is not caused by a breach by the terminating Party; (vii) at any time after November 1, 2010, by Seller if the transactions contemplated by this Agreement have not been consummated on or before such date and such failure to consummate is not caused by a breach of this Agreement by Seller; (viii) at any time after November 1, 2010, by Buyer if the transactions contemplated by this Agreement have not been consummated on or before such date and such failure to consummate is not caused by a breach of this Agreement by Buyer; or (ix) at any time by Buyer upon written notice to Seller, accompanied by payment to Seller of the termination fee described in Section 10.7(a). In the event that any applicable cure period for a Party provided by or permitted in this Section 10.5(a) extends beyond November 1, 2010, neither Seller nor Buyer may terminate this Agreement pursuant to Sections 10.5(a)(vii) or (viii) until after the expiration of such cure period without cure by the appropriate Party.

(b) No termination shall be effective pursuant to Section 10.5(a)(ix) unless concurrently with such termination, Buyer pays the termination fee in full in accordance with the provisions of Section 10.7(a).

**10.6 Termination for Casualty or Eminent Domain.** If prior to the Closing Date any part of one or more of the Hospitals is destroyed or damaged by fire, theft, vandalism or other

cause or casualty (or is otherwise made subject to an eminent domain proceeding) which results in, or could reasonably be expected to result in, (a) Losses (net of applicable insurance) of at least \$25,000,000 or (b) an adverse effect on EBITDA (after taking into consideration the expected proceeds of applicable business interruption insurance) of the Hospital Businesses of at least \$10,000,000 in any year, Buyer may terminate this Agreement in its entirety without penalty. Otherwise, the Parties shall consummate the transactions notwithstanding such destruction or damage (or eminent domain proceeding), in which event Seller shall pay, transfer and assign to Buyer at Closing the proceeds (or the right to receive the proceeds) of the applicable insurance policy or the proceeds from the eminent domain proceeding.

#### **10.7 Effect of Termination.**

(a) If this Agreement is terminated pursuant to Section 10.5(a), other than pursuant to Sections 10.5(a)(iii), 10.5(a)(iv) or 10.5(a)(v) (but only to the extent provided in Section 10.7(b)), no Party shall have any claim against the other, whether under the terms of this Agreement or under applicable Laws; provided, however, if Buyer terminates this Agreement pursuant to Section 10.5(a)(ix), Buyer's only obligation to Seller hereunder shall be to pay to Seller in cash a termination fee of \$50,000,000. If the circumstances that require Seller or Buyer to pay liquidated damages to the other as a consequence of a termination of the Agreement pursuant to Sections 10.5(a)(iii), 10.5(a)(iv) or 10.5(a)(v) as provided in Section 10.7(b) or (c) are not met, then no Party shall have any claim against the other, whether under the terms of this Agreement or under applicable Laws.

(b) Buyer understands and acknowledges that in the event that Seller terminates this Agreement pursuant to Section 10.5(a)(iii) or Section 10.5(a)(v), in either case as a result of an intentional breach by Buyer (but in the case of Section 10.5(a)(iii) only to the extent such breach was both intentional and results in, or could reasonably be expected to result in, individually or in the aggregate (i) Losses of \$25,000,000 or more or (ii) an adverse effect on EBITDA of Vanguard and its consolidated subsidiaries in excess of \$10,000,000 on an annualized basis), Seller will have incurred substantial monetary damages that are not readily subject to determination. Therefore, in order to avoid uncertainty and to clearly establish the damages that Seller would sustain in the event that Seller terminates this Agreement for the reasons described in this Section 10.7(b), Buyer shall pay to Seller as liquidated damages, and not as a penalty, the amount of \$50,000,000. For the avoidance of doubt, a termination of this Agreement arising from Buyer's failure to satisfy its obligations on the Closing Date after all conditions precedent to Buyer's obligations contained herein have been satisfied shall entitle Seller to recovery of \$50,000,000 liquidated damages pursuant to this Section 10.7(b).

(c) Seller understands and acknowledges that in the event that Buyer terminates this Agreement pursuant to Section 10.5(a)(iii) or Section 10.5(a)(iv), in either case as a result of an intentional breach by Seller (but in the case of Section 10.5(a)(iii) only to the extent such breach was both intentional and results in, or could reasonably be expected to result in, individually or in the aggregate (i) Losses of \$25,000,000 or more or (ii) an adverse effect on EBITDA of the Hospital Businesses in excess of \$10,000,000 on an annualized basis), Buyer will have incurred substantial monetary damages that are not readily subject to determination. Therefore, in order to avoid uncertainty and to clearly establish the damages that Buyer would sustain in the event that Buyer terminates this Agreement for the reasons described in this 10.7(c), Seller shall pay to

Buyer as liquidated damages, and not as a penalty, the amount of \$50,000,000. For the avoidance of doubt, a termination of this Agreement arising from Seller's failure to satisfy its obligations on the Closing Date after all conditions precedent to Seller's obligations contained herein have been satisfied shall entitle Buyer to recovery of \$50,000,000 liquidated damages pursuant to this Section 10.7(c).

(d) In the event Buyer is obligated to pay to Seller the \$50,000,000 termination fee described above or the \$50,000,000 in liquidated damages as described above, in no event shall Seller and its Affiliates be entitled to receive any damages in excess of \$50,000,000, in the aggregate, inclusive of such termination fee or such liquidated damages provided pursuant to the terms of this Agreement, for all losses and damages arising from or in connection with breaches of this Agreement by Buyer or Vanguard, or otherwise relating to or arising out of this Agreement or the transactions contemplated by this Agreement.

(e) In the event Seller is obligated to pay to Buyer the \$50,000,000 in liquidated damages as described above, in no event shall Buyer and Vanguard be entitled to receive any damages in excess of \$50,000,000, in the aggregate, inclusive of such liquidated damages provided pursuant to the terms of this Agreement, for all losses and damages arising from or in connection with breaches of this Agreement by Seller, or otherwise relating to or arising out of this Agreement or the transactions contemplated by this Agreement.

(f) Upon termination of this Agreement, Buyer's right of access shall terminate, each Party shall promptly return every document furnished it by the other Party in connection with the transactions contemplated hereby, whether obtained before or after execution of this Agreement, and all copies thereof, and will destroy all copies of any analyses, studies, compilations or other documents prepared by it or its representatives to the extent they contain any information with respect to the business of the other Parties or their Affiliates, and will cause its representatives to whom such documents were furnished to comply with the foregoing.

(g) The Parties acknowledge and agree that the agreements contained in this Section 10.7 are an integral part of the transaction contemplated by the Agreement. This Section 10.7 shall survive any termination of this Agreement.

## **ARTICLE 11 POST-CLOSING COVENANTS OF SELLER**

**11.1 Tax Reporting of Hired Employees.** As of the Closing Date, all Hired Employees shall cease to be employed by Seller. Buyer will be responsible in accordance with the alternate procedure set forth in Section 5. of Rev. Proc. 2004-53 for issuing an individual W-2 to each Hired Employee with respect to his or her employment in 2010, regardless of whether such Hired Employee's wages for 2010 were paid with respect to employment prior to or following the Closing. Further, in accordance with Treasury Regulation Section 31.3121(a)(1)-1(b), in determining the "annual wage limitation" of each Hired Employee for purposes of the Federal Insurance Contributions Act (FICA) for the year ending December 31, 2010, Buyer will use commercially reasonable efforts to include any remuneration received by the Hired Employees from Seller during such period; provided that Seller provides Buyer with all necessary information regarding the Hired Employees. Buyer and Seller will cooperate

reasonably and in good faith to provide access to such information as necessary or appropriate for Buyer to satisfy these obligations.

## **11.2 Non-Competition.**

(a) For a period of five years from and after the Closing Date, Seller shall not, directly or indirectly, and Seller shall use its best efforts to cause its Affiliates not to, in any capacity: (i) own, lease, manage, operate, control, participate in the management or control of, be employed by, or maintain or continue any interest whatsoever in any hospital, or in any facility that provides outpatient surgery, diagnostic imaging, renal dialysis, radiation therapy, primary care, urgent care, cardiac catheterization or endoscopy services within a 25-mile radius of each of the Hospitals; (ii) employ or solicit the employment of any Hired Employee unless (x) such employee resigns voluntarily (without any solicitation from Seller or any of its Affiliates), (y) Buyer consents in writing to such employment or solicitation, or (z) such employee is terminated by Buyer after the Closing Date; or (iii) take any affirmative act causing any Person (including any physician employee or medical staff member) to terminate any Contract for the provision or arrangement of health care services from any of the Hospital Businesses.

(b) Notwithstanding the foregoing: (i) Seller, or any successor to Seller, shall be permitted at any time and from time to time to engage in the health care businesses described on Schedule 11.2, or to make grants to fund any health care related activities or businesses described on Schedule 11.2; (ii) Seller may exercise the Warrants and hold an equity interest in Vanguard, which the Parties acknowledge is not an Affiliate of Seller subject to the limitations of this Section; and (iii) Seller may advertise generally for employment opportunities and issue other notices of employment opportunities to the public at large and employ Hired Employees who accept offers of employment pursuant to such general advertisements and public notices.

(c) Seller acknowledges that any remedy at law for any breach of this Section would be inadequate and consents to the granting by any court of an injunction or other equitable relief, without the necessity of actual monetary loss being proved, in order that a breach or threatened breach of this Section may be effectively enjoined.

**11.3 Change of Corporate Names.** Promptly after Closing, Seller shall change its corporate or other legal entity names to names not including “DMC,” “The Detroit Medical Center,” the commonly known names of any of the Hospitals or any of the Hospital Businesses, or any variation of the foregoing related to or suggesting activities falling within the sphere of activities restricted under Section 11.2; provided that DMC may change its name to “The Detroit Medical Center Foundation,” “DMC Foundation” or another name substantially similar thereto. Buyer understands and acknowledges that a tax-exempt organization that is not an Affiliate of Seller currently uses the name “Children’s Hospital of Michigan Foundation” and will continue to use such name after Closing.

**11.4 Further Assurances.** At any time and from time to time at and after the Closing, upon request of Buyer, Seller shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances, powers of attorney, confirmations and assurances as Buyer may reasonably request

to more effectively convey, assign and transfer to and vest in Buyer full legal right, title and interest in and actual possession of the Assets and the Hospital Businesses, and to generally carry out the purposes and intent of this Agreement. Seller also shall furnish Buyer with such information and documents in its possession or under its control, or which Seller can execute or cause to be executed, as will enable Buyer to prosecute any and all petitions, applications, claims and demands relating to or constituting a part of the Assets, the Hospital Businesses and the Assumed Liabilities.

## **ARTICLE 12 POST-CLOSING COVENANTS OF BUYER**

### **12.1 Buyer Advisory Board; Hospital Advisory Board.**

(a) As of Closing, VHS of Michigan shall establish an Advisory Board (the “VHS Michigan Advisory Board”) which shall be comprised of up to 11 members, a majority of whom shall be appointed by VHS of Michigan and the remainder of whom shall be appointed by DMC. Subject to the overall control and direction of the board of directors of VHS of Michigan, the VHS Michigan Advisory Board will oversee the conduct of the business of the Hospitals and the Hospital Businesses after Closing, will nominate members for each of the Hospital Advisory Boards, and will report to, and generally provide advice and make recommendations to, VHS of Michigan concerning the conduct of the business of the Hospitals, the Hospital Businesses, and the operating and capital budgets thereof. DMC may remove, with or without cause, any individual appointed by DMC to the VHS Michigan Advisory Board. VHS of Michigan may remove, with or without cause, any individual appointed by VHS of Michigan to the VHS Michigan Advisory Board. If, as a result of death, disability, retirement, resignation, removal or otherwise, there shall exist any vacancy on the VHS Michigan Advisory Board, the Person entitled under this Section 12.1(a) to appoint such individual whose death, disability, retirement, resignation or removal resulted in such vacancy may appoint another individual to fill such capacity and serve as a member of the VHS Michigan Advisory Board. As of Closing, the VHS Michigan Advisory Board shall adopt bylaws that more precisely articulate the relationship between VHS of Michigan and the VHS Michigan Advisory Board and that govern its internal structure, activities and meetings (including the frequency thereof) that are in form and substance reasonably satisfactory to DMC and VHS of Michigan. The VHS Michigan Advisory Board will remain in existence for a period of at least ten years.

(b) Immediately after the Closing, the members of the current executive management team of Seller (comprising for this purpose the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Chief Nursing Officer, the Chief Legal Officer and the Chief Medical Officer of DMC and the President of each of the Hospitals), who accept Buyer’s offer of employment pursuant to Section 6.3(a), will be employed to manage the Hospitals and the Hospital Businesses in such respective capacities, subject to the terms of any applicable employment agreement and the authority of the applicable Buyer’s board of directors.

(c) As soon as practicable following Closing, VHS of Michigan, acting in concert with or through the VHS Michigan Advisory Board, will appoint and maintain separate advisory boards for each of the Hospitals (each, a “Hospital Advisory Board”). Subject to applicable Legal Requirements, each Hospital Advisory Board will advise the Hospital with which it is

associated on quality assurance and accreditation matters. In its advisory capacity, each Hospital Advisory Board shall also review and advise Buyer on management's recommended capital and operational budgets for the Hospital with which it is associated. The membership of each initial Hospital Advisory Board shall be agreed upon by Buyer and Seller on or prior to the Closing Date.

**12.2 Indigent and Low Income Care.** Buyer acknowledges that the Hospitals have historically provided significant levels of care for indigent and low-income patients and have also provided care through a variety of community-based health programs. Buyer will maintain and adhere to (a) Seller's historic policy on charity care, a copy of which is attached as Schedule 12.2, or (b) at Buyer's discretion, the charity care policy utilized by any Affiliate of Buyer from time-to-time so long as such policy is no less favorable to indigent and low-income patients in any respect than the policy attached as Schedule 12.2, and provide charity care according to such policy (described in Section 12.2(a) or 12.2(b)) for at least ten years from and after Closing. Upon request of Seller at any time during the 180 day period prior to the tenth anniversary of the Closing Date, Buyer and Seller shall negotiate in good faith prior to the tenth anniversary of the Closing Date to determine whether Buyer should extend its commitment to adhere to Seller's charity care policy and provide charity care at the Hospitals according to the historic policy of Seller, it being understood that such negotiations shall be limited in scope to the extension of Seller's charity care policy at the Hospitals after the tenth anniversary of the Closing Date.

**12.3 Commitments to Maintain the Hospitals and Provide Core Services.**

(a) For at least ten years from and after the Closing Date and unless otherwise agreed by Seller, Buyer shall maintain each of the Hospitals as a general acute care hospital licensed in the State of Michigan, or as a rehabilitation hospital licensed in the State of Michigan in the case of Rehabilitation Hospital of Michigan. The Parties acknowledge that the Hospitals provide a large share of the State of Michigan's graduate medical education and care to beneficiaries of the Medicaid program and to the uninsured. Reductions in state or federal funding and reimbursement that apply proportionately to the Hospitals and all other general acute care hospitals in the State of Michigan shall not constitute a basis for Buyer to request approval from Seller to close any Hospital. The Parties also acknowledge that this provision is not intended to preclude Buyer from requesting approval from Seller to close a Hospital in the event of discriminatory reductions in state or federal funding and reimbursement for graduate medical education or services provided to beneficiaries of the Medicaid program or to the uninsured. Reductions in state or federal funding and reimbursement to the Hospitals that are materially disproportionate to reductions in funding and reimbursement to all other general acute care hospitals in the State of Michigan and that cause one or more of the Hospitals to suffer material declines in EBITDA, shall constitute a basis for Buyer to request the approval of Seller to close such affected Hospitals, which approval shall not be unreasonably withheld. Upon such time as Buyer, if at all, is permitted to cease maintaining the operation of any Hospital prior to the date which is ten years from and after the Closing Date, notwithstanding any provision to the contrary contained in this Agreement, once Buyer has initiated the process of ceasing the operation of such Hospital, Buyer shall be relieved of its obligations under each of Sections 12.1, 12.2, 12.3, 12.4 and 12.7, but in each case only with respect to such Hospital.