EXHIBIT 10.65  
  
 CHINO, CA  
  
 LEASE AGREEMENT  
  
 MPT OF CHINO, LLC,  
 a Delaware limited liability company  
  
 Lessor  
  
 AND  
  
 VERITAS HEALTH SERVICES, INC.  
 a California corporation  
  
 Lessee  
  
 AND  
  
 PRIME HEALTHCARE SERVICES, LLC,  
 a California limited liability company  
  
 Prime  
  
 Property:  
  
 One Hundred Twenty Six (126)-Bed Acute Care Hospital Facility  
 (Commonly referred to as the Chino Valley Medical Center)  
 0000 Xxxxxx Xxxxxx  
 Xxxxx, Xxx Xxxxxxxxxx Xxxxxx, Xxxxxxxxxx 00000  
  
 November 30, 2005  
  
  
  
 Table of Contents  
  
  
  
 Page  
 ----  
   
ARTICLE I LEASED PROPERTY; TERM.................................. 1  
ARTICLE II DEFINITIONS............................................ 2  
ARTICLE III RENT................................................... 11  
 3.1 Base Rent.............................................. 11  
 3.2 Additional Charges..................................... 12  
 3.3 Absolute Net Lease..................................... 12  
 3.4 Lease Deposit.......................................... 12  
 3.5 Adjustments............................................ 12  
 3.6 Rent and Payments under Parking Lot Lease.............. 12  
ARTICLE IV IMPOSITIONS............................................ 13  
 4.1 Payment of Impositions................................. 13  
 4.2 Adjustment of Impositions.............................. 13  
 4.3 Utility Charges........................................ 13  
 4.4 Insurance Premiums..................................... 13  
ARTICLE V NO TERMINATION......................................... 14  
 5.1 Acknowledgement........................................ 14  
ARTICLE VI OWNERSHIP OF LEASED PROPERTY AND PERSONAL PROPERTY..... 14  
 6.1 Ownership of the Leased Property....................... 14  
 6.2 Lessee's Personal Property............................. 14  
ARTICLE VII CONDITION AND USE OF LEASED PROPERTY................... 15  
 7.1 Condition of the Leased Property....................... 15  
 7.2 Use of the Leased Property............................. 15  
 7.3 Lessor to Grant Easements.............................. 16  
ARTICLE VIII LEGAL AND INSURANCE REQUIREMENTS....................... 16  
 8.1 Compliance with Legal and Insurance Requirements....... 16  
 8.2 Legal Requirement Covenants............................ 17  
 8.3 Hazardous Materials.................................... 17  
 8.4 Healthcare Laws........................................ 17  
 8.5 Representations and Warranties......................... 18  
 8.6 Single Purpose Entity.................................. 18  
 8.7 Organizational Documents............................... 18  
ARTICLE IX REPAIRS; RESERVE; RESTRICTIONS......................... 19  
 9.2 Reserves for Extraordinary Repairs..................... 20  
 9.3 Encroachments; Restrictions............................ 20  
ARTICLE X CAPITAL ADDITIONS...................................... 21  
 10.1 Construction of Capital Additions to the Leased  
 Property............................................ 21  
 10.2 Capital Additions Financed by Lessee................... 21  
 10.3 Capital Additions Financed by Lessor................... 22  
 10.4 Salvage................................................ 24  
ARTICLE XI LIENS.................................................. 24  
ARTICLE XII PERMITTED CONTESTS..................................... 24  
  
  
  
 i  
  
  
  
 Table of Contents  
 (continued)  
  
  
  
 Page  
 ----  
   
ARTICLE XIII INSURANCE.............................................. 25  
 13.1 General Insurance Requirements......................... 25  
 13.2 Additional Insurance................................... 27  
 13.3 Waiver of Subrogation.................................. 27  
 13.4 Form of Insurance...................................... 27  
 13.5 Increase in Limits..................................... 28  
 13.6 Blanket Policy......................................... 28  
 13.7 No Separate Insurance.................................. 28  
ARTICLE XIV FIRE AND CASUALTY...................................... 29  
 14.1 Insurance Proceeds..................................... 29  
 14.2 Reconstruction in the Event of Damage or Destruction  
 Covered by Insurance................................ 29  
 14.3 Reconstruction in the Event of Damage or Destruction  
 Not Covered by Insurance............................ 30  
 14.4 Lessee's Personal Property............................. 30  
 14.5 Restoration of Lessee's Property....................... 30  
 14.6 No Abatement of Rent................................... 30  
 14.7 Damage Near End of Term................................ 30  
 14.8 Termination of Right to Purchase....................... 30  
 14.9 Waiver................................................. 31  
ARTICLE XV CONDEMNATION........................................... 31  
 15.1 Definitions............................................ 31  
 15.2 Parties' Rights and Obligations........................ 31  
 15.3 Total Taking........................................... 31  
 15.4 Partial Taking......................................... 31  
 15.5 Restoration............................................ 31  
 15.6 Award Distribution..................................... 31  
 15.7 Temporary Taking....................................... 32  
ARTICLE XVI DEFAULT................................................ 32  
 16.1 Events of Default...................................... 32  
 16.2 Events of Default in Financial Covenants............... 36  
 16.3 Additional Expenses.................................... 38  
 16.4 Intentionally Omitted.................................. 38  
 16.5 Waiver................................................. 38  
 16.6 Application of Funds................................... 38  
 16.7 Notices by Lessor...................................... 38  
 16.8 Lessor's Contractual Security Interest................. 38  
ARTICLE XVII LESSOR'S RIGHT TO CURE................................. 40  
ARTICLE XVIII PURCHASE OF THE LEASED PROPERTY........................ 40  
ARTICLE XIX HOLDING OVER........................................... 41  
ARTICLE XX INTENTIONALLY OMITTED.................................. 41  
ARTICLE XXI INTENTIONALLY OMITTED.................................. 41  
  
  
  
 ii  
  
  
  
 Table of Contents  
 (continued)  
  
  
  
 Page  
 ----  
   
ARTICLE XXII RISK OF LOSS........................................... 41  
ARTICLE XXIII INDEMNIFICATION........................................ 41  
ARTICLE XXIV ASSIGNMENT, SUBLETTING AND SUBLEASE SUBORDINATION...... 42  
 24.1 Assignment and Subletting.............................. 42  
 24.2 Sublease Limitations................................... 42  
 24.3 Sublease Subordination and Non-Disturbance............. 43  
ARTICLE XXV OFFICER'S CERTIFICATES; FINANCIAL STATEMENTS; NOTICES  
 AND OTHER CERTIFICATES.............................. 43  
ARTICLE XXVI INSPECTION............................................. 45  
ARTICLE XXVII NO WAIVER.............................................. 45  
ARTICLE XXVIII REMEDIES CUMULATIVE.................................... 45  
ARTICLE XXIX SURRENDER.............................................. 45  
ARTICLE XXX NO MERGER OF TITLE..................................... 46  
ARTICLE XXXI TRANSFERS BY LESSOR.................................... 46  
ARTICLE XXXII QUIET ENJOYMENT........................................ 46  
ARTICLE XXXIII NOTICES................................................ 47  
ARTICLE XXXIV APPRAISAL.............................................. 48  
ARTICLE XXXV PURCHASE RIGHTS........................................ 48  
 35.1 Lessee's Option to Purchase............................ 48  
 35.2 Lessor's Option to Purchase Lessee's Personal  
 Property............................................ 49  
 35.3 Lessor's Put Option.................................... 49  
 35.4 Lessee Substitution for Parking Lot Property........... 49  
ARTICLE XXXVI INTENTIONALLY OMITTED.................................. 50  
ARTICLE XXXVII FINANCING OF THE LEASED PROPERTY....................... 50  
 37.1 Financing by Lessor.................................... 50  
ARTICLE XXXVIII SUBORDINATION AND NON-DISTURBANCE...................... 50  
ARTICLE XXXIX LICENSES............................................... 51  
ARTICLE XL COMPLIANCE WITH HEALTHCARE LAWS........................ 52  
ARTICLE XLI LESSOR'S RIGHT TO SELL AND LESSEE'S RIGHT OF FIRST  
 REFUSAL............................................. 53  
 41.1 Lessor's Right to Sell................................. 53  
 41.2 Lessee's Right of First Refusal........................ 53  
ARTICLE XLII MISCELLANEOUS.......................................... 53  
 42.1 General................................................ 53  
 42.2 Lessor's Expenses...................................... 54  
 42.3 Assets Purchased Pursuant to Purchase Options.......... 54  
 42.4 Entire Agreement; Modifications........................ 54  
 42.5 Lease Guaranty......................................... 54  
 42.6 Future Financing....................................... 54  
 42.7 Change in Ownership/Control............................ 54  
 42.8 Lessor Securities Offering and Filings................. 54  
 42.9 Non-Recourse as to Lessor.............................. 55  
  
  
  
 iii  
  
  
  
 Table of Contents  
 (continued)  
  
  
  
 Page  
 ----  
   
 42.10 Management Agreements.................................. 55  
 42.11 Prime's Right to Exercise Purchase Options............. 55  
 42.12 Governing Law.......................................... 55  
 42.13 Jurisdiction and Venue................................. 55  
 42.14 Counterparts........................................... 56  
ARTICLE XLIII MEMORANDUM OF LEASE.................................... 56  
  
  
  
 iv  
  
  
  
 LEASE AGREEMENT  
  
 This LEASE AGREEMENT (the "Lease") is dated as of the 30th day of November,  
2005, and is among MPT OF CHINO, LLC, a Delaware limited liability company  
("Lessor"), having its principal office at 0000 Xxxxx Xxxxxx Xxxxx, Xxxxx 000,  
Xxxxxxxxxx, Xxxxxxx 00000, VERITAS HEALTH SERVICES, INC., a California  
corporation ("Lessee"), having its principal office at 0000 Xxxxxx Xxxxxx,  
Xxxxx, Xxxxxxxxxx 00000, and PRIME HEALTHCARE SERVICES, LLC, a California  
limited liability company ("Prime"), having its principal office at 00000 Xxxx  
Xxxxxx Xxxx, Xxxxxxxxxxx, Xxxxxxxxxx 00000.  
  
 WITNESSETH:  
  
 WHEREAS, Lessor is the current owner of that certain real property located  
in Chino, San Bernardino County, California, which real property is more  
particularly described on EXHIBIT A attached hereto and incorporated herein by  
reference, and all improvements located thereon;  
  
 WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated  
and delivered to Lessor as of the date hereof, whereby Prime assigned to Lessor,  
and Lessor assumed from Prime, all of Prime's right, title and interest under  
that certain Restated and Amended Lease (Parking Lot) dated April 7, 2001 (the  
"Parking Lot Lease"), Lessor holds a leasehold interest in that certain real  
property owned by Xxxxxxxx Lutheran Church (the "Parking Lot Lessor") more  
particularly described in the Parking Lot Lease and on EXHIBIT B attached hereto  
and incorporated herein by reference, and all improvements located thereon (the  
"Parking Lot Property");  
  
 WHEREAS, Lessor has agreed to grant to Prime the right and option to  
exercise the purchase options granted to Lessee hereunder pursuant and subject  
to the terms, provisions and conditions set forth herein; and  
  
 WHEREAS, Lessor, Lessee and Prime desire to enter into this Lease on the  
terms and conditions hereinafter provided.  
  
 NOW, THEREFORE, the parties hereto hereby agree as follows:  
  
 ARTICLE I  
  
 LEASED PROPERTY; TERM  
  
 Lessor and Lessee acknowledge and agree that this Lease is subject to  
Lessor's continued leasehold interest in the Parking Lot Property and Lessee  
accepts, assumes and agrees to perform and observe all of the terms, conditions,  
provisions, limitations and obligations contained in the Parking Lot Lease to be  
performed on the part of the Lessor as lessee therein, including the payment of  
Parking Lot Rent, except as expressly modified and limited herein. In the event  
of termination of the Parking Lot Lease, by lapse of time or for any other  
reason, prior to the cancellation or termination of this Lease, this Lease shall  
terminate in accordance with and subject to the rights, terms and conditions of  
Sections 35.3 and 35.4 below. Upon and subject to the foregoing and the terms  
and conditions hereinafter set forth, and subject to the rights of any tenants,  
subtenants, lessees or sublessees under any Existing Leases as described in  
Section 24.1 below, Lessor leases to Lessee and Lessee rents from Lessor all of  
Lessor's rights and interest in and to the following property (collectively, the  
"Leased Property"):  
  
 (a) the real property described on EXHIBIT A attached hereto (the  
 "Land");  
  
 (b) the Parking Lot Property including the real estate as described on  
 EXHIBIT B attached hereto (subject to the terms, provisions and conditions  
 of the Parking Lot Lease);  
  
  
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 (c) the Facility and all buildings, structures, Fixtures (as  
 hereinafter defined) and other improvements of every kind, alleyways and  
 connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site  
 and off-site), parking areas and roadways appurtenant to such buildings and  
 structures presently or hereafter situated upon the Land (but specifically  
 excluding the Power Generation Facility) and Capital Additions (as  
 hereinafter defined) financed by Lessor (collectively, the "Leased  
 Improvements");  
  
 (d) all easements, rights and appurtenances relating to the Land and  
 the Leased Improvements;  
  
 (e) all site plans, surveys, soil and substrata studies, architectural  
 drawings, plans and specifications, inspection reports, engineering and  
 environmental plans and studies, title reports, floor plans, landscape  
 plans and other plans relating to the Land and Leased Improvements; and  
  
 (f) all permanently affixed non-medical equipment, machinery,  
 fixtures, and other items of real and/or personal property, including all  
 components thereof, now and hereafter located in, on or used in connection  
 with, and permanently affixed to or incorporated into the Leased  
 Improvements, including, without limitation, all furnaces, boilers,  
 heaters, electrical equipment, heating, plumbing, lighting, ventilating,  
 refrigerating, incineration, air and water pollution control, waste  
 disposal, air-cooling and air-conditioning systems and apparatus, sprinkler  
 systems and fire and theft protection equipment, and built-in oxygen and  
 vacuum systems, all of which, to the greatest extent permitted by law, are  
 hereby deemed by the parties hereto to constitute real estate, together  
 with all replacements, modifications, alterations and additions thereto,  
 but specifically excluding the Power Generation Facility, and all items  
 included within the category of Lessee's Personal Property as defined in  
 Article II below (collectively the "Fixtures").  
  
SUBJECT, HOWEVER, to the matters set forth on EXHIBIT C attached hereto (the  
"Permitted Exceptions"); Lessee shall have and hold the Leased Property for a  
fixed term (the "Fixed Term") commencing on the date hereof (the "Commencement  
Date") and ending at midnight on the last day of the one hundred and eightieth  
(180th) month period after the Commencement Date, unless sooner terminated as  
herein provided.  
  
 So long as Lessee is not in default, and no event has occurred which with  
the giving of notice or the passage of time or both would constitute a default,  
under any of the terms and conditions of this Lease, or under any of the terms  
and conditions of the Other Leases (as hereinafter defined), Lessee shall have  
the option to extend the Fixed Term of this Lease on the same terms and  
conditions set forth herein for three (3) additional periods of five (5) years  
each (each an "Extension Term"). Lessee may exercise each such option by giving  
written notice to the Lessor at least three hundred sixty five (365) days prior  
to the expiration of the Fixed Term or Extension Term, as applicable (the  
"Extension Notice"). If during the period following the delivery of the  
Extension Notice to Lessor, a default or breach by Lessee shall occur under this  
Lease, or under any of the Other Leases, and such default or breach is not cured  
within the applicable time periods as provided herein, Lessee shall be deemed to  
have forfeited all Extension Options. If Lessee elects not to exercise its  
option to extend, all subsequent options to extend shall be deemed to have  
lapsed.  
  
 ARTICLE II  
  
 DEFINITIONS  
  
 For all purposes of this Lease, except as otherwise expressly provided or  
unless the context otherwise requires, (a) the terms defined in this Article  
have the meanings assigned to them in this Article and include the plural as  
well as the singular, (b) all accounting terms not otherwise defined herein have  
the meanings assigned to them in accordance with GAAP as at the time applicable,  
(c) all references in this Lease to designated "Articles", "Sections" and other  
subdivisions are to the designated Articles, Sections and other subdivisions of  
this Lease, and (d) the words "herein", "hereof" and "hereunder" and other words  
of similar import refer to this Lease as a whole and not to any particular  
Article, Section or other subdivision:  
  
  
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 ACMs: As defined in Section 8.3.  
  
 Added Value Additional: As defined in Section 10.2.  
  
 Additional Charges: As defined in Section 3.2.  
  
 Adjustment Date: January 1 of each year commencing on January 1, 2007.  
  
 Affiliate: When used with respect to any corporation, limited liability  
company, or partnership, the term "Affiliate" shall mean any person,  
corporation, limited liability company, partnership or other legal entity,  
which, directly or indirectly, controls or is controlled by or is under common  
control with such corporation, limited liability company, or partnership. For  
the purposes of this definition, "control" (including the correlative meanings  
of the terms "controlled by" and "under common control with"), as used with  
respect to any person, corporation, limited liability company, partnership or  
other legal entity, shall mean the possession, directly or indirectly, of the  
power to direct or cause the direction of the management and policies of such  
person, corporation, limited liability company, partnership or other legal  
entity, through the ownership of voting securities, partnership interests or  
other equity interests.  
  
 Award: As defined in Section 15.1.  
  
 Base Rent: As defined in Section 3.1.  
  
 Business: The operation of the Facility and the engagement in and pursuit  
and conduct of any business venture or activity related thereto.  
  
 Business Day: Each Monday, Tuesday, Wednesday, Thursday and Friday which is  
not a day on which money centers in the City of New York, New York are  
authorized, or obligated, by law or executive order, to close.  
  
 Capital Additions: One or more new buildings or one or more additional  
structures annexed to any portion of any of the Leased Improvements, which are  
constructed on any parcel or portion of the Land during the Term, including the  
construction of a new wing or new story.  
  
 Capital Addition Cost: The cost of any Capital Additions proposed to be  
made by Lessee whether or not paid for by Lessee or Lessor. Such cost shall  
include (a) the cost of construction of the Capital Additions, including site  
preparation and improvement, materials, labor, supervision and certain related  
design, engineering and architectural services, the cost of any fixtures, the  
cost of construction financing and miscellaneous costs approved by Lessor, (b)  
if agreed to by Lessor in writing in advance, the cost of any land contiguous to  
the Leased Property purchased for the purpose of placing thereon the Capital  
Additions or any portion thereof or for providing means of access thereto, or  
parking facilities therefor, including the cost of surveying the same, (c) the  
cost of insurance, real estate taxes, water and sewage charges and other  
carrying charges for such Capital Additions during construction, (d) the cost of  
title insurance, (e) reasonable fees and expenses of legal counsel, (f) filing,  
registration and recording taxes and fees, (g) documentary stamp taxes, if any,  
and (h) all reasonable costs and expenses of Lessor and any Lending Institution  
which has committed to finance the Capital Additions, including, but not limited  
to, (i) the reasonable fees and expenses of their respective legal counsel, (ii)  
all printing expenses, (iii) the amount of any filing, registration and  
recording taxes and fees, (iv) documentary stamp taxes, if any, (v) title  
insurance charges, appraisal fees, if any, (vi) rating agency fees, if any, and  
(vii) commitment fees, if any, charged by any Lending Institution advancing or  
offering to advance any portion of the financing for such Capital Additions.  
  
 Capital Improvement Reserve: As defined in Section 9.1(e).  
  
 Code: The Internal Revenue Code of 1986, as amended.  
  
 Combined EBITDAR: The combined EBITDAR of the Desert Valley Tenants as  
reduced for any inter-company transactions.  
  
  
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 Combined Fixed Charges: The sum of the combined Lease Payments and required  
principal and interest payments of the Desert Valley Tenants pursuant to the  
Total Debt as reduced for any inter-company transactions.  
  
 Combined Lease Payments: The combined payments of Base Rent of the Desert  
Valley Tenants required pursuant to this Lease and any other leases between the  
Desert Valley Tenants and Lessor or any of Lessor's Affiliates.  
  
 Commencement Date: The date hereof.  
  
 Commitment Letter: The commitment letter between Lessor and Prime  
Healthcare Systems, LLC (and their Affiliates) dated May 2, 2005, and executed  
by Lessee on May 3, 2005, as amended.  
  
 Condemnation, Condemnor: As defined in Section 15.1.  
  
 Consolidated Net Worth: At any time, the sum of the following for  
Guarantors or Lessee and their respective consolidated subsidiaries (excluding  
PHS II) on a consolidated basis determined in accordance with GAAP.  
  
 (a) the amount of capital or stated capital (after deducting the cost  
 of any treasury shares), plus  
  
 (b) the amount of capital surplus and retained earnings (or, in the  
 case of a capital surplus or retained earnings deficit, minus the amount of  
 such deficit), minus  
  
 (c) the sum of the following (without duplication of deductions in  
 respect of items already deducted in arriving at surplus and retained  
 earnings): (i) unamortized debt discount and expense and (ii) any write-up  
 in book value of assets resulting from a revaluation thereof pursuant to  
 generally accepted accounting principles subsequent to the most recent  
 Statements of Cash Flow prior to the date thereof, except any net write-up  
 in value of foreign currency in accordance with GAAP; any write-up  
 resulting from reversal of a reserve for bad debts or depreciation; and any  
 write-up resulting from a change in methods of accounting for inventory.  
  
 Consumer Price Index: The Consumer Price Index, all urban consumers, all  
items, U.S. City Average, published by the United States Department of Labor,  
Bureau of Labor Statistics, in which 1982-1984 equals one hundred (100). If the  
Consumer Price Index is discontinued or revised during the term of this Lease,  
such other governmental index or computation with which it is replaced shall be  
used in order to obtain substantially the same result as would be obtained if  
the Index had not been discontinued or revised.  
  
 CPI: The Consumer Price Index.  
  
 Credit Enhancements: All security deposits, security interests, letters of  
credit, pledges, guaranties, prepaid rent or other sums, deposits or interests  
held by Lessee, if any, with respect to the Leased Property, the Tenant Leases  
or the Tenants.  
  
 Date of Taking: As defined in Section 15.1.  
  
 Desert Valley Tenants: The Lessee, the Guarantors and any of their  
respective Affiliates who are also or who become tenants of Lessor or any of its  
Affiliates; provided, however, Prime Healthcare Services II, LLC, as lessee  
under the Xxxxxxx Oaks Lease (as hereinafter defined), shall not be included as  
a Desert Valley Tenant for purposes of this Lease.  
  
 EBITDAR: Earnings before the deduction of interest, taxes, depreciation,  
amortization and rent, as determined in accordance with GAAP.  
  
  
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 Encumbrances: As defined in Article XXXVII.  
  
 Energy Services Agreement: That certain Energy Services Agreement dated as  
of December 15, 2004, by and between U.S. Power Corporation and Veritas  
Healthcare Services, Inc. d/b/a Chino Valley Medical Center.  
  
 Equity Investment: The Purchase Price.  
  
 Events of Default: As defined in Section 16.1 and Section 16.2.  
  
 Existing Leases: As defined in Section 24.1.  
  
 Extension Notice: As defined in Article I.  
  
 Extension Term: As defined in Article I.  
  
 Extraordinary Repairs: All repairs to the Facility of every kind and  
nature, whether interior or exterior, structural or non-structural (including,  
without limitation, all parking decks and parking lots) which are considered to  
be extraordinary in nature (as opposed to being ordinary or normal in nature),  
as Lessee and/or Lessor may determine to be necessary or appropriate from time  
to time during the Term.  
  
 Facility: The licensed one hundred twenty-six (126)-bed acute care hospital  
facility and all improvements in connection therewith operated on the Land, but  
specifically excluding the Power Generation Facility.  
  
 Facility Instrument: A note (whether secured or unsecured), loan agreement,  
credit agreement, guaranty, security agreement, mortgage, deed of trust or other  
security agreement pursuant to which a Facility Lender has provided financing to  
Lessor in connection with the Leased Property or any part thereof, or financing  
provided to Lessee, if such financing is provided by Lessor or any Affiliate of  
Lessor, to Lessee, and any and all renewals, replacements, modifications,  
supplements, consolidations, spreaders and extensions thereof.  
  
 Facility Lender: A holder (which may include any Affiliate of Lessor) of  
any Facility Instrument.  
  
 Fair Market Added Value: The Fair Market Value of the Leased Property  
(including all Capital Additions) less the Fair Market Value of the Leased  
Property determined as if no Capital Additions paid for by Lessee had been  
constructed.  
  
 Fair Market Value: The Fair Market Value of the Leased Property, including  
all Capital Additions, (a) and shall be determined in accordance with the  
appraisal procedures set forth in Article XXXIV or in such other manner as shall  
be mutually acceptable to Lessor and Lessee, (b) and shall not take into account  
any reduction in value resulting from any indebtedness to which the Leased  
Property is subject and which encumbrance Lessee or Lessor is otherwise required  
to remove pursuant to any provision of this Lease or agrees to remove at or  
prior to the closing of the transaction as to which such Fair Market Value  
determination is being made. The positive or negative effect on the value of the  
Leased Property attributable to the interest rate, amortization schedule,  
maturity date, prepayment penalty and other terms and conditions of any  
Encumbrance on the Leased Property, which is not so required or agreed to be  
removed shall be taken into account in determining such Fair Market Value.  
Notwithstanding anything contained herein to the contrary, any appraisal of the  
Leased Property shall assume the Lease is in place for a term of fifteen (15)  
years, and based solely on the rents and other revenues generated and to be  
generated pursuant to this Lease without any regard to the Lessee's operations.  
  
 Fair Market Value Purchase Price: The Fair Market Value of the Leased  
Property less the Fair Market Added Value.  
  
 Fiscal Year: The fiscal year for this Lease shall be the twelve (12) month  
period from January 1 to December 31.  
  
  
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 Fixed Term: As defined in Article I.  
  
 Fixtures: As defined in Article I.  
  
 GAAP: Generally accepted accounting principles in the United States,  
consistently applied.  
  
 Governmental Entity: Any national, federal, regional, state, local,  
provincial, municipal, foreign or multinational court or other governmental or  
regulatory authority, administrative body or government, department, board,  
body, tribunal, instrumentality or commission of competent jurisdiction.  
  
 Guarantors: Jointly and severally, Prime Healthcare Services, LLC, a  
California limited liability company, Prime Healthcare Services, Inc., a  
Delaware corporation, Desert Valley Medical Group, Inc., a California  
corporation, and Desert Valley Hospital, Inc., a California corporation.  
  
 Hazardous Materials: Any substance, including without limitation, asbestos  
or any substance containing asbestos and deemed hazardous under any Hazardous  
Materials Law, the group of organic compounds known as polychlorinated  
biphenyls, flammable explosives, radioactive materials, infectious wastes,  
biomedical and medical wastes, chemicals known to cause cancer or reproductive  
toxicity, pollutants, effluents, contaminants, emissions or related materials  
and any items included in the definition of hazardous or toxic wastes, materials  
or substances under any Hazardous Materials Laws.  
  
 Hazardous Materials Laws: All local, state and federal laws relating to  
environmental conditions and industrial hygiene, including, without limitation,  
the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Comprehensive  
Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as  
amended by the Superfund Amendments and Reauthorization Act of 1986 ("XXXX"),  
the Hazardous Materials Transportation Act, the Federal Water Pollution Control  
Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act,  
the Safe Drinking Water Act, and all similar federal, state and local  
environmental statutes, ordinances and the regulations, orders, or decrees now  
or hereafter promulgated thereunder.  
  
 Healthcare Laws: All rules and regulations under the False Claims Act (31  
U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section  
51 et seq.), the Federal Health Care Programs Anti-Kickback statute (42 U.S.C.  
Section 1320a-7a(b)), the Ethics in Patient Referrals Act of 1989, as amended  
(Xxxxx Law) (42 U.S.C. 1395nn), the Civil Money Penalties Law (42 U.S.C. Section  
1320a-7a), or the Truth in Negotiations (10 U.S.C. Section 2304 et seq.), Health  
Care Fraud (18 U.S.C. 1347), Wire Fraud (18 U.S.C. 1343), Theft or Embezzlement  
(18 U.S.C. 669), False Statements (18 U.S.C. 1001), False Statements (19 U.S.C.  
1035), and Patient Inducement Statute, and equivalent state statutes and any and  
all rules or regulations promulgated by governmental entities with respect to  
any of the foregoing.  
  
 Impositions: Collectively, all civil monetary penalties, fines and  
overpayments imposed by state and federal regulatory authorities, all taxes  
(including, without limitation, all capital stock and franchise taxes of Lessor,  
all ad valorem, sales and use, single business, gross receipts, transaction  
privilege, rent or similar taxes), assessments (including, without limitation,  
all assessments, charges and costs imposed under the Permitted Exceptions, all  
assessments for public improvements or benefits, whether or not commenced or  
completed prior to the date hereof and whether or not to be completed within the  
Term), ground rents, water, sewer or other rents and charges, excises, tax  
levies, fees (including, without limitation, license, permit, inspection,  
authorization and similar fees), and all other governmental charges, in each  
case whether general or special, ordinary or extraordinary, or foreseen or  
unforeseen, of every character in respect of the Leased Property and/or the Rent  
(including all interest and penalties thereon due to any failure in payment by  
Lessee), and all other fees, costs and expenses which at any time prior to,  
during or in respect of the Term hereof may be charged, assessed or imposed on  
or in respect of or be a lien upon (a) Lessor or Lessor's interest in the Leased  
Property, (b) the Leased Property or any part thereof or any rent therefrom or  
any estate, right, title or interest therein, or (c) any occupancy, operation,  
use or possession of, sales from, or activity conducted on, or in connection  
with, the Leased Property or the leasing or use of the Leased Property or any  
part thereof; provided, however, nothing contained in this Lease shall be  
construed to require Lessee to pay (1) any  
  
  
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tax based on net income (whether denominated as a franchise or capital stock,  
financial institutions or other tax) imposed on Lessor, or (2) any transfer or  
net revenue tax of Lessor, or (3) any tax imposed with respect to the sale,  
exchange or other disposition by Lessor of any portion of the Leased Property or  
the proceeds thereof, or (4) except as expressly provided elsewhere in this  
Lease, any principal or interest on any Encumbrance on the Leased Property,  
except to the extent that any tax, assessment, tax levy or charge which Lessee  
is obligated to pay pursuant to the first sentence of this definition and which  
is in effect at any time during the Term hereof is totally or partially  
repealed, and a tax, assessment, tax levy or charge set forth in clause (1) or  
(2) is levied, assessed or imposed expressly in lieu thereof, in which case  
Lessee shall pay.  
  
 Initial Purchase Price: A price equal to the purchase price paid by Lessor  
(and its Affiliates, including, without limitation, MPT Operating Partnership,  
L.P.) for the Leased Property pursuant to the Purchase Agreement, plus all costs  
and expenses incurred in association with the purchase and lease of such Leased  
Property, including, but not limited to, legal, appraisal, title, survey,  
environmental, seismic, engineering and other fees and expenses paid in  
connection with the inspection of the Leased Property and site visits, and fees  
paid to advisors and brokers, except to the extent such items are paid by  
Lessee.  
  
 Insurance Premiums: As defined in Section 4.4.  
  
 Insurance Requirements: All terms of any insurance policy required by this  
Lease and all requirements of the issuer of any such policy, and such additional  
insurance which the Lessor may reasonably require.  
  
 Land: As defined in Article I.  
  
 Lease: As defined in the Preamble.  
  
 Lease Assignment: That certain Assignment of Rents and Leases to be  
effective the Commencement Date executed and delivered by Lessee to Lessor,  
pursuant to the terms of which Lessee has assigned to Lessor each of the Tenant  
Leases and Credit Enhancements, if any, as security for the obligations of  
Lessee under this Lease (as this Lease may be amended, modified and/or restated  
from time to time), the obligations of Guarantors under the Lease Guaranty and  
any other obligations of Lessee to Lessor, any Guarantor or any Affiliate of  
Lessee or any Guarantor to Lessor or any Affiliate of Lessor.  
  
 Lease Guaranty: That certain Lease Guaranty to be effective on the  
Commencement Date executed and delivered by Guarantors in favor of Lessor  
contemporaneously herewith.  
  
 Lease Year: A twelve (12) month period commencing on the Commencement Date  
or on each anniversary date thereof, as the case may be.  
  
 Leased Improvements; Leased Property: Each as defined in Article I.  
  
 Legal Requirements: All federal, state, county, municipal and other  
governmental statutes, laws, rules, orders, regulations, ordinances, judgments,  
decrees and injunctions affecting the Lessee's operation of its business on the  
Leased Property, along with the Leased Property or the construction, use or  
alteration thereof (including, without limitation, the Americans With  
Disabilities Act and Section 504 of the Rehabilitation Act of 1973) whether now  
or hereafter enacted and in force, including any which may (a) require repairs,  
modifications, or alterations in or to the Leased Property, or (b) in any way  
adversely affect the use and enjoyment thereof, and all permits, licenses,  
authorizations and regulations relating thereto, and all covenants, agreements,  
restrictions and encumbrances contained in any instruments, either of record or  
known to Lessee (other than encumbrances created by Lessor without the consent  
of Lessee), at any time in force affecting the Leased Property.  
  
 Lending Institution: Any insurance company, federally insured commercial or  
savings bank, national banking association, savings and loan association,  
employees' welfare, pension or retirement fund or system, corporate  
profit-sharing or pension trust, college or university, or real estate  
investment trust, including any  
  
  
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corporation qualified to be treated for federal tax purposes as a real estate  
investment trust, having a net worth of at least Fifty Million Dollars  
($50,000,000).  
  
 Lessee: Veritas Health Services, Inc., a California corporation, and its  
successors and permitted assigns, which, if required by Lessor, shall at all  
times during the term of this Lease be a Single Purpose Entity created and to  
remain in good standing as required hereunder for the sole purpose of leasing  
and operating the Facility.  
  
 Lessee's Personal Property: All of Lessee's machinery, equipment, medical  
equipment (including all medical equipment affixed to the Leased Property),  
furniture, furnishings, trailers, movable walls or partitions, computers, trade  
fixtures, consumable inventory and supplies and all other personal property  
currently owned or acquired after the execution of this Lease, and used or  
useful in the operation of the Facility, including, without limitation, all  
items of furniture, furnishings, equipment, supplies and inventory, and Lessee's  
operating licenses, but excluding Lessee's accounts receivable and any items  
included within the definition of Fixtures (excluding the Power Generation  
Facility, unless Lessee purchases the Power Generation Facility as provided in  
the Energy Services Agreement).  
  
 Lessor: MPT of Chino, LLC, a Delaware limited liability company, and its  
successors and assigns.  
  
 Licenses: As defined in Article XXXIX.  
  
 Management Agreement: Any contracts and agreements for the management of  
any part of the Leased Property, including, without limitation, the real estate  
and the Leased Improvements and the operations of the Facility.  
  
 Management Company: Any person, firm, corporation or other entity or  
individual who or which will manage any part of the Leased Property.  
  
 Market Value of Desert Valley Tenants: An amount equal to the collective  
EBITDAR of the Desert Valley Tenants, on a trailing twelve (12) months basis,  
multiplied by four (4).  
  
 Medicaid: The medical assistance program established by Title XIX of the  
Social Security Act (42 U.S.C. Sections 1396 et seq.) and any statute succeeding  
thereto.  
  
 Medicare: The health insurance program for the aged and disabled  
established by Title XVIII of the Social Security Act (42 U.S.C. Sections 1395  
et seq.) and any statute succeeding thereto.  
  
 MPT: Medical Properties Trust, Inc., an Affiliate of Lessor.  
  
 MPT Development Services: MPT Development Services, Inc., an Affiliate of  
Lessor.  
  
 Officer's Certificate: A certificate of Lessee signed by the Chairman of  
the Board of Directors, the President, any Vice President or the Treasurer of  
Lessee or another officer or representative authorized to so sign by the Board  
of Directors or other governing body of Lessee, or any other person whose power  
and authority to act has been authorized by delegation in writing by any of the  
persons holding the foregoing offices.  
  
 Option Price: As defined in Section 35.1.  
  
 Other Leases: All other leases entered into between Lessor or any Affiliate  
of Lessor, on the one hand, and Lessee, any Guarantor, or any of their  
respective Affiliates, on the other hand, but specifically excluding the Xxxxxxx  
Oaks Lease.  
  
 Overdue Rate: On any date, a rate per annum equal to four percent (4%).  
  
  
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 Parking Lot Interest: Lessor's leasehold interest in and to the Parking Lot  
Property under the Parking Lot Lease. -  
  
 Parking Lot Lease: The Parking Lot Lease as defined in the Recitals of this  
Lease.  
  
 Parking Lot Lessor: The Parking Lot Lessor as defined in the Recitals of  
this Lease.  
  
 Parking Lot Property: The property leased pursuant to the Parking Lot  
Lease.  
  
 Parking Lot Rent: All rent, additional rent and other costs and expenses  
paid by Lessor or due and payable under the Parking Lot Lease.  
  
 Payment Date: Any due date for the payment of the installments of Base  
Rent, Additional Rent, or any other sums payable under this Lease.  
  
 Permitted Exceptions: As defined in Article I.  
  
 PHS II: Prime Healthcare Services II, LLC, a California limited liability  
company.  
  
 Power Generation Facility: The energy generation equipment and component  
parts, supplies and other items used in connection therewith placed on and used  
in connection with the operation of the Facility, as more particularly described  
in the Energy Services Agreement.  
  
 Primary Intended Use: As defined in Article VII.  
  
 Prime: As defined in the Preamble.  
  
 Prime's Personal Property: All of Prime's machinery, equipment, medical  
equipment (including all medical equipment affixed to the Leased Property),  
furniture, furnishings, trailers, movable walls or partitions, computers, trade  
fixtures, consumable inventory and supplies and all other personal property  
currently owned or acquired after the execution of this Lease, and used or  
useful in the operation of the Facility, including without limitation, all items  
of furniture, furnishings, equipment, supplies and inventory.  
  
 Prime Rate: The annual rate announced by Citibank in New York, New York, to  
be the prime rate for 90-day unsecured loans to its United States corporate  
borrowers of the highest credit standing, as in effect from time to time.  
  
 Purchase Agreement: That certain Purchase and Sale Agreement dated as of  
November 30, 2005, by and among Lessor, Lessee, the Guarantors and MPT Operating  
Partnership, L.P.  
  
 Purchase Price: The Initial Purchase Price, plus all costs and expenses not  
included in the Initial Purchase Price incurred or paid in connection with the  
purchase and lease of the Leased Property, including, but not limited to, legal,  
appraisal, title, survey, environmental, seismic, engineering and other fees and  
expenses paid in connection with the inspection of the Leased Property, and paid  
to advisors and brokers (except to the extent such items are paid by Lessee or  
Prime), and shall include the costs of Capital Additions financed by Lessor (and  
Lessor's Affiliates) as provided in Section 10.3 of this Lease (collectively the  
"Purchase Price Adjustment").  
  
 Purchase Price Adjustment: As defined in the above definition of "Purchase  
Price."  
  
 Put Event: As defined in Section 35.3.  
  
 Put Notice: As defined in Section 35.3.  
  
 Put Option: As defined in Section 35.3.  
  
  
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 Real Estate Taxes: All real estate taxes, assessments and special  
assessments and dues which shall be levied, or imposed upon the Leased Property  
during the Term.  
  
 Removal Notice: As defined in Section 16.2.  
  
 Rent: Collectively, the Base Rent (as increased in accordance with the  
provisions of Section 3.1(b) hereof) and the Additional Charges.  
  
 Request: As defined in Section 10.3(a).  
  
 Security Agreements: Those certain Security Agreements to be effective on  
the Commencement Date executed and delivered by Lessee and Prime, individually,  
to Lessor, pursuant to the terms of which Lessee and Prime have granted to  
Lessor a first lien and security interest in all of Lessee's and Prime's rights  
under this Lease (as this Lease may be amended, modified and/or restated from  
time to time), to all of Lessee's Personal Property (excluding accounts  
receivable) and certain of Prime's Personal Property, and to all of the  
Licenses.  
  
 Xxxxxxx Oaks Lease: Any lease agreement entered into or to be entered into  
between any Affiliate of Lessor and any Affiliate of Lessee relating to that  
certain healthcare facility located in Xxxxxxx Oaks, California.  
  
 Single Purpose Entity: An entity which (i) exists solely for the purpose of  
owning and/or leasing all or any portion of the Facility and conducting the  
operation of the Business, (ii) conducts business only in its own name, (iii)  
does not engage in any business other than the ownership and/or leasing all or  
any portion of the Facility and the operation of the Business, (iv) does not  
hold, directly or indirectly, any ownership interest (legal or equitable) in any  
entity or any real or personal property other than the interest in the Facility  
which it owns in the Facility and the other assets incident to the operation of  
the Business, (v) does not have any debt other than as permitted by this Lease  
or arising in the ordinary course of the Business and does not guarantee or  
otherwise obligate itself with respect to the debts of any other person or  
entity, other than as approved by Lessor, (vi) has its own separate books,  
records, accounts, financial statements and tax returns (with no commingling of  
funds or assets), (vii) holds itself out as being a company separate and apart  
from any other entity, and (viii) maintains all corporate formalities  
independent of any other entity.  
  
 Statements of Cash Flow: For any fiscal year or other accounting period for  
Lessee or Guarantors and their respective consolidated subsidiaries, statements  
of earnings and retained earnings and of changes in financial position for such  
period and for the period from the beginning of the respective Fiscal Year to  
the end of such period and the related balance sheet as at the end of such  
period, together with the notes thereto, all in reasonable detail and setting  
forth in comparative form the corresponding figures for the corresponding period  
in the preceding fiscal year, and prepared in accordance with GAAP.  
  
 Substitute Property: As defined in Section 35.4.  
  
 Taking: A taking or voluntary conveyance during the Term hereof of all or  
part of the Leased Property, or any interest therein or right accruing thereto  
or use thereof, as the result of, or in settlement of, any Condemnation or other  
eminent domain proceeding affecting the Leased Property whether or not the same  
shall have actually been commenced.  
  
 Tenant: The lessees or tenants under the Tenant Leases, if any.  
  
 Tenant Leases: All leases, subleases, pharmacy leases and other rental  
agreements (written or verbal, now or hereafter in effect), if any, including,  
without limitation, the Existing Leases as described in Section 24.1 hereof that  
grant a possessory interest in and to any space in or any part of the Leased  
Property, or that otherwise have rights with regard to the Leased Property, and  
all Credit Enhancements, if any, held in connection therewith.  
  
 Term: The actual duration of this Lease, including the Fixed Term and the  
Extension Terms (if exercised by the Lessee) and taking into account any  
termination.  
  
  
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 Total Capitalization: Total Debt plus all capital account or stated capital  
balances according to GAAP.  
  
 Total Debt: All indebtedness which, in accordance with GAAP, will be  
included in determining total liabilities as shown on the liability side of a  
balance sheet, including any such indebtedness represented by obligations under  
a lease that is required to be capitalized for financial reporting purposes in  
accordance with GAAP, but excluding any nonrecourse indebtedness and excluding  
any current liabilities.  
  
 Unavoidable Delays: Delays due to strikes, lockouts, inability to procure  
materials, power failure, acts of God, governmental restrictions, enemy action,  
civil commotion, fire, unavoidable casualty or other causes beyond the control  
of the party responsible for performing an obligation hereunder, provided that  
lack of funds shall not be deemed a cause beyond the control of either party  
hereto unless such lack of funds is caused by the failure of the other party  
hereto.  
  
 Unsuitable for Its Use or Unsuitable for Its Primary Intended Use: As used  
anywhere in this Lease, the terms "Unsuitable for Its Use" or "Unsuitable for  
Its Primary Intended Use" shall mean that, by reason of damage or destruction,  
or a partial Taking by Condemnation, the Facility cannot be operated on a  
commercially practicable basis for its Primary Intended Use, taking into  
account, all relevant factors, and the effect of such damage or destruction or  
partial Taking.  
  
 Victorville Lease: That certain Lease Agreement dated February 28, 2005, by  
and among MPT of Victorville, LLC, as lessor, and Desert Valley Hospital, Inc.,  
as lessee, whereby Desert Valley Hospital, Inc. leases the Victorville Property  
from MPT of Victorville, LLC.  
  
 Victorville Property: The land and all improvements thereon subject to the  
Victorville Lease.  
  
 ARTICLE III  
  
 RENT  
  
 3.1 BASE RENT. During the Term, Lessee shall pay to Lessor, in advance and  
without notice, demand, set off or counterclaim, in lawful money of the United  
States of America, at Lessor's address set forth herein or at such other place  
or to such other person, firm or entity as Lessor from time to time may  
designate in writing, Base Rent as follows:  
  
 (a) BASE RENT: Subject to adjustment as provided herein, Lessee shall  
 pay Lessor base rent (the "Base Rent") in a per annum amount equal to ten  
 percent (10%) multiplied by the Purchase Price, which as of the date hereof  
 is an annual amount of Two Million One Hundred Thousand and 00/100 Dollars  
 ($2,100,000.00). Base Rent shall be payable in advance in equal,  
 consecutive monthly installments on or before the tenth (10th) day of each  
 calendar month during the Term, commencing on the Commencement Date  
 (prorated as to any partial month).  
  
 (b) ADJUSTMENT OF BASE RENT: Commencing on January 1, 2007, and on  
 each January 1 thereafter (each an "Adjustment Date") during the term of  
 this Lease, the Base Rent shall be increased, if any, by an amount equal to  
 the greater of (A) two percent (2%) per annum of the prior year's Base  
 Rent, or (B) the percentage by which the CPI on the Adjustment Date shall  
 have increased over the CPI figure in effect on the immediately preceding  
 January 1. If the previous year's Base Rent is for a partial year, Base  
 Rent shall be annualized based on the highest annual rate effective during  
 the preceding year. Notwithstanding anything contained herein to the  
 contrary, the parties hereto acknowledge and agree that all calculations of  
 Base Rent as specified herein have been made by multiplying the Initial  
 Purchase Price by ten percent (10%) per annum. In the event the Initial  
 Purchase Price is adjusted and increased by the Purchase Price Adjustment,  
 then all calculations of Base Rent shall be adjusted accordingly.  
  
  
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 3.2 ADDITIONAL CHARGES. In addition to the Base Rent (a) Lessee will also  
pay and discharge as and when due and payable all other amounts, liabilities,  
obligations and Impositions which Lessee assumes or agrees to pay under this  
Lease, and all other amounts, liabilities, obligations and Impositions related  
to the ownership, use, possession and operation of the Leased Property,  
including, without limitation, the Parking Lot Rent, all costs of owning and  
operating the Facility, all Real Estate Taxes, Insurance Premiums, maintenance  
and capital improvements, all licensure violations, violations of and defaults  
under any of the Permitted Exceptions, civil monetary penalties and fines, and  
(b) in the event of any failure on the part of Lessee to pay any of those items  
referred to in clause (a) above, Lessee will also promptly pay and reimburse  
Lessor for all such amounts paid by Lessor and promptly pay and discharge every  
fine, penalty, interest and cost which may be added for non-payment or late  
payment of such items (the items referred to in clauses (a) and (b) above being  
referred to herein collectively as the "Additional Charges"), and Lessor shall  
have all legal, equitable and contractual rights, powers and remedies provided  
in this Lease, by statute or otherwise, in the case of non-payment of the  
Additional Charges, as in the case of the Base Rent. If any installment of Base  
Rent or Additional Charges (but only as to those Additional Charges which are  
payable directly to Lessor) shall not be paid within five (5) Business Days  
after its due date, Lessee will pay Lessor on demand, as Additional Charges, a  
late charge (to the extent permitted by law) computed at the Overdue Rate (or at  
the maximum rate permitted by law, whichever is less) on the amount of such  
installment, from the due date of such installment to the date of payment  
thereof. To the extent that Lessee pays any Additional Charges to Lessor  
pursuant to any requirement of this Lease, Lessee shall be relieved of its  
obligation to pay such Additional Charges to the entity to which they would  
otherwise be due. At any time during the Term, Lessor may require Lessee to pay  
to Lessor or its Facility Lender estimates of Real Estate Taxes and Insurance  
Premiums and Lessee shall pay to Lessor (or directly to a Facility Lender, if  
requested by Lessor), upon written request from Lessor, such amounts as and when  
required by Lessor (or the Facility Lender). All sums paid into escrow or  
deposits shall not bear interest and may be commingled with Lessor's books,  
accounts and funds; however, upon an Event of Default under this Lease, the  
escrowed funds or deposits may be applied by Lessor (or the Facility Lender) to  
all sums owed by Lessee to Lessor (or to sums owed to Facility Lender).  
  
 3.3 ABSOLUTE NET LEASE. The Rent shall be paid absolutely net to Lessor, so  
that this Lease shall yield to Lessor the full amount of the installments of  
Base Rent and the payments of Additional Charges throughout the Term, but  
subject to any other provisions of this Lease which expressly provide for  
adjustment of Rent or other charges. Lessee further acknowledges and agrees that  
all charges, assessments or payments of any kind due and payable without notice,  
demand, set off or counterclaim under the Permitted Exceptions shall be paid by  
Lessee as they become due and payable.  
  
 3.4 LEASE DEPOSIT. Intentionally Omitted.  
  
 3.5 ADJUSTMENTS. Lessor and Lessee acknowledge that to the extent Lessee  
fails to reimburse to Lessor any costs and expenses which otherwise would be  
included in the definition of Purchase Price, then the Lessor shall recalculate  
the Purchase Price to include such unreimbursed costs and expenses and deliver  
to Lessee a letter confirming the Base Rent to be paid hereunder and such letter  
shall constitute an amendment to the provisions of this Lease.  
  
 3.6 RENT AND PAYMENTS UNDER PARKING LOT LEASE. Lessee shall pay all Parking  
Lot Rent directly to the Parking Lot Lessor as and when the Parking Lot Rent  
becomes due and payable all as required under the Parking Lot Lease (a copy of  
which has been provided to Lessee), and Lessee shall provide Lessor with  
reasonable evidence of payment each month confirming that the Parking Lot Rent  
has been timely paid or, at Lessor's request, Lessee shall pay the Parking Lot  
Rent to Lessor at least five (5) business days prior to its due date under the  
Parking Lot Lease.  
  
  
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 ARTICLE IV  
  
 IMPOSITIONS  
  
 4.1 PAYMENT OF IMPOSITIONS. Subject to Article XII relating to permitted  
contests, Lessee will pay, or cause to be paid, all Impositions before any fine,  
penalty, interest or cost may be added for non-payment, such payments to be made  
directly to the taxing or assessing authorities unless, in the case of escrows  
and deposits required to be paid to Lessor or Facility Lender as provided in  
Section 3.2 hereof, and Lessee will promptly, upon request, furnish to Lessor  
copies of official receipts or other satisfactory proof evidencing such  
payments. Lessee's obligation to pay such Impositions shall be deemed absolutely  
fixed upon the date such Impositions become a lien upon the Leased Property or  
any part thereof. If any such Imposition may, at the option of the Lessor,  
lawfully be paid in installments (whether or not interest shall accrue on the  
unpaid balance of such Imposition), Lessee may exercise the option to pay the  
same (and any accrued interest on the unpaid balance of such Imposition) in  
installments and, in such event, shall pay such installments during the Term  
hereof (subject to Lessee's right of contest pursuant to the provisions of  
Article XII; and subject to the requirement to pay the full amount of escrows  
and deposits as required under Section 3.2 hereof) as the same respectively  
become due and before any fine, penalty, premium, further interest or cost may  
be added thereto. Lessor, at its expense, shall, to the extent permitted by  
applicable law, prepare and file all tax returns and reports as may be required  
by governmental authorities in respect of Lessor's net income, gross receipts,  
franchise taxes and taxes on its capital stock, and Lessee, at its expense,  
shall, to the extent permitted by applicable laws and regulations, prepare and  
file all other tax returns and reports in respect of any Imposition as may be  
required by governmental authorities. If any refund shall be due from any taxing  
authority in respect of any Imposition paid by Lessee, the same shall be paid  
over to or retained by Lessee if no Event of Default shall have occurred  
hereunder and be continuing. Any such funds retained by Lessor due to an Event  
of Default shall be applied as provided in Article XVI. Lessor and Lessee shall,  
upon request of the other, provide such data as is maintained by the party to  
whom the request is made with respect to the Leased Property as may be necessary  
to prepare any required returns and reports. In the event governmental  
authorities classify any property covered by this Lease as personal property,  
Lessee shall file all personal property tax returns in such jurisdictions where  
it may legally so file. Lessor, to the extent it possesses the same, and Lessee,  
to the extent it possesses the same, will provide the other party, upon request,  
with cost and depreciation records necessary for filing returns for any property  
so classified as personal property. Where Lessor is legally required to file  
personal property tax returns, Lessee will be provided with copies of assessment  
notices indicating a value in excess of the reported value in sufficient time  
for Lessee to file a protest. Lessee may, upon giving notice to Lessor, at  
Lessee's option and at Lessee's sole cost and expense, protest, appeal, or  
institute such other proceedings as Lessee may deem appropriate to effect a  
reduction of real estate or personal property assessments and Lessor, at  
Lessee's expense as aforesaid, shall fully cooperate with Lessee in such  
protest, appeal, or other action. Xxxxxxxx for reimbursement by Lessee to Lessor  
of personal property taxes shall be accompanied by copies of a xxxx therefor and  
payments thereof which identify the personal property with respect to which such  
payments are made.  
  
 4.2 ADJUSTMENT OF IMPOSITIONS. Impositions imposed in respect of the  
tax-fiscal period during which the Term terminates, unless Lessee purchases the  
Leased Property pursuant to the purchase options expressly provided herein,  
shall be adjusted and prorated between Lessor and Lessee, whether or not such  
Imposition is imposed before or after such termination, and Lessee's obligation  
to pay its prorated share thereof shall survive such termination.  
  
 4.3 UTILITY CHARGES. Lessee will contract for, in its own name, and will  
pay or cause to be paid when due all charges for electricity, power, gas, oil,  
water and other utilities used in connection with the Leased Property during the  
Term, including, without limitation, all impact and tap fees necessary for the  
operation of the Facility.  
  
 4.4 INSURANCE PREMIUMS. Lessee will contract for in its own name and will  
pay or cause to be paid when due all premiums for the insurance coverage  
required to be maintained pursuant to Article XIII during the Term (the  
"Insurance Premiums"); provided, however, that if required by Lessor, such  
premiums shall be paid as required under Section 3.2 hereof. At Lessor's option  
and provided that the costs of such coverages collectively do  
  
  
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not exceed the costs of such insurance obtained by Lessee, Lessor may obtain the  
insurance coverages required herein and, in such event, Lessee shall reimburse  
Lessor for the costs of such coverages immediately upon request by Lessor.  
  
 ARTICLE V  
  
 NO TERMINATION  
  
 5.1 ACKNOWLEDGEMENT. The parties hereto understand, acknowledge and agree  
that this is an absolute triple net lease. Lessee shall remain bound by this  
Lease in accordance with its terms and shall neither take any action without the  
consent of Lessor to modify, surrender or terminate the same, nor seek nor be  
entitled to any abatement, deduction, deferment or reduction of Rent, or set-off  
against the Rent, nor shall the respective obligations of Lessor and Lessee be  
otherwise affected by reason of (a) any damage to, or destruction of, any Leased  
Property or any portion thereof from whatever cause or any Taking of the Leased  
Property or any portion thereof, (b) the lawful or unlawful prohibition of, or  
restriction upon, Lessee's use of the Leased Property, or any portion thereof,  
or the interference with such use by any person, corporation, partnership or  
other entity, or by reason of eviction by paramount title; (c) any claim which  
Lessee has or might have against Lessor or by reason of any default or breach of  
any warranty by Lessor under this Lease or any other agreement between Lessor  
and Lessee, or to which Lessor and Lessee are parties, (d) any bankruptcy,  
insolvency, reorganization, composition, readjustment, liquidation, dissolution,  
winding up or other proceedings affecting Lessor or any assignee or transferee  
of Lessor, or (e) for any other cause whether similar or dissimilar to any of  
the foregoing other than a discharge of Lessee from any such obligations as a  
matter of law. Lessee hereby specifically waives all rights, arising from any  
occurrence whatsoever, which may now or hereafter be conferred upon it by law to  
(i) modify, surrender or terminate this Lease or quit or surrender the Leased  
Property or any portion thereof, or (ii) entitle Lessee to any abatement,  
reduction, suspension or deferment of the Rent or other sums payable by Lessee  
hereunder, except as otherwise specifically provided in this Lease. The  
obligations of Lessor and Lessee hereunder shall be separate and independent  
covenants and agreements and the Rent and all other sums payable by Lessee  
hereunder shall continue to be payable in all events unless the obligations to  
pay the same shall be terminated pursuant to the express provisions of this  
Lease or by termination of this Lease other than by reason of an Event of  
Default.  
  
 ARTICLE VI  
  
 OWNERSHIP OF LEASED PROPERTY AND PERSONAL PROPERTY  
  
 6.1 OWNERSHIP OF THE LEASED PROPERTY. Lessee acknowledges that the Leased  
Property is the property of Lessor (except for the Parking Lot Property with  
respect to which Lessor holds a leasehold interest pursuant to the Parking Lot  
Lease), and that Lessee has only the right to the possession and use of the  
Leased Property upon the terms and conditions of this Lease and the Parking Lot  
Lease.  
  
 6.2 LESSEE'S PERSONAL PROPERTY. Lessee, at its expense, shall install,  
affix, assemble and place on the Leased Property, the Lessee's Personal  
Property, which Lessee's Personal Property shall be subject to the security  
interests and liens as provided in Section 16.8 of this Lease. Lessee shall not,  
without the prior written consent of Lessor (which consent may be withheld in  
the event Lessee is in default hereunder) remove any of the Lessee's Personal  
Property from the Leased Property. Lessee shall provide and maintain during the  
entire Term all such Lessee's Personal Property as shall be necessary in order  
to operate the Facility in compliance with all licensure and certification  
requirements, in compliance with all applicable Legal Requirements and Insurance  
Requirements and otherwise in accordance with customary practice in the industry  
for the Primary Intended Use. If removal is authorized by Lessor as provided  
herein, all of Lessee's Personal Property not removed by Lessee within seven (7)  
days following the expiration or earlier termination of this Lease shall be  
considered abandoned by Lessee and may be appropriated, sold, destroyed or  
otherwise disposed of by Lessor without first giving notice thereof to Lessee,  
without any payment to Lessee and without any obligation to Lessee to account  
therefor. Lessee will, at its expense,  
  
  
 14  
  
  
  
restore the Leased Property and repair of all damage to the Leased Property  
caused by the removal of Lessee's Personal Property, whether effected by Lessee,  
Lessor, any Lessee lender, or any Lessor lender.  
  
 ARTICLE VII  
  
 CONDITION AND USE OF LEASED PROPERTY  
  
 7.1 CONDITION OF THE LEASED PROPERTY. Lessee acknowledges receipt and  
delivery of possession of the Leased Property and that Lessee has examined and  
otherwise has acquired knowledge of the condition of the Leased Property prior  
to the execution and delivery of this Lease and has found the same to be in good  
order and repair and satisfactory for its purpose hereunder. Lessee is leasing  
the Leased Property "as is" in its present condition. Lessee waives any claim or  
action against Lessor in respect of the condition of the Leased Property. Lessee  
warrants and represents that (a) it has been in possession of the Leased  
Property since approximately 2001, (b) the Leased Property is in compliance with  
all of the requirements, restrictions and conditions as set forth in the  
Permitted Exceptions, and (c) the use of the Leased Property for the Primary  
Intended Use will not violate any of the Permitted Exceptions. LESSOR MAKES NO  
WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED  
PROPERTY OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, SUITABILITY,  
DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO  
QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING  
AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. LESSEE ACKNOWLEDGES THAT  
THE LEASED PROPERTY HAS BEEN INSPECTED BY LESSEE AND IS SATISFACTORY TO IT.  
  
 7.2 USE OF THE LEASED PROPERTY.  
  
 (a) Lessee covenants that it will obtain and maintain throughout the  
 entire Term all approvals needed to use and operate the Leased Property and  
 the Facility for the Primary Intended Use, as defined below, under  
 applicable local, state and federal law, including but not limited to  
 licensure approvals and Medicare and/or a Medicaid certifications, provider  
 numbers, certificates of need, governmental approvals, and full  
 accreditation from all applicable governmental authorities, if any, that  
 are necessary for the operation of the Facility as a one hundred twenty-six  
 (126) bed acute care hospital facility.  
  
 (b) Beginning on the Commencement Date and during the entire Term,  
 Lessee shall use the Leased Property and the improvements thereon only as a  
 one hundred twenty-six (126) bed acute care hospital facility and for such  
 other legal ancillary uses as may be necessary in connection with or  
 incidental to such uses, subject to any covenants, restrictions and  
 easements relating to the Facility (the "Primary Intended Use"). Lessee  
 shall not use the Leased Property or any portion thereof for any other use,  
 nor change the number or type of beds within the Facility, nor reconfigure  
 or rearrange any portion of the Leased Property or the Facility without the  
 prior written consent of Lessor, which consent Lessee agrees may be  
 withheld in Lessor's sole discretion. No use shall be made or permitted to  
 be made of the Leased Property and no acts shall be done which will cause  
 the cancellation of any insurance policy covering the Leased Property or  
 any part thereof, nor shall Lessee sell or otherwise provide to residents  
 or patients therein, or permit to be kept, used or sold in or about the  
 Leased Property any article which may be prohibited by law or by the  
 standard form of fire insurance policies, any other insurance policies  
 required to be carried hereunder, or fire underwriters regulations. Lessee  
 shall, at its sole cost, comply with all of the requirements, covenants and  
 restrictions pertaining to the Leased Property, including, without  
 limitation, all of the Permitted Exceptions, and other requirements of any  
 insurance board, association, organization or company necessary for the  
 maintenance of the insurance, as herein provided, covering the Leased  
 Property and Lessee's Personal Property.  
  
 (c) Lessee covenants and agrees that during the Term it will  
 continuously operate the Leased Property only as a provider of healthcare  
 services in accordance with the Primary Intended Use and Lessee  
  
  
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 shall maintain its certifications for reimbursement and licensure and all  
 accreditations necessary to maintain its Medicare and Medicaid  
 certifications.  
  
 (d) Lessee shall not commit or suffer to be committed any waste on the  
 Leased Property, or in the Facility, nor shall Lessee cause or permit any  
 nuisance thereon.  
  
 (e) Lessee shall neither suffer nor permit the Leased Property or any  
 portion thereof, including any Capital Addition whether or not financed by  
 Lessor, or Lessee's Personal Property, to be used in such a manner as (i)  
 might reasonably tend to impair Lessor's (or Lessee's, as the case may be)  
 title thereto or to any portion thereof, or (ii) may reasonably make  
 possible a claim or claims of adverse usage or adverse possession by the  
 public, as such, or of implied dedication of the Leased Property or any  
 portion thereof.  
  
 (f) Lessee agrees that during the entire term of this Lease, Lessor  
 shall have the right and option to erect a sign on the Leased Property  
 stating that the Leased Property is owned by the Lessor. Such sign shall be  
 in a size, and shall be erected in a location, reasonably acceptable to  
 Lessor and approved by Lessee, which approval shall not be unreasonably  
 withheld, conditioned or delayed.  
  
 7.3 LESSOR TO GRANT EASEMENTS. Lessor will, from time to time so long as no  
default, and no event has occurred which with the giving of notice or the  
passage of time or both would constitute a default, has occurred and is  
continuing under this Lease, the Other Leases, at the request of Lessee and at  
Lessee's cost and expense, but subject to the approval of Lessor (a) grant  
easements and other rights in the nature of easements, (b) release existing  
easements or other rights in the nature of easements which are for the benefit  
of the Leased Property, (c) dedicate or transfer unimproved portions of the  
Leased Property for road, highway or other public purposes, (d) execute  
petitions to have the Leased Property annexed to any municipal corporation or  
utility district, (e) execute amendments to any covenants and restrictions  
affecting the Leased Property and (f) execute and deliver to any person any  
instrument appropriate to confirm or effect such grants, releases, dedications  
and transfers (to the extent of its interest in the Leased Property), but only  
upon delivery to Lessor of an Officer's Certificate stating (and such other  
information as Lessor may reasonably require confirming) that such grant,  
release, dedication, transfer, petition or amendment is required for and not  
detrimental to the proper conduct of the Primary Intended Use on the Leased  
Property and does not reduce its value.  
  
 ARTICLE VIII  
  
 LEGAL AND INSURANCE REQUIREMENTS  
  
 8.1 COMPLIANCE WITH LEGAL AND INSURANCE REQUIREMENTS. Subject to Article  
XII relating to permitted contests, Lessee, at its expense, will promptly (a)  
comply with all Legal Requirements and Insurance Requirements in respect of the  
use, operation, maintenance, repair and restoration of the Leased Property,  
whether or not compliance therewith shall require structural change in any of  
the Leased Improvements or interfere with the use and enjoyment of the Leased  
Property, and (b) procure, maintain and comply with all licenses, certificates  
of need, Medicare and Medicaid provider agreements, accreditations and other  
authorizations required for any use of the Leased Property and Lessee's Personal  
Property then being made, and for the proper erection, installation, operation  
and maintenance of the Leased Property or any part thereof, including without  
limitation, any Capital Additions. Upon Lessor's request, Lessee shall deliver  
copies of all such licenses, certificates of need, agreements and other  
authorizations. Lessee hereby agrees to indemnify and defend, at Lessee's sole  
cost and expense, and hold Lessor, its successors and assigns harmless from and  
against, and to reimburse Lessor and its successors and assigns with respect to  
any and all claims, demands, actions, causes of action, losses, damages,  
liabilities, costs and expenses (including, without limitation, reasonable  
attorneys' fees and court costs) of any and every kind or character, known or  
unknown, fixed or contingent, asserted against or incurred by Lessor, its  
successors and assigns, at any time and from time to time by reason or arising  
out of any breach by Lessee of any of the representations and warranties set  
forth in this Section 8.1.  
  
  
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 8.2 LEGAL REQUIREMENT COVENANTS. Lessee covenants and agrees that the  
Leased Property and Lessee's Personal Property shall not be used for any  
unlawful purpose. Lessee shall use its best efforts to have tenants acquire and  
maintain all licenses, certificates, permits, provider agreements and other  
authorizations and approvals needed to operate the Leased Property and all  
equipment and machinery used in or in connection with the Leased Property in its  
customary manner for the Primary Intended Use and any other use conducted on the  
Leased Property as may be permitted from time to time hereunder. Lessee further  
covenants and agrees that Lessee's use of the Leased Property, the use of all  
equipment and machinery used in connection with the Leased Property, and the  
maintenance, alteration, and operation of the same, and all parts thereof, shall  
at all times conform to all applicable local, state and federal laws,  
ordinances, rules and regulations.  
  
 8.3 HAZARDOUS MATERIALS. Except for Hazardous Materials generated in the  
normal course of business regarding the Primary Intended Use (which Hazardous  
Materials shall be handled and disposed of in compliance with all Hazardous  
Materials Laws), no Hazardous Materials shall be installed, used, generated,  
manufactured, treated, handled, refined, produced, processed, stored or disposed  
of, or otherwise present in, on or under the Leased Property. No activity shall  
be undertaken on the Leased Property which would cause (i) the Leased Property  
to become a treatment, storage or disposal facility of hazardous waste,  
infectious waste, biomedical or medical waste, within the meaning of, or  
otherwise bring the Leased Property within the ambit of RCRA or any Hazardous  
Materials Laws, (ii) a release or threatened release of Hazardous Material from  
the Leased Property within the meaning of, or otherwise bring the Leased  
Property within the ambit of, CERCLA or XXXX or any Hazardous Materials Laws or  
(iii) the discharge of Hazardous Material into any watercourse, surface or  
subsurface of body of water or wetland, or the discharge into the atmosphere of  
any Hazardous Material which would require a permit under any Hazardous  
Materials Laws. No activity shall be undertaken with respect to the Leased  
Property which would cause a violation or support a claim under RCRA, CERCLA,  
XXXX or any Hazardous Materials Laws. No investigation, administrative order,  
litigation or settlement with respect to any Hazardous Material is, to the best  
of the Lessee's knowledge, threatened or in existence with respect to the Leased  
Property. No notice has been served on Lessee from any entity, governmental body  
or individual claiming any violation of any Hazardous Materials Laws, or  
requiring compliance with any Hazardous Materials Laws, or demanding payment or  
contribution for environmental damage or injury to natural resources. Lessee has  
not obtained and Lessee has no knowledge of any reason Lessee will be required  
to obtain any permits, licenses, or similar authorizations to occupy, operate or  
use the Improvements or any part of the Leased Property by reason of any  
Hazardous Materials Laws. Lessee hereby agrees to indemnify and defend, at its  
sole cost and expense, and hold Lessor, its successors and assigns, harmless  
from and against and to reimburse Lessor with respect to any and all claims,  
demands, actions, causes of action, losses, damages, liabilities, costs and  
expenses (including, without limitation, reasonable attorney's fees and court  
costs) of any and every kind or character, known or unknown, fixed or  
contingent, asserted against or incurred by Lessor at any time and from time to  
time by reason or arising out of any breach or violation of any Hazardous  
Materials Laws. Lessee shall, at its sole cost, expense, risk and liability,  
remove or cause to be removed from the Leased Property all Hazardous Materials  
generated in connection with the Primary Intended Use and as found in hospital  
and healthcare facilities, including, without limitation, all infectious waste  
materials, syringes, needles and any materials contaminated with bodily fluids  
of any type, character or description of whatsoever nature in accordance with  
all Hazardous Materials Laws. Lessee shall not dispose of any such infectious  
waste and Hazardous Materials in any receptacles used for the disposal of normal  
refuse. Within thirty (30) days following the Commencement Date, Lessee shall  
institute an operations and maintenance program designed by an environmental  
consultant reasonably satisfactory to Lessor with respect to asbestos-containing  
materials ("ACMs") consistent with Guidelines for Controlling  
Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant  
guidelines. Such maintenance program shall continuously remain in effect during  
the Term. Lessee shall inspect and maintain all ACMs on a regular basis and  
ensure that all ACM's are maintained in a condition that prevents exposure to  
the ACMs at all times.  
  
 8.4 HEALTHCARE LAWS. Lessee warrants and represents that this Lease and all  
subleases are, and at all times during the term of this Lease will be, in  
compliance with all Healthcare Laws. Lessee agrees to add to all of its third  
party agreements relating to the Leased Property, including, without limitation,  
all subleases, that in the event it is determined that such agreement and/or  
sublease is in violation of the Healthcare Laws, such agreement  
  
  
 17  
  
  
  
and/or sublease shall be renegotiated so that same are in compliance with all  
Healthcare Laws. Lessee agrees promptly to notify Lessor in writing of receipt  
of any notice of investigation of any alleged Healthcare Law violations. Lessee  
hereby agrees to indemnify and defend, at Lessee's sole cost and expense, and  
hold Lessor, its successors and assigns harmless from and against and to  
reimburse Lessor and its successors and assigns with respect to any and all  
claims, demands, actions, causes of action, losses, damages, liabilities, costs  
and expenses (including, without limitation, reasonable attorneys' fees and  
court costs) of any and every kind or character, known or unknown, fixed or  
contingent, asserted against or incurred by Lessor, its successors and assigns,  
at any time and from time to time by reason or arising out of any breach by  
Lessee of any of the representations and warranties set forth in this Section  
8.4.  
  
 8.5 REPRESENTATIONS AND WARRANTIES. Lessee represents and warrants to  
Lessor that as of the date hereof: (i) Lessee is a corporation duly organized  
and existing under the laws of the State of California and is duly authorized to  
enter into, deliver and perform this Lease and the other documents referred to  
herein and such agreements constitute the valid and binding obligations of  
Lessee, enforceable in accordance with their terms, (ii) neither the entering  
into this Lease or the other documents referred to herein nor the performance by  
Lessee of its obligations hereunder or under the other documents referred to  
herein will violate any provision of law or any agreement, indenture, note or  
other instrument binding upon Lessee, (iii) no authority from or approval by any  
governmental body, commission or agency or consent of any third party is  
required in connection with the making or validity of and the execution,  
delivery and performance of this Lease or the other documents referred to  
herein, (iv) there are no actions, suits or proceedings pending against or, to  
the knowledge of Lessee, threatened against or affecting Lessee or any of its  
Affiliates, in any court or before or by any governmental department, agency or  
instrumentality, an adverse decision in which could materially and adversely  
affect the financial condition, business or operations of Lessee or the ability  
of Lessee to perform its obligations under this Lease or the other documents  
referred to herein, (v) Lessee and each of its Affiliates is in compliance in  
all material respects with all applicable laws, ordinances, rules, regulations  
and requirements of governmental authorities, and (vi) Lessee has obtained and  
delivered copies thereof to Lessor on the Commencement Date all certificates of  
need, Medicare billing numbers, other licenses and agreements required for the  
operation of the Facility.  
  
 8.6 SINGLE PURPOSE ENTITY. Except as otherwise set forth on SCHEDULE 8.6,  
Lessee represents, warrants, covenants and agrees that Lessee has always been,  
is, and shall remain at all times during the term of this Lease, a Single  
Purpose Entity created and to remain in good standing for the sole purpose of  
leasing and operating the Facility in accordance with the terms of this Lease.  
Simultaneously with the execution of this Lease, and as requested by Lessor at  
other times during the term of this Lease, Lessee shall provide Lessor evidence  
that Lessee is a Single Purpose Entity and is in good standing in the state of  
its organization and in the state in which the Leased Property is located.  
  
 8.7 ORGANIZATIONAL DOCUMENTS. Lessee shall not permit or suffer, without  
the prior written consent of Lessor an amendment or modification of its  
Organizational Documents (as defined below), or the organizational documents of  
any constituent entity within the Lessee, which changes Lessee's status as a  
single purpose entity, (ii) any dissolution or termination of its existence, or  
(iii) change in its state of formation or incorporation or its name. Lessee has,  
simultaneously with the execution of this Lease, delivered to Lessor a true and  
complete copy of its articles of incorporation and bylaws creating Lessee, and  
all other documents creating and governing the Lessee (collectively, the  
"Organizational Documents"). Lessee warrants and represents that the  
Organizational Documents (i) were duly executed and delivered, (ii) are in full  
force and effect and binding upon and enforceable in accordance with their  
terms, (iii) constitute the entire understanding among the shareholders,  
partners and members of Lessee, and (iv) no breach exists under the  
Organizational Documents and no act has occurred and no condition exists which,  
with the giving of notice or the passage of time or both would constitute a  
breach under the Organizational Documents.  
  
  
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 ARTICLE IX  
  
 REPAIRS; RESERVE; RESTRICTIONS  
  
 9.1 MAINTENANCE AND REPAIR.  
  
 (a) Lessee, at its expense, will keep the Leased Property (including  
 the Power Generation Facility) and all private roadways, sidewalks and  
 curbs appurtenant thereto, and Lessee's Personal Property in good first  
 class order and repair (whether or not the need for such repairs occurs as  
 a result of Lessee's use, any prior use, the elements, the age of the  
 Leased Property or any portion thereof) and, except as otherwise provided  
 in Articles XIV and XV, with reasonable promptness, will make all necessary  
 and appropriate repairs thereto of every kind and nature, whether interior  
 or exterior, structural or non-structural, ordinary or extraordinary,  
 foreseen or unforeseen or arising by reason of a condition existing prior  
 to the commencement of the Term of this Lease (concealed or otherwise),  
 including, without limitation, all required seismic repairs, replacements  
 and upgrades. All repairs shall, to the extent reasonably achievable, be at  
 least equivalent in quality to the original work. Lessee will not take or  
 omit to take any action the taking or omission of which might materially  
 impair the value or the usefulness of the Leased Property or any part  
 thereof for the Primary Intended Use. Notwithstanding anything contained  
 herein to the contrary, Lessee shall make additions, modifications and  
 remodeling to the Leased Property which are not Capital Additions from time  
 to time which are necessary for the Primary Intended Use and which permit  
 the Lessee to comply fully with its obligations set forth in this Lease,  
 provided that any such action will be undertaken expeditiously, in a  
 workmanlike manner and will not significantly alter the character or  
 purpose or detract from the value or operating efficiency of the Leased  
 Property and will not significantly impair the revenue producing capability  
 of the Leased Property or adversely affect the ability of the Lessee to  
 comply with the provisions of this Lease. Such additions, modifications and  
 remodeling shall, without payment by Lessor at any time, be included under  
 the terms of this Lease and shall be the property of Lessor. Lessee shall  
 notify the Lessor of any and all repairs, improvements, additions,  
 modifications and remodeling made to the Leased Property in excess of  
 Twenty Five Thousand and 00/100 Dollars ($25,000.00) and obtain consent  
 from Lessor prior to making such repairs, improvements, additions,  
 modifications and remodeling.  
  
 (b) Lessor shall not under any circumstances be required to build or  
 rebuild any improvements on the Leased Property, or to make any repairs,  
 replacements, alterations, restorations, or renewals of any nature or  
 description to the Leased Property, whether ordinary or extraordinary,  
 structural or non-structural, foreseen or unforeseen, or to make any  
 expenditure whatsoever with respect thereto in connection with this Lease,  
 or to maintain the Leased Property in any way.  
  
 (c) Nothing contained in this Lease and no action or inaction by  
 Lessor shall be construed as (i) constituting the consent or request of  
 Lessor, expressed or implied, to any contractor, subcontractor, laborer,  
 materialman or vendor to or for the performance of any labor or services or  
 the furnishing of any materials or other property for the construction,  
 alteration, addition, repair or demolition of or to the Leased Property or  
 any part thereof, or (ii) giving Lessee any right, power or permission to  
 contract for or permit the performance of any labor or services or the  
 furnishing of any materials or other property in such fashion as would  
 permit the making of any claim against Lessor in respect thereof or to make  
 any agreement that may create, or in any way be the basis for, any right,  
 title, interest, lien, claim or other encumbrance upon the estate of Lessor  
 in the Leased Property or any portion thereof.  
  
 (d) Unless Lessor shall convey any of the Leased Property to Lessee  
 pursuant to the provisions of this Lease, Lessee will, upon the expiration  
 or prior termination of the Term, vacate and surrender the Leased Property  
 to Lessor in the condition in which the Leased Property was originally  
 received from Lessor, except as improved, repaired, rebuilt, restored,  
 altered or added to as permitted or required by the provisions of this  
 Lease and except for ordinary wear and tear (subject to the obligation of  
 Lessee to  
  
  
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 maintain the Leased Property in good order and repair during the entire  
 Term of the Lease), damage caused by the gross negligence or willful acts  
 of Lessor and damage or destruction described in Article XIV or resulting  
 from a Taking described in Article XV which Lessee is not required by the  
 terms of this Lease to repair or restore.  
  
 9.2 RESERVES FOR EXTRAORDINARY REPAIRS. Commencing on the Commencement  
Date, with respect to the initial payment, and on or before the last day of each  
calendar quarter thereafter, beginning with the quarter ending March 31, 2006,  
Lessee shall make quarterly deposits to a reserve (the "Reserve") at a financial  
institution of the Lessor's choosing, provided, however, that the first such  
deposit on the Commencement Date, shall be prorated. Subject to the immediately  
preceding sentence, each deposit to be made pursuant to this Section 9.2 shall  
be equal to the sum of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00)  
per bed per annum. For the period commencing on the Commencement Date and ending  
on December 31, 2005, the number of beds shall be assumed to be one hundred  
twenty-six (126). Beginning on January 1, 2006, and on each January 1  
thereafter, the number of beds shall be determined by the actual number of beds  
placed in service or certified to be available for use in the Facility, which  
shall not be reduced without the prior written consent of Lessor. The account to  
which such payments are made shall require the signature of an officer of Lessee  
and Lessor to make withdrawals. Beginning on January 1, 2007, and on each  
January 1 thereafter during the entire Lease Term, such payment into the Reserve  
shall be increased by two percent (2%) per annum. Notwithstanding anything  
contained herein to the contrary, Lessee shall pay into the Reserve any amounts  
needed in excess of such required payments as provided herein. The amounts in  
the Reserve, including interest, shall be used to pay for Extraordinary Repairs  
on the Facility, or, in the event Lessee fails to make any required  
non-Extraordinary Repairs, Lessor may use funds in the Reserve for that purpose  
as well, without the necessity of obtaining the signature of an officer of  
Lessee. Lessee shall replenish amounts drawn from the Reserve at the rate of  
one-twelfth (1/12th) of the total amount withdrawn per month, until completely  
replenished. Lessee hereby grants to Lessor a security interest in all monies  
deposited into the Reserve and Lessee shall, within fifteen (15) days from the  
Commencement Date, execute all documents necessary for Lessor to perfect its  
security interest in the Reserve. Lessor and Lessee agree that the first dollars  
of all expenditures for Extraordinary Repairs made in each year during the Term  
shall be funded from the Reserve account to the full extent of such account;  
provided, however, that if Lessor, in its reasonable discretion, determines at  
any time that the balance then remaining in the Reserve account is insufficient  
to pay in full for the present and future anticipated Extraordinary Repairs on  
the Facility, Lessor shall retain funds in the Reserve account in an amount  
sufficient to pay in full for Extraordinary Repairs and Lessee will deposit  
additional sums into the account from time to time, upon the written request of  
Lessor, in amounts equal to the difference between the then balance in the  
Reserve account and the cost to complete the present and future Extraordinary  
Repairs so that at all times there is an adequate amount in the Reserve account  
to pay for such items on a going forward basis. So long as no default has  
occurred under any of the terms hereof, and no event has occurred which with the  
giving of notice or the passage of time or both would constitute a default  
hereunder, any amounts remaining in the Reserve, after the payment of and the  
reimbursement for the Extraordinary Repairs on the Facility, at the expiration  
of this Lease shall be returned to Lessee. Lessee consents to Lessor's pledge of  
the Reserve to any Facility Lender, subject to Lessor's obligation to return any  
remaining amounts in the Reserve to Lessee pursuant to this Section 9.2.  
  
 9.3 ENCROACHMENTS; RESTRICTIONS. If any of the Leased Improvements shall,  
at any time, encroach upon any property, street or right-of-way adjacent to the  
Leased Property, or shall violate the agreements or conditions contained in any  
federal, state or local law, restrictive covenant or other agreement affecting  
the Leased Property, or any part thereof, or shall impair the rights of others  
under any easement or right-of-way to which the Leased Property is subject, then  
promptly upon the request of Lessor, Lessee shall, at its expense, subject to  
its right to contest the existence of any encroachment, violation or impairment,  
(a) obtain valid and effective waivers or settlements of all claims, liabilities  
and damages resulting from each such encroachment, violation or impairment,  
whether the same shall affect Lessor or Lessee or (b) make such changes in the  
Leased Improvements, and take such other actions, as Lessor in the good faith  
exercise of its judgment deems reasonably practicable, to remove such  
encroachment, or to end such violation or impairment, including, if necessary,  
the alteration of any of the Leased Improvements, and in any event take all such  
actions as may be necessary in order to be able to continue the operation of the  
Facility without such violation, encroachment or impairment. Any such alteration  
shall be made in  
  
  
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conformity with the applicable requirements of Article X. Lessee's obligations  
under this Section 9.3 shall be in addition to and shall in no way discharge or  
diminish any obligation of any insurer under any policy of title or other  
insurance and Lessee shall be entitled to a credit for any sums paid by Lessee  
and recovered by Lessor under any such policy of title or other insurance.  
  
 ARTICLE X  
  
 CAPITAL ADDITIONS  
  
 10.1 CONSTRUCTION OF CAPITAL ADDITIONS TO THE LEASED PROPERTY.  
  
 (a) If no Event of Default shall have occurred or be continuing under  
 this Lease, the Other Leases and the Tenant Leases, Lessee shall have the  
 right, upon and subject to the terms and conditions set forth below, to  
 construct or install Capital Additions on the Leased Property without the  
 prior written consent of Lessor, provided, however, except as expressly  
 provided in Section 10.2(d) hereof, Lessee shall not be permitted to create  
 any Encumbrance on the Leased Property, in connection with such Capital  
 Addition. Prior to commencing construction of any Capital Addition, Lessee  
 shall, at Lessee's sole cost and expense (i) submit to Lessor in writing a  
 proposal setting forth in reasonable detail any proposed Capital Addition,  
 (ii) submit to Lessor such plans and specifications, certificates of need  
 and other approvals, permits, licenses, contracts and other information  
 concerning the proposed Capital Addition as Lessor may reasonably request,  
 and (iii) obtain all necessary certificates of need, state licensure  
 surveys and all regulatory approvals of architectural plans. Without  
 limiting the generality of the foregoing, such proposal shall indicate the  
 approximate projected cost of constructing such Capital Addition, and the  
 use or uses to which it will be put.  
  
 (b) Prior to commencing construction of any Capital Addition, Lessee  
 shall first request Lessor to provide funds to pay for such Capital  
 Addition in accordance with the provisions of Section 10.3. If Lessor  
 declines or is unable to provide such financing on terms acceptable to  
 Lessee, the provisions of Section 10.2 shall apply. Notwithstanding any  
 other provision of this Article X to the contrary, no Capital Additions  
 shall be made without the consent of Lessor, which consent shall not be  
 unreasonably withheld or delayed, if the Capital Addition Cost of such  
 proposed Capital Addition, when aggregated with the costs of all Capital  
 Additions made by Lessee, would exceed twenty-five percent (25%) of the  
 then Fair Market Value of the Leased Property or would diminish the value  
 of the Leased Property. Furthermore, no Capital Addition shall be made  
 which would tie in or connect the Leased Property and/or any Leased  
 Improvements on the Leased Property with any other improvements on property  
 adjacent to the Leased Property (and not part of the Land covered by this  
 Lease) including, without limitation, tie-ins of buildings or other  
 structures or utilities, unless Lessee shall have obtained the prior  
 written approval of Lessor, which approval in Lessor's sole discretion may  
 be granted or withheld. All proposed Capital Additions shall be  
 architecturally integrated and consistent with the Leased Property.  
  
 10.2 CAPITAL ADDITIONS FINANCED BY LESSEE. If Lessee provides or arranges  
to finance any Capital Addition, this Lease shall be and hereby is amended to  
provide as follows:  
  
 (a) The above referenced proportion of the Fair Market Added Value of  
 Capital Additions paid for by Lessee to the Fair Market Value of the entire  
 Leased Property expressed as a percentage is referred to herein as the  
 "Added Value Additional". The Added Value Additional determined as provided  
 above for each Capital Addition financed or paid for by Lessee shall remain  
 in effect until any subsequent Capital Addition.  
  
 (b) There shall be no adjustment in the Base Rent by reason of any  
 such Capital Addition.  
  
  
 21  
  
  
  
 (c) Upon the expiration or earlier termination of this Lease, except  
 by reason of the default by Lessee hereunder, Lessor shall, if Lessee does  
 not purchase the Leased Property as provided herein, compensate Lessee for  
 all Capital Additions paid for or financed by Lessee in any of the  
 following ways, determined in the sole discretion of Lessor:  
  
 (i) By purchasing all Capital Additions paid for by Lessee from  
 Lessee for cash in the amount of the Fair Market Added Value of all  
 such Capital Additions paid for or financed by Lessee; or  
  
 (ii) By purchasing such Capital Additions from Lessee by  
 delivering to Lessee Lessor's purchase money promissory note in the  
 amount of said Fair Market Added Value, due and payable not later than  
 eighteen (18) months after the date of expiration or other termination  
 of this Lease, bearing interest at the test rate applicable under  
 Section 1272 of the Code or any successor section thereto ("Test  
 Rate") or, if no such Test Rate exists, at the Prime Rate, which  
 interest shall be payable monthly, and which note shall be secured by  
 a mortgage on the Leased Property, subject to all mortgages and  
 encumbrances on the Leased Property at the time of such purchase; or  
  
 (iii) Such other arrangement regarding such compensation as shall  
 be mutually acceptable to Lessor and Lessee.  
  
 (d) Lessor and Lessee agree that Lessee's lender for Capital Additions  
 shall have the right to secure its loan by a mortgage upon the Leased  
 Property provided such mortgage (i) shall not exceed the cost of the  
 Capital Additions being made with the proceeds of such loan, (ii) shall be  
 subordinate to Lessor's acquisition cost and any Capital Additions paid for  
 by the Lessor of the Leased Property, (iii) shall be subordinate to any  
 mortgage or encumbrance now existing or hereinafter created, including,  
 without limitation, Facility Instruments, (iv) the term of the loan shall  
 not extend beyond the term of this Lease, (v) such lender executes all  
 subordination and other documents and certificates reasonably required by  
 the Facility Lenders, and (vi) shall be limited solely to Lessee's interest  
 in the Leased Property.  
  
 10.3 CAPITAL ADDITIONS FINANCED BY LESSOR.  
  
 (a) Lessee shall request that Lessor provide or arrange financing for  
 a Capital Addition by providing to Lessor such information about the  
 Capital Addition as Lessor may request (a "Request"), including without  
 limitation, all information referred to in Section 10.1 above. Lessor may,  
 but shall be under no obligation to, obtain the funds necessary to meet the  
 Request. Within thirty (30) days of receipt of a Request, Lessor shall  
 notify Lessee as to whether it will finance the proposed Capital Addition  
 and, if so, the terms and conditions upon which it would do so, including  
 the terms of any amendment to this Lease. In no event shall the portion of  
 the projected Capital Addition Cost comprised of land, if any, materials,  
 labor charges and fixtures be less than ninety percent (90%) of the total  
 amount of such cost. Lessee may withdraw its Request by notice to Lessor at  
 any time before or after receipt of Lessor's terms and conditions.  
  
 (b) If Lessor agrees to finance the proposed Capital Addition, Lessee  
 shall provide Lessor with the following prior to any advance of funds:  
  
 (i) all customary or other required loan documentation, if the  
 Capital Addition is to be financed through the incurrence of debt;  
  
 (ii) any information, certificates of need, regulatory approvals  
 of architectural plans and other certificates, licenses, permits or  
 documents requested by either Lessor or any lender with whom Lessor  
 has agreed or may agree to provide financing which are necessary to  
 confirm that  
  
  
 22  
  
  
  
 Lessee will be able to use the Capital Addition upon completion  
 thereof in accordance with the Primary Intended Use, including all  
 required federal, state or local government licenses and approvals;  
  
 (iii) an Officer's Certificate and, if requested, a certificate  
 from Lessee's architect, setting forth in reasonable detail the  
 projected (or actual, if available) cost of the proposed Capital  
 Addition;  
  
 (iv) an amendment to this Lease, duly executed and acknowledged,  
 in form and substance satisfactory to Lessor (the "Lease Amendment"),  
 and containing such provisions as may be necessary or appropriate,  
 including without limitation, any appropriate changes in the legal  
 description of the Land, the Fair Market Value and the Rent, which  
 shall be increased to take into account an adjustment to the Purchase  
 Price in an amount equal to the equity contributed by Lessor to  
 finance the Capital Addition or, in the case of debt financing, the  
 principal and interest on the debt incurred by Lessor to finance the  
 Capital Addition;  
  
 (v) a grant deed conveying title to Lessor to any land acquired  
 for the purpose of constructing the Capital Addition, free and clear  
 of any liens or encumbrances except those approved by Lessor and, both  
 prior to and following completion of the Capital Addition, an as-built  
 survey thereof satisfactory to Lessor;  
  
 (vi) endorsements to any outstanding policy of title insurance  
 covering the Leased Property and any additional land referred to in  
 subparagraph (v) above, or a supplemental policy of title insurance  
 covering the Leased Property and any additional land referred to in  
 subparagraph (v) above, satisfactory in form and substance to Lessor  
 (A) updating the same without any additional exceptions, except as may  
 be permitted by Lessor; and (B) increasing the coverage thereof by an  
 amount equal to the Fair Market Value of the Capital Addition (except  
 to the extent covered by the owner's policy of title insurance  
 referred to in subparagraph (vii) below);  
  
 (vii) if required by Lessor, (A) an owner's policy of title  
 insurance insuring fee simple title to any land conveyed to Lessor  
 pursuant to subparagraph (v), free and clear of all liens and  
 encumbrances except those approved by Lessor and (B) a lender's policy  
 of title insurance satisfactory in form and substance to Lessor and  
 the Lending Institution advancing any portion of the Capital Addition  
 Cost;  
  
 (viii) if required by Lessor, prior to commencing the Capital  
 Addition, an M.A.I. appraisal of the Leased Property indicating that  
 the value of the Leased Property upon completion of the Capital  
 Addition will exceed the Fair Market Value of the Leased Property  
 prior thereto by an amount not less than one hundred percent (100%) of  
 the Capital Addition Costs; and  
  
 (ix) such other certificates (including, but not limited to,  
 endorsements increasing the insurance coverage, if any, at the time  
 required by Section 13.1), documents, contracts, opinions of counsel,  
 appraisals, surveys, certified copies of duly adopted resolutions of  
 the governing body of Lessee authorizing the execution and delivery of  
 the Lease Amendment and any other instruments as may be reasonably  
 required by Lessor and any Lending Institution advancing or  
 reimbursing Lessee for any portion of the Capital Addition Cost.  
  
 (c) Lessor and Lessee agree that Lessor shall have the right, in the  
 exercise of its reasonable discretion and after consulting with Lessee, to  
 designate the general contractor, developer, architect, construction  
 company, engineer and other parties which will participate in the  
 development of the Capital Addition. Lessor and Lessee further agree that  
 Lessor shall control the preparation and negotiation of the  
  
  
 23  
  
  
  
 definitive agreements with such parties and Lessor will give Lessee an  
 opportunity to review such definitive agreements prior to their execution.  
  
 (d) Upon making a Request to finance a Capital Addition, whether or  
 not such financing is actually consummated, Lessee shall pay or agree to  
 pay, upon demand, all reasonable costs and expenses of Lessor and any  
 Lending Institution which has committed to finance such Capital Addition  
 which have been paid or incurred by them in connection with the financing  
 of the Capital Addition, including, but not limited to, (i) the fees and  
 expenses of their respective counsel, (ii) all printing expenses, (iii) the  
 amount of any filing, registration and recording taxes and fees, (iv)  
 documentary stamp taxes, if any, (v) title insurance charges, appraisal  
 fees, if any, rating agency fees, if any, and (vi) commitment fees, if any,  
 and (vii) costs of obtaining regulatory and governmental approvals,  
 including but not limited to any required certificates of need, for the  
 construction, operation, use or occupancy of the Capital Addition.  
  
 10.4 SALVAGE. All materials which are scrapped or removed in connection  
with the making of either Capital Additions permitted by Section 10.1 or repairs  
required by Article IX shall be or become the property of Lessor.  
  
 ARTICLE XI  
  
 LIENS  
  
 Subject to the provisions of Article XII relating to permitted contests,  
Lessee will not directly or indirectly create or allow to remain and will  
promptly discharge at its expense any lien, encumbrance, attachment, title  
retention agreement or claim upon the Leased Property or any attachment, levy,  
claim or encumbrance in respect of the Rent, not including, however, (a) this  
Lease, (b) the matters, if any, set forth in EXHIBIT C, (c) restrictions, liens  
and other encumbrances which are consented to in writing by Lessor, or any  
easements granted pursuant to the provisions of Section 7.3 of this Lease, (d)  
liens for those taxes of Lessor which Lessee is not required to pay hereunder,  
(e) liens for Impositions or for sums resulting from noncompliance with Legal  
Requirements so long as (1) the same are not yet payable or are payable without  
the addition of any fine or penalty or (2) such liens are in the process of  
being contested as permitted by Article XII, (f) liens of mechanics, laborers,  
materialmen, suppliers or vendors for sums either disputed or not yet due,  
provided that (1) the payment of such sums shall not be postponed for more than  
sixty (60) days after the completion of the action giving rise to such lien and  
such reserve or other appropriate provisions as shall be required by law or  
generally accepted accounting principles shall have been made therefor or (2)  
any such liens are in the process of being contested as permitted by Article  
XII, and (g) any liens which are the responsibility of Lessor pursuant to the  
provisions of Article XXXVII of this Lease. Unless otherwise expressly provided  
herein, Lessee shall not mortgage or grant any interest or security interest in,  
or otherwise assign, any part of Lessee's rights and interests in this Lease,  
the Leased Property, Lessee's Personal Property, or any permits, licenses,  
certificates of need (if any) or any other approvals required to operate the  
Leased Property during the Term without the prior written consent of Lessor,  
which may be withheld at Lessor's sole discretion.  
  
 ARTICLE XII  
  
 PERMITTED CONTESTS  
  
 Lessee, on its own or on Lessor's behalf (or in Lessor's name), but at  
Lessee's expense, after two (2) business days' prior written notice to Lessor,  
may contest, by appropriate legal proceedings conducted in good faith and with  
due diligence, the amount, validity or application, in whole or in part, of any  
Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy,  
encumbrance, charge or claim not otherwise permitted by Article XI, provided  
that (a) in the case of an unpaid Imposition, lien, attachment, levy,  
encumbrance, charge or claim, the commencement and continuation of such  
proceedings shall suspend the collection thereof from Lessor and from the Leased  
Property, (b) neither the Leased Property nor any Rent therefrom nor any part  
thereof or interest therein would be in any immediate danger of being sold,  
forfeited, attached or lost, (c) in the case of a Legal  
  
  
 24  
  
  
  
Requirement, Lessor would not be in any immediate danger of civil or criminal  
liability for failure to comply therewith pending the outcome of such  
proceedings, (d) in the event that any such contest shall involve a sum of money  
or potential loss in excess of Fifty Thousand Dollars ($50,000), then, in any  
such event, (i) provided the Consolidated Net Worth of Lessee and/or Guarantors  
is then in excess of Fifty Million Dollars ($50,000,000), Lessee shall deliver  
to Lessor an Officer's Certificate to the effect set forth in clauses (a), (b)  
and (c), to the extent applicable, or (ii) in the event the Consolidated Net  
Worth of Lessee and/or Guarantors is not then in excess of Fifty Million Dollars  
($50,000,000), then Lessee shall deliver to Lessor and its counsel an opinion of  
Lessee's counsel to the effect set forth in clauses (a), (b) and (c), to the  
extent applicable, (e) in the case of a Legal Requirement and/or an Imposition,  
lien, encumbrance or charge, Lessee shall give such reasonable security as may  
be demanded by Lessor to insure ultimate payment of the same and to prevent any  
sale or forfeiture of the affected portion of the Leased Property or the Rent by  
reason of such non-payment or non-compliance; provided, however, the provisions  
of this Article XII shall not be construed to permit Lessee to contest the  
payment of Rent (except as to contests concerning the method of computation or  
the basis of levy of any Imposition or the basis for the assertion of any other  
claim) or any other sums payable by Lessee to Lessor hereunder, (f) in the case  
of an Insurance Requirement, the coverage required by Article XIII shall be  
maintained, and (g) if such contest be finally resolved against Lessor or  
Lessee, Lessee shall, as Additional Charges due hereunder, promptly pay the  
amount required to be paid, together with all interest and penalties accrued  
thereon, or comply with the applicable Legal Requirement or Insurance  
Requirement. Lessor, at Lessee's expense, shall execute and deliver to Lessee  
such authorizations and other documents as may reasonably be required in any  
such contest and, if reasonably requested by Lessee or if Lessor so desires,  
Lessor shall join as a party therein. Lessee shall indemnify and save Lessor  
harmless against any liability, cost or expense of any kind that may be imposed  
upon Lessor in connection with any such contest and any loss resulting  
therefrom.  
  
 ARTICLE XIII  
  
 INSURANCE  
  
 13.1 GENERAL INSURANCE REQUIREMENTS. During the Term of this Lease, Lessee  
shall at all times keep the Leased Property and all property located in or on  
the Leased Property, including Lessee's Personal Property, insured against loss  
or damage from such causes as are customarily insured against, by prudent owners  
of similar facilities. Without limiting the generality of the foregoing, Lessee  
shall obtain and maintain in effect throughout the Lease Term, the kinds and  
amounts of insurance deemed necessary by the Lessor and as described below.  
After prior written notice to Lessee, Lessor may, at Lessor's option, obtain the  
insurance coverages required from Lessee herein (excluding coverages for  
worker's compensation and professional liability) provided that (i) the  
insurance coverages obtained by Lessee may be terminated without penalty or cost  
to Lessee, (ii) the costs of such coverages obtained by Lessor collectively do  
not exceed the costs of the insurance obtained by Lessee and (iii) the coverages  
obtained by Lessor are comparable to that obtained or to be obtained by Lessee  
hereunder. In the event Lessor obtains such insurance coverages, Lessee shall  
reimburse Lessor for the costs of such coverages immediately upon request by  
Lessor. The insurance shall be written by insurance companies (i) acceptable to  
the Lessor, (ii) that are rated at least an "A-VII" or better by Best's  
Insurance Guide and Key Ratings and a claim payment rating by Standard & Poor's  
Corporation of A or better, and (iii) authorized, licensed and qualified to do  
insurance business in the state in which the Leased Property is located.  
Notwithstanding the foregoing or any other provision of this Article XIII,  
Lessor acknowledges and agrees that the insurance coverages required under  
subparagraphs (d), (h) and (e) of this Section 13.1 are being handled through a  
captive insurance company, the identity of which has been disclosed to the  
Lessee and Lessor. The aggregate amount of coverage by a single company must not  
exceed five percent (5%) of the insurance company's policyholders' surplus. The  
policies must name Lessor (and any other entities as Lessor may deem necessary)  
as an additional insured and losses shall be payable to Lessor and/or Lessee as  
provided in Article XIV. Each insurance policy required hereunder must (i)  
provide primary insurance without right of contribution from any other insurance  
carried by Lessor, (ii) contain an express waiver by the insurer of any right of  
subrogation, setoff or counterclaim against any insured party thereunder  
including Lessor, (iii) permit Lessor to pay premiums at Lessor's discretion,  
and (iv) as respects any third party liability claim brought against Lessor,  
obligate the insurer to defend Lessor as an additional insured thereunder. In  
addition, the policies shall name as an  
  
  
 25  
  
  
  
additional insured any Facility Lender by way of a standard form of mortgagee's  
loss payable endorsement. Any loss adjustment shall require the written consent  
of Lessor and each affected Facility Lender. Evidence of insurance and/or  
Impositions shall be deposited with Lessor and, if requested, with any Facility  
Lender. If any provision of any Facility Instrument requires deposits of  
insurance to be made with such Facility Lender, Lessee shall either pay to  
Lessor monthly the amounts required and Lessor shall transfer such amounts to  
such Facility Lender or, pursuant to written direction by Lessor, Lessee shall  
make such deposits directly with such Facility Lender. The policies on the  
Leased Property, including the Leased Improvements, the Fixtures and Lessee's  
Personal Property, shall insure against the following risks:  
  
 (a) All Risks or Special Form Property insurance against loss or  
 damage to the building and improvements, including but not limited to,  
 perils of fire, lightning, water, wind, theft, vandalism and malicious  
 mischief, plate glass breakage, and perils typically provided under an  
 Extended Coverage Endorsement and other forms of broadened risk perils, and  
 insured on a "replacement cost" value basis to the extent of the full  
 replacement value of the Leased Property. The policy shall include coverage  
 for subsidence. The deductible amount thereunder shall be borne by the  
 Lessee in the event of a loss and the deductible must not exceed Ten  
 Thousand and 00/100 Dollars ($10,000.00) per occurrence. Further, in the  
 event of a loss, Lessee shall abide by all provisions of the insurance  
 contract, including proper and timely notice of the loss to the insurer,  
 and Lessee further agrees that it will notify the Lessor of any loss in the  
 amount of Twenty-Five Thousand and 00/100 Dollars ($25,000.00) or greater  
 and that no claim at or in excess of Twenty-Five Thousand and 00/100  
 Dollars ($25,000.00) shall be settled without the prior written consent of  
 Lessor, which consent shall not be unreasonably withheld or delayed.  
  
 (b) Flood and earthquake insurance shall be required only in the event  
 that the Leased Property is located in a flood plain or earthquake zone.  
 Such insurance to be in an amount equal to the Full Replacement Cost value  
 of the Facility, subject to no more than a Twenty-Five Thousand Dollars  
 ($25,000) per occurrence deductible and such policy shall include coverage  
 for subsidence.  
  
 (c) Insurance against loss of earnings in an amount sufficient to  
 cover not less than twelve (12) months' lost earnings and written in an  
 "all risks" form, either as an endorsement to the insurance required under  
 subparagraph (a) above, or under a separate policy.  
  
 (d) Worker's compensation insurance covering all employees in amounts  
 that are customary for the Lessee's industry.  
  
 (e) Commercial General Liability in a primary amount of at least Three  
 Million and 00/100 Dollars ($3,000,000.00) per occurrence, bodily injury  
 for injury or death of any one person and One Hundred Thousand and 00/100  
 Dollars ($100,000.00) for Property Damage for damage to or loss of property  
 of others, subject to a Ten Million and 00/100 Dollars ($10,000,000.00)  
 annual aggregate policy limit for all bodily injury and property damage  
 claims, occurring on or about the Leased Property or in any way related to  
 the Leased Property, including but not limited to, any swimming pools or  
 other rehabilitation and recreational facilities or areas that are located  
 on the Leased Property otherwise related to the Leased Property. Such  
 policy shall include coverages of a Broad Form nature, including, but not  
 limited to, Explosion, Collapse and Underground (XCU), Products Liability,  
 Completed Operations, Broad Form Contractual Liability, Broad Form Property  
 Damage, Personal Injury, Incidental Malpractice Liability, and Host Liquor  
 Liability.  
  
 (f) Automobile and vehicle liability insurance coverage for all owned,  
 non-owned, leased or hired automobiles and vehicles in a primary limit  
 amount of One Million and 00/100 Dollars ($1,000,000.00) per occurrence for  
 bodily injury; One Hundred Thousand and 00/100 Dollars ($100,000.00) per  
 occurrence for property damage; subject to an annual aggregate policy limit  
 of One Million and 00/100 Dollars ($1,000,000.00).  
  
  
 26  
  
  
  
 (g) Umbrella liability insurance in the minimum amount of Ten Million  
 and 00/100 Dollars ($10,000,000.00) for each occurrence and aggregate  
 combined single limit for all liability, with a Ten Thousand and 00/100  
 Dollar ($10,000.00) self-insured retention for exposure not covered in  
 underlying primary policies. The umbrella liability policy shall name in  
 its underlying schedule the policies of professional liability, commercial  
 general liability, garage keepers liability, automobile/vehicle liability  
 and employer's liability under the workers compensation policy.  
  
 (h) Professional liability insurance for any physician employed or  
 other employee or agent of the Lessee providing services at the Leased  
 Property in an amount not less than Three Million and 00/100 Dollars  
 ($3,000,000.00) per individual claim and Ten Million and 00/100 Dollars  
 ($10,000,000.00) annual aggregate.  
  
 (i) A commercial blanket bond covering all employees of the Lessee,  
 including its officers and the individual owners of the insured business  
 entity, whether a joint-venture, partnership, proprietorship or  
 incorporated entity, against loss as a result of their dishonesty. Policy  
 limit shall be in an amount of at least One Million and 00/100 Dollars  
 ($1,000,000.00) subject to a deductible of no more than Ten Thousand and  
 00/100 Dollars ($10,000.00) per occurrence.  
  
 The term "Full Replacement Cost" as used herein, shall mean the actual  
 replacement cost thereof from time to time, including increased cost of  
 construction endorsement, less exclusions provided in the normal fire  
 insurance policy. In the event either Lessor or Lessee believes that the  
 Full Replacement Cost has increased or decreased at any time during the  
 Term, it shall have the right to have such Full Replacement Cost  
 re-determined by the fire insurance company which is then providing the  
 largest amount of fire insurance carried on the Leased Property,  
 hereinafter referred to as the "impartial appraiser". The party desiring to  
 have the Full Replacement Cost so re-determined shall forthwith, on receipt  
 of such determination by such impartial appraiser, give written notice  
 thereof to the other party hereto. The determination of such impartial  
 appraiser shall be final and binding on the parties hereto, and Lessee  
 shall forthwith increase, or may decrease, the amount of the insurance  
 carried pursuant to this Article, as the case may be, to the amount so  
 determined by the impartial appraiser. Lessee shall pay the fee, if any, of  
 the impartial appraiser.  
  
 13.2 ADDITIONAL INSURANCE. In addition to the insurance described above,  
Lessee shall maintain such additional insurance, including, without limitation,  
adequate loss of rents insurance with respect to casualty or condemnation events  
to the extent the coverage set forth in Section 3.1(c) is not adequate, as may  
be required from time to time by any Facility Lender and shall further at all  
times maintain adequate worker's compensation insurance coverage for all persons  
employed by Lessee on the Leased Property, in accordance with the requirements  
of applicable local, state and federal law.  
  
 13.3 WAIVER OF SUBROGATION. All insurance policies to be obtained by Lessee  
as required hereunder, including, without limitation, insurance policies  
covering the Leased Property, the Fixtures, the Facility, and/or Lessee's  
Personal Property, including without limitation, contents, fire and casualty  
insurance, shall expressly waive any right of subrogation on the part of the  
insurer against the Lessor. Lessee shall obtain insurance policies which will  
include such a waiver clause or endorsement regardless of whether same is  
obtainable without extra cost, and in the event of such an extra charge Lessee  
shall pay the same.  
  
 13.4 FORM OF INSURANCE. All of the policies of insurance referred to in  
this Section shall be written in form satisfactory to Lessor and by insurance  
companies satisfactory to Lessor. Lessee shall pay all of the premiums therefor,  
and shall deliver such original policies, or in the case of a blanket policy, a  
copy of the original policy certified in writing by a duly authorized agent for  
the insurance company as a "true and certified" copy of the policy, to the  
Lessor effective with the Commencement Date and furnished annually thereafter  
(and, with respect to any renewal policy, at least fifteen (15) days prior to  
the expiration of the existing policy) and in the event of the failure of Lessee  
either to obtain such insurance in the names herein called for or to pay the  
premiums therefor, or to deliver  
  
  
 27  
  
  
  
such policies or certified copies of such policies (if allowed hereunder) to  
Lessor at the times required, Lessor shall be entitled, but shall have no  
obligation, to obtain such insurance and pay the premiums therefor, which  
premiums shall be repayable to Lessor upon written demand therefor, and failure  
to repay the same shall constitute an Event of Default within the meaning of  
Section 16.1(c). Each insurer mentioned in this Section shall agree, by  
endorsement on the policy or policies issued by it, or by independent instrument  
furnished to Lessor, that it will give to Lessor sixty (60) days' prior written  
notice (at Lessor's notice address as specified in this Lease (the "Lessor's  
Notice Address")) before the policy or policies in question shall be altered,  
allowed to expire or canceled. The parties hereto agree that all insurance  
policies, endorsements and certificates which provide that the insurer will  
"endeavor to" give notice before same may be altered, allowed to expire or  
canceled will not be acceptable to Lessor. Notwithstanding anything contained  
herein to the contrary, all policies of insurance required to be obtained by the  
Lessee hereunder shall provide (i) that such policies will not lapse, terminate,  
be canceled, or be amended or modified to reduce limits or coverage terms unless  
and until Lessor has received not less than sixty (60) days' prior written  
notice at the Lessor's Notice Address, with a simultaneous copy to MPT Operating  
Partnership, LP, Attention: Its President, 0000 Xxxxx Xxxxxx Xxxxx, Xxxxx 000,  
Xxxxxxxxxx, Xxxxxxx 00000, and (ii) that in the event of cancellation due to  
non-payment of premium, the insurer will provide not less than ten (10) days'  
prior written notice to the Lessor at the Lessor's Notice Address, with a  
simultaneous copy to MPT Operating Partnership, LP, Attention: Its President,  
0000 Xxxxx Xxxxxx Xxxxx, Xxxxx 000, Xxxxxxxxxx, Xxxxxxx 00000.  
  
 13.5 INCREASE IN LIMITS. In the event that Lessor shall at any time in its  
reasonable discretion deem the limits of the personal injury, property damage or  
general public liability insurance then carried to be insufficient, the parties  
shall endeavor to agree on the proper and reasonable limits for such insurance  
to be carried and such insurance shall thereafter be carried with the limits  
thus agreed on until further change pursuant to the provisions of this Section.  
If the parties shall be unable to agree thereon, the proper and reasonable  
limits for such insurance to be carried shall be determined by an impartial  
third party selected by the parties. Nothing herein shall permit the amount of  
insurance to be reduced below the amount or amounts required by any of the  
Facility Instruments.  
  
 13.6 BLANKET POLICY. Notwithstanding anything to the contrary contained in  
this Section, Lessee's obligations to carry the insurance provided for herein  
may be brought within the coverage of a so-called blanket policy or policies of  
insurance carried and maintained by Lessee provided that  
  
 (a) Any such blanket policy or policies are acceptable to and have  
 been approved by the Lessor;  
  
 (b) Any such blanket policy or policies shall not be changed, altered  
 or modified without the prior written consent of the Lessor; and  
  
 (c) Any such blanket policy or policies shall otherwise satisfy the  
 insurance requirements of this Article XIII (including the requirement of  
 thirty (30) days' written notice before the expiration or cancellation of  
 such policies as required by Section 13.4 hereof) and shall provide for  
 deductibles in amounts acceptable to Lessor.  
  
 13.7 NO SEPARATE INSURANCE. Lessee shall not, on Lessee's own initiative or  
pursuant to the request or requirement of any third party, take out separate  
insurance concurrent in form or contributing in the event of loss with that  
required in this Article to be furnished by, or which may reasonably be required  
to be furnished by, Lessee, or increase the amounts of any then existing  
insurance by securing an additional policy or additional policies, unless all  
parties having an insurable interest in the subject matter of the insurance,  
including in all cases Lessor and all Facility Lenders, are included therein as  
additional insureds and the loss is payable under said insurance in the same  
manner as losses are required to be payable under this Lease. Lessee shall  
immediately notify Lessor of the taking out of any such separate insurance or of  
the increasing of any of the amounts of the then existing insurance by securing  
an additional policy or additional policies.  
  
  
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 ARTICLE XIV  
  
 FIRE AND CASUALTY  
  
 14.1 INSURANCE PROCEEDS. All proceeds payable by reason of any loss or  
damage to the Leased Property, or any portion thereof, and insured under any  
policy of insurance required by Article XIII of this Lease shall be paid to  
Lessor and held by Lessor in trust (subject to the provisions of Section 14.7)  
and shall be made available for reconstruction or repair, as the case may be, of  
any damage to or destruction of the Leased Property, or any portion thereof, and  
shall be paid out by Lessor from time to time for the reasonable cost of such  
reconstruction or repair. Any excess proceeds of insurance remaining after the  
completion of the restoration or reconstruction of the Leased Property (or in  
the event neither Lessor nor Lessee is required or elects to repair and restore,  
all such insurance proceeds) shall be retained by Lessor free and clear upon  
completion of any such repair and restoration except as otherwise specifically  
provided below in this Article XIV. All salvage resulting from any risk covered  
by insurance shall belong to Lessor except that any salvage relating to Capital  
Additions paid for by Lessee or to Lessee's Personal Property shall belong to  
Lessee.  
  
 14.2 RECONSTRUCTION IN THE EVENT OF DAMAGE OR DESTRUCTION COVERED BY  
INSURANCE.  
  
 (a) Except as provided in Section 14.7, if during the Term, the Leased  
 Property is totally or partially destroyed from a risk covered by the  
 insurance described in Article XIII and the Facility thereby is rendered  
 Unsuitable for its Primary Intended Use, Lessee shall have the option, by  
 giving written notice to Lessor within sixty (60) days following the date  
 of such destruction, to (i) restore the Facility to substantially the same  
 condition as existed immediately before the damage or destruction, or (ii)  
 so long as Lessee is not in monetary or payment default of any kind, and no  
 event has occurred which with the giving of notice or the passage of time,  
 or both, would constitute such a default, under this Lease, the Other  
 Leases and the Tenant Leases, purchase the Leased Property (including the  
 Parking Lot Interest) from Lessor for a purchase price equal to the Option  
 Price as defined in Section 35.1 (less the amount of any insurance proceeds  
 held by Lessor), or (iii) so long as the damage or destruction was not  
 caused by the negligence of Lessee, its agents, servants, employees or  
 contractors, terminate this Lease and, in this event, Lessor shall be  
 entitled to retain the insurance proceeds, and Lessee shall pay to Lessor  
 on demand, the amount of any deductible or uninsured loss arising in  
 connection therewith. In the event Lessee purchases the Leased Property  
 pursuant to this Section 14.2(a), the terms set forth in Article XVIII  
 shall apply and the sale/purchase must be closed within ninety (90) days  
 after the date of the written notice from Lessee to Lessor of Lessee's  
 intent to purchase, unless a different closing date is agreed upon in  
 writing by Lessor and Lessee.  
  
 (b) If during the Term, the Leased Improvements and/or the Fixtures  
 are totally or partially destroyed from a risk covered by the insurance  
 described in Article XIII, but the Facility is not thereby rendered  
 Unsuitable for its Primary Intended Use, Lessee shall restore the Facility  
 to substantially the same condition as existed immediately before the  
 damage or destruction. Such damage or destruction shall not terminate this  
 Lease; provided, however, if Lessee cannot within a reasonable time obtain  
 all necessary governmental approvals, including building permits, licenses,  
 conditional use permits and any certificates of need, after diligent  
 efforts to do so, in order to be able to perform all required repair and  
 restoration work and to operate the Facility for its Primary Intended Use  
 in substantially the same manner as immediately prior to such damage or  
 destruction, so long as Lessee is not in monetary or payment default of any  
 kind, and no event has occurred which with the giving of notice or the  
 passage of time or both would constitute such a default, under the terms of  
 this Lease, the Other Leases and the Tenant Leases, Lessee shall have the  
 option, by giving written notice to Lessor within sixty (60) days following  
 the date of such damage or destruction, to purchase the Leased Property  
 (including the Parking Lot Interest) for a purchase price equal to the  
 Option Price as defined in Section 35.1 (less the amount of any insurance  
 proceeds held by Lessor). In the event Lessee purchases the Leased Property  
 pursuant to this Section 14.2(b), the terms set forth in Article XVIII  
 shall apply and the sale/purchase must be closed within ninety (90) days  
 after the date of the  
  
  
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 written notice from Lessee to Lessor of Lessee's intent to purchase, unless  
 a different closing date is agreed upon in writing by Lessor and Lessee.  
  
 (c) If the cost of the repair or restoration exceeds the amount of  
 proceeds received by Lessor from the insurance required under Article XIII,  
 Lessee shall be obligated to contribute any excess amount needed to restore  
 the Facility prior to use of the insurance proceeds. Such amount shall be  
 paid by Lessee to Lessor (or a Facility Lender if required) to be held in  
 trust together with any other insurance proceeds for application to the  
 cost of repair and restoration.  
  
 (d) In the event Lessee purchases the Leased Property, this Lease  
 shall terminate upon payment of the Option Price (less the amount of any  
 insurance proceeds held by Lessor) and Lessor shall remit to Lessee all  
 insurance proceeds being held in trust by Lessor or the Facility Lender if  
 applicable.  
  
 14.3 RECONSTRUCTION IN THE EVENT OF DAMAGE OR DESTRUCTION NOT COVERED BY  
INSURANCE. Except as provided in Section 14.7 below, if during the Term, the  
Facility is totally or materially destroyed from a risk not covered by the  
insurance described in Article XIII but that would have been covered if Lessee  
carried the insurance customarily maintained by, and generally available to, the  
operators of reputable health care facilities in the region in which the  
Facility is located, then, whether or not such damage or destruction renders the  
Facility Unsuitable for its Use, Lessee shall, at its sole cost and expense,  
restore the Facility to substantially the same condition it was in immediately  
before such damage or destruction and such damage or destruction shall not  
terminate this Lease. If such damage or destruction is not material, Lessee  
shall restore the Leased Property at Lessee's expense.  
  
 14.4 LESSEE'S PERSONAL PROPERTY. All insurance proceeds payable by reason  
of any loss of or damage to any of Lessee's Personal Property or Capital  
Additions financed by Lessee shall be paid to Lessor and Lessor shall hold such  
insurance proceeds in trust to pay the cost of repairing or replacing the damage  
to Lessee's Personal Property or the Capital Additions financed by Lessee.  
  
 14.5 RESTORATION OF LESSEE'S PROPERTY. If Lessee is required or elects to  
restore the Facility as provided in Sections 14.2 or 14.3, Lessee shall also  
restore all alterations and improvements made by Lessee, Lessee's Personal  
Property and all Capital Additions paid for by Lessee.  
  
 14.6 NO ABATEMENT OF RENT. This Lease shall remain in full force and effect  
and Lessee's obligation to make rental payments and to pay all other charges  
required by this Lease shall remain unabated during any period required for  
repair and restoration.  
  
 14.7 DAMAGE NEAR END OF TERM. Notwithstanding any provisions of Sections  
14.2 or 14.3 to the contrary but subject to the option of Lessee to purchase the  
Leased Property as provided in Section 35.1 by giving Lessor written notice  
within sixty (60) days following the date of such damage or destruction, if  
damage to or destruction of the Facility occurs during the last twenty-four (24)  
months of the Term, and if such damage or destruction cannot be fully repaired  
and restored within six (6) months immediately following the date of loss,  
either party shall have the right to terminate this Lease by giving notice to  
the other within sixty (60) days after the date of damage or destruction, in  
which event Lessor shall be entitled to retain the insurance proceeds and Lessee  
shall pay to Lessor on demand the amount of any deductible or uninsured loss  
arising in connection therewith; provided, however, that any such notice given  
by Lessor shall be void and of no force and effect if Lessee exercises an  
available option to extend the Term for one Extended Term within thirty (30)  
days following receipt of such termination notice.  
  
 14.8 TERMINATION OF RIGHT TO PURCHASE. Any termination of this Lease  
pursuant to this Article XIV shall cause any right to purchase under any other  
provisions of this Lease granted to Lessee under this Lease to be terminated and  
to be without further force and effect.  
  
  
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 14.9 WAIVER. Lessee hereby waives any statutory or common law rights of  
termination which may arise by reason of any damage or destruction of the  
Facility.  
  
 ARTICLE XV  
  
 CONDEMNATION  
  
 15.1 DEFINITIONS.  
  
 (a) "Condemnation" means (i) the exercise of any governmental power,  
 whether by legal proceedings or otherwise, by a Condemnor or (ii) a  
 voluntary sale or transfer by Lessor to any Condemnor, either under threat  
 of Condemnation or while legal proceedings for Condemnation are pending.  
  
 (b) "Date of Taking" means the date the Condemnor has the right to  
 possession of the property being condemned.  
  
 (c) "Award" means all compensation, sums or anything of value awarded,  
 paid or received on a total or partial Condemnation.  
  
 (d) "Condemnor" means any public or quasi-public authority, or private  
 corporation or individual, having the power of Condemnation.  
  
 15.2 PARTIES' RIGHTS AND OBLIGATIONS. If during the Term there is any  
Taking of all or any part of the Leased Property or any interest in this Lease  
by Condemnation, the rights and obligations of the parties shall be determined  
by this Article XV.  
  
 15.3 TOTAL TAKING. If there is a Taking of all of the Leased Property by  
Condemnation, this Lease shall terminate on the Date of Taking.  
  
 15.4 PARTIAL TAKING. If there is a Taking of a portion of the Leased  
Property by Condemnation, this Lease shall remain in effect if the Facility is  
not thereby rendered Unsuitable for its Primary Intended Use. If, however, the  
Facility is thereby rendered Unsuitable for its Primary Intended Use, Lessee  
shall have the option (a) to restore the Facility, at its own expense, to the  
extent possible, to substantially the same condition as existed immediately  
before the partial Taking, or (b) so long as Lessee is not in monetary or  
payment default of any kind, and no event has occurred which with the giving of  
notice or the passage of time or both would constitute such a default, under the  
terms of this Lease, the Other Leases and the Tenant Leases to acquire the  
Leased Property (including the Parking Property Interest) from Lessor for a  
purchase price equal to the Option Price as defined in Section 35.1, in which  
event this Lease shall terminate upon payment of the Option Price. Lessee shall  
exercise its option by giving Lessor notice thereof within sixty (60) days after  
Lessee receives notice of the Taking. In the event Lessee exercises the option  
to purchase the Leased Property pursuant to this Section 15.4, the terms set  
forth in Article XVIII shall apply and the sale/purchase must be closed within  
thirty (30) days after the date of the written notice from Lessee to Lessor of  
Lessee's intent to purchase, unless a different closing date is agreed upon in  
writing by Lessor and Lessee.  
  
 15.5 RESTORATION. If there is a partial Taking of the Leased Property and  
this Lease remains in full force and effect pursuant to Section 15.4, Lessee  
shall accomplish all necessary restoration.  
  
 15.6 AWARD DISTRIBUTION. In the event Lessee exercises the purchase option  
as described in clause (b) of Section 15.4, the entire Award shall belong to  
Lessee provided no Event of Default is continuing and Lessor agrees to assign to  
Lessee all of its rights thereto. In any other event, the entire Award shall  
belong to and be paid to Lessor, except that, if this Lease is terminated, and  
subject to the rights of the Facility Lender, Lessee shall be entitled to  
receive from the Award, if and to the extent such Award specifically includes  
such items, the following:  
  
  
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 (a) A sum attributable to the Capital Additions for which Lessee would  
 be entitled to reimbursement at the end of the Term pursuant to the  
 provisions of Section 10.2(c) and the value, if any, of the leasehold  
 interest of Lessee under this Lease; and  
  
 (b) A sum attributable to Lessee's Personal Property and any  
 reasonable removal and relocation costs included in the Award.  
  
If Lessee is required or elects to restore the Facility, Lessor agrees that,  
subject to the rights of the Facility Lenders, its portion of the Award shall be  
used for such restoration and it shall hold such portion of the Award in trust,  
for application to the cost of the restoration. Notwithstanding any provision of  
this Lease to the contrary, any Award retained by Lessor and not used for  
restoration shall be taken into account as an amount received by Lessor for  
purposes of calculating the Option Price as defined in Section 35.1.  
  
 15.7 TEMPORARY TAKING. The Taking of the Leased Property, or any part  
thereof, by military or other public authority shall constitute a Taking by  
Condemnation only when the use and occupancy by the Taking authority has  
continued for longer than six (6) months. During any such six (6) month period  
all the provisions of this Lease shall remain in full force and effect and the  
Base Rent shall not be abated or reduced during such period of Taking.  
  
 ARTICLE XVI  
  
 DEFAULT  
  
 16.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following  
events (individually, an "Event of Default") shall constitute Events of Default  
or defaults hereunder:  
  
 (a) a default or event of default shall occur under any of the Other  
 Leases that is not cured within the applicable cure period as provided  
 therein, or  
  
 (b) if Lessee shall fail to make a payment of the Rent or any other  
 monetary payment due and payable by Lessee under this Lease when the same  
 becomes due and payable, or  
  
 (c) if Lessee shall fail to observe or perform any other term,  
 covenant or condition of this Lease and such failure is not cured by Lessee  
 within a period of thirty (30) days after receipt by Lessee of written  
 notice thereof from Lessor (provided, however, in no event shall Lessor be  
 required to give more than one (1) written notice per calendar year for a  
 non-monetary default), unless such failure cannot with due diligence be  
 cured within a period of thirty (30) days, in which case such failure shall  
 not be deemed to continue if Lessee proceeds promptly and with due  
 diligence to cure the failure and diligently completes the curing thereof  
 within sixty (60) days after receipt by Lessee of Lessor's notice of  
 default, or  
  
 (d) if Lessee or any Guarantor shall:  
  
 (i) admit in writing its inability to pay its debts generally as  
 they become due,  
  
 (ii) file a petition in bankruptcy or a petition to take  
 advantage of any insolvency act,  
  
 (iii) make an assignment for the benefit of its creditors,  
  
 (iv) consent to the appointment of a receiver of itself or of the  
 whole or any substantial part of its property, or  
  
  
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 (v) file a petition or answer seeking reorganization or  
 arrangement under the Federal bankruptcy laws or any other applicable  
 law or statute of the United States of America or any state thereof,  
  
 (e) if Lessee's license as defined in Article XXXIX or participation  
 or certification in Medicare, Medicaid or other governmental payor programs  
 is terminated, or  
  
 (f) if Lessee admits in writing that it cannot meet its obligations as  
 they become due; or is declared insolvent according to any law; or  
 assignment of Lessee's property is made for the benefit of creditors; or a  
 receiver or trustee is appointed for Lessee or its property; or the  
 interest of Lessee under this Lease is levied on under execution or other  
 legal process; or any petition is filed by or against Lessee to declare  
 Lessee bankrupt or to delay, reduce or modify Lessee's capital structure if  
 Lessee be a corporation or other entity (provided that no such levy,  
 execution, legal process or petition filed against Lessee shall constitute  
 a breach of this Lease if Lessee shall vigorously contest the same by  
 appropriate proceedings and shall remove or vacate the same within thirty  
 (30) days from the date of its creation, service or filing), or  
  
 (g) the abandonment or vacation of the Leased Property by Lessee  
 (Lessee's absence from the Leased Property for thirty (30) consecutive days  
 shall constitute abandonment), or Lessee fails to continuously operate the  
 Facility in accordance with the terms of this Lease, or  
  
 (h) if the Lessee or any Guarantor shall, after a petition in  
 bankruptcy is filed against it, be adjudicated a bankrupt or if a court of  
 competent jurisdiction shall enter an order or decree appointing, without  
 the consent of Lessee or such Guarantor, as the case may be, a receiver of  
 Lessee or such Guarantor or of the whole or substantially all of its  
 property, or approving a petition filed against it seeking reorganization  
 or arrangement of Lessee or such Guarantor under the federal bankruptcy  
 laws or any other applicable law or statute of the United States of America  
 or any state thereof, and such judgment, order or decree shall not be  
 vacated or set aside or stayed within ninety (90) days from the date of the  
 entry thereof, or  
  
 (i) if Lessee or any Guarantor shall be liquidated or dissolved, or  
 shall begin proceedings toward such liquidation or dissolution, or shall,  
 in any manner, permit the sale or divestiture of substantially all of its  
 assets other than in connection with a merger or consolidation of Lessee or  
 such Guarantor into, or a sale of substantially all of Lessee's or such  
 Guarantor's assets to, another corporation, provided that if the survivor  
 of such merger or the purchaser of such assets shall assume all of Lessee's  
 obligations under this Lease by a written instrument, in form and substance  
 reasonably satisfactory to Lessor, accompanied by an opinion of counsel,  
 reasonably satisfactory to Lessor and addressed to Lessor stating that such  
 instrument of assumption is valid, binding and enforceable against the  
 parties thereto in accordance with its terms (subject to usual bankruptcy  
 and other creditors' rights exceptions), and provided, further, that if,  
 immediately after giving effect to any such merger, consolidation or sale,  
 Lessee or such other corporation (if not the Lessee) surviving the same,  
 together with Guarantors, shall have a Consolidated Net Worth not less than  
 the Consolidated Net Worth of Lessee or Guarantors immediately prior to  
 such merger, consolidation or sale, all as to be set forth in an Officer's  
 Certificate delivered to Lessor within thirty (30) days of such merger,  
 consolidation or sale, an Event of Default shall not be deemed to have  
 occurred, or  
  
 (j) if the estate or interest of Lessee in the Leased Property or any  
 part thereof shall be levied upon or attached in any proceeding and the  
 same shall not be vacated or discharged within the later of ninety (90)  
 days after commencement thereof or thirty (30) days after receipt by Lessee  
 of written notice thereof from Lessor (unless Lessee shall be contesting  
 such lien or attachment in good faith in accordance with Article XII  
 hereof), or  
  
 (k) if, except as a result of damage, destruction or a partial or  
 complete Condemnation, Lessee voluntarily ceases operations on the Leased  
 Property for a period in excess of ninety (90) days, or  
  
  
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 (l) if any of the representations or warranties made by Lessee or any  
 of the Sellers named in the Purchase Agreement or in the certificates  
 delivered in connection therewith are or become untrue in any material  
 respect, and which is not cured within ten (10) days after notice from  
 Lessor, or  
  
 (m) a default shall occur under the Guaranty, or  
  
 (n) a default or event of default shall occur under the Lease  
 Assignment, Purchase Agreement, Assignment of Rents and Leases, Security  
 Agreements or any other agreement between Lessor or any Affiliate of  
 Lessor, on the one hand, and Lessee, any Guarantor, or any of their  
 respective Affiliates, on the other hand, which is not cured within the  
 cure period as provided therein, or  
  
 (o) if Lessee defaults under the Tenant Leases or fails or refuses to  
 enforce the terms and conditions of the Tenant Leases, or  
  
 (p) if a payment default occurs with respect to any of Lessee's or any  
 Guarantor's debt or other leases or is declared to be in material default  
 by any of its lenders and such default is not cured within the applicable  
 cure periods provided therefor.  
  
Notwithstanding anything contained herein to the contrary, a default under the  
Xxxxxxx Oaks Lease or a default under the guaranty executed by the guarantors  
guaranteeing the obligations of the lessee under the Xxxxxxx Oaks Lease shall  
not constitute a default under this Lease.  
  
If an Event of Default shall have occurred, Lessor may pursue any one or more of  
the remedies set forth in Sections 16.1A through D below and in Section 16.2  
hereof, in addition to any remedies which may be permitted by law or by other  
provisions of this Lease, without notice or demand, except as hereinafter  
provided. Lessor may exercise these remedies at the time of an Event of Default  
or at any time thereafter; provided, however, that if Lessor fails to exercise  
any such remedy within six (6) months following the occurrence of such Event of  
Default, Lessee may cure such default, provided such cure occurs prior to  
Lessor's exercise of such remedy and, provided further, that any cure by Lessee  
within such six (6) month period shall have no effect on Lessor's right to  
exercise any such remedy within such six (6) month period.  
  
 A. Without any notice or demand whatsoever, Lessor may take any one or more  
of the actions permissible at law to insure performance by Lessee of Lessee's  
covenants and obligations under this Lease. In this regard, it is agreed that if  
Lessee deserts or vacates the Leased Property, Lessor may enter upon and take  
possession of such Leased Property in order to protect it from deterioration and  
continue to demand from Lessee the monthly rentals and other charges provided in  
this Lease, without any obligation to relet; but that if Lessor does, at its  
sole discretion, elect to relet the Leased Property, such action by Lessor shall  
not be deemed as an acceptance of Lessee's surrender of the Leased Property  
unless Lessor expressly notifies Lessee of such acceptance in writing pursuant  
to subsection B of this Section 16.1, Lessee hereby acknowledging that Lessor  
shall otherwise be reletting as Lessee's agent and Lessee furthermore hereby  
agreeing to pay to Lessor on demand any deficiency that may arise between the  
monthly rentals and other charges provided in this Lease and that are actually  
collected by Lessor. It is further agreed in this regard that in an Event of  
Default described in this Section 16.1, Lessor shall have the right to enter  
upon the Leased Property without being liable for prosecution or any claim for  
damages therefor, and do whatever Lessee is obligated to do under the terms of  
this Lease; and Lessee agrees to reimburse Lessor on demand for any expenses  
which Lessor may incur in thus effecting compliance with Lessee's obligations  
under this Lease, and Lessee further agrees that Lessor shall not be liable for  
any damages resulting to the Lessee from such action.  
  
 X. Xxxxxx may terminate this Lease by written notice to Lessee, in which  
event Lessee shall immediately surrender the Leased Property to Lessor, and if  
Lessee fails to do so, Lessor may, without prejudice to any other remedy which  
Lessor may have for possession or arrearages in rent (including any interest  
which may have accrued pursuant to Section 3.3 of this Lease), enter upon and  
take possession of the Leased Property and expel or remove Lessee and any other  
person who may be occupying the Leased Property or any part thereof without  
  
  
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being liable of prosecution or any claim for damages therefor. Lessee hereby  
waives any statutory requirement of prior written notice for filing eviction or  
damage suits for nonpayment of rent. In addition, Lessee agrees to pay to Lessor  
on demand the amount of all loss and damage which Lessor may suffer by reason of  
any termination effected pursuant to this subsection B, said loss and damage to  
be determined by:  
  
 (i) The worth at the time of award of the unpaid rent which had  
 been earned at the time of termination;  
  
 (ii) The worth at the time of award of the amount by which the  
 unpaid rent which would have been earned after termination until the  
 time of award exceeds the amount of such rental loss that the Lessee  
 proves could have been reasonably avoided;  
  
 (iii) The worth at the time of award of the amount by which the  
 unpaid rent for the balance of the term after the time of award  
 exceeds the amount of such rental loss that the Lessee proves could be  
 reasonably avoided; and  
  
 (iv) Any other amount necessary to compensate the Lessor for all  
 the detriment proximately caused by the Lessee's failure to perform  
 its obligations under this Lease or which in the ordinary course of  
 things would be likely to result therefrom, including, but not limited  
 to, all reasonable legal expenses and other related costs incurred by  
 Lessor following an Event of Default, all costs incurred by Lessor in  
 recovering the Leased Property and restoring the Leased Property to  
 good order and condition, and/or in remodeling, renovating or  
 otherwise preparing the Leased Property for reletting, and all costs  
 (including, without limitation, any brokerage commissions and  
 reasonable attorneys' fees) incurred by Lessor in reletting the Leased  
 Premises.  
  
 The "worth at the time of award" of the amounts referred to in paragraphs  
(i) and (ii) above is computed by allowing interest at a rate equal to the  
lowest rate of capitalization (highest present worth) reasonably applicable at  
the time of such determination and allowed by applicable law. The worth at the  
time of award of the amount referred to in paragraph (iii) above is computed by  
discounting such amount at the discount rate of the Federal Reserve Bank of San  
Francisco at the time of award plus one percent (1%).  
  
 C. In addition to other rights and remedies Lessor may have hereunder and  
at law and in equity, if an Event of Default occurs under this Lease, (i) Lessee  
is deemed to have assigned to Lessor, at Lessor's sole option, all service  
agreements (including, without limitation, all medical director agreements);  
(ii) to the extent permitted by law, Lessee is deemed, at Lessor's sole  
discretion, to have transferred and assigned to Lessor all Licenses and  
agreements, including, without limitation, all Medicare and Medicaid provider  
numbers, and (iii) to the extent permitted by law, if required by Lessor,  
transfer to the Lessor all of the Licenses, including, without limitation, all  
Medicare and Medicaid provider numbers. In the event there are legal limitations  
on any of the foregoing remedies, Lessee further hereby covenants and agrees  
that it will take all actions necessary to orderly transfer the operations and  
occupancy of the Leased Property to the Lessor, including cooperating with  
respect to the transfer to Lessor of Licenses, provider numbers and other  
agreements.  
  
 D. In addition to the above remedies, in the Event of Default hereunder by  
Lessee, Lessor, at its option, may have one or more of the following remedies in  
addition to all other legal rights and remedies:  
  
 (i) Lessor may serve upon Lessee notice that its Lease and the  
 then unexpired term hereof shall terminate and become absolutely void  
 on a date specified in such notice, which shall be the date of such  
 notice or such later date as may be required by law, and the Lease,  
 and well as the right, title, and interest of Lessee hereunder shall,  
 except as to the rights and remedies of Lessor upon termination as  
 provided herein, terminate and become void in the same manner and with  
 the same force and effect as if the date filed in such notice were the  
 date originally specified for the expiration of the Lease term; and  
 Lessee shall then immediately quit and surrender to Lessor the Leased  
 Property, including any and all buildings and improvements thereon,  
 and Lessor may then  
  
  
 35  
  
  
  
 or at any time thereafter, without judicial proceedings of any kind,  
 enter into and repossess the Leased Property, and may remove all  
 occupants and any property thereon without being liable for any action  
 or prosecution of any kind for such entry or the manner thereof, or  
 loss of or damage to any property upon the Leased Property. In the  
 event of any such termination of this Lease, and in addition to any  
 other rights and remedies Lessor may have, Lessor shall have all of  
 the rights and remedies of a Lessor provided by Section 1951.2 of the  
 California Civil Code.  
  
 (ii) In addition, Lessor shall have all the rights and remedies  
 described in Section 1951.4 of the California Civil Code (Lessor may  
 continue the Lease in effect after Lessee's breach and abandonment and  
 recover rent as it becomes due, if Lessee has the right to sublease or  
 assign subject only to reasonable limitations).  
  
 (iii) Lessor may immediately terminate Lessee's right of  
 possession of the Leased Property, but not terminate the Lease, and  
 without notice or demand enter upon the Leased Property or any part  
 thereof and take absolute possession of the same, and at Lessor's sole  
 option may relet the Leased Property or any part thereof for such  
 terms and such rents as Lessor may reasonable elect. In the event  
 Lessor shall elect to so relet, then rent received by Lessor from such  
 reletting shall be applied first, to the payment of any indebtedness  
 other than Rent due hereunder from Lessee to Lessor, second, to the  
 payment of any cost of such reletting, including, without limitation,  
 refurbishing costs and leasing commissions, and third, to the payment  
 of Rent due and unpaid hereunder, and Lessee shall satisfy and pay any  
 deficiency upon demand therefor from time to time. Any entry into and  
 possession of the Leased Property by Lessor shall be without liability  
 or responsibility to Lessee and shall not be in lieu of or in  
 substitution for any other legal rights of Lessor hereunder. Lessee  
 further agrees that Lessor may file suit to recover any sums due under  
 the terms of this Lease and that no recovery of any portion due Lessor  
 hereunder shall be any defense to any subsequent action brought for  
 any amount not therefore reduced to judgment in favor of Lessor.  
 Reletting of the Leased Property shall not be construed as an election  
 on the part of Lessor to terminate this Lease and, notwithstanding any  
 such reletting without termination, Lessor may at any time thereafter  
 elect to terminate this Lease for default.  
  
 16.2 EVENTS OF DEFAULT IN FINANCIAL COVENANTS.  
  
Compliance with financial covenants set forth in subparagraphs (a) and (b) of  
this Section 16.2 below will be determined on a combined basis using the  
combined financial statements and information of Desert Valley Tenants.  
  
 (a) The failure or breach of any one or more of the following shall  
constitute a default and breach of this Section 16.2 and the Lessor shall have  
the rights and remedies provided for herein:  
  
 (i) Combined EBITDAR shall equal or exceed one hundred  
 seventy-five percent (175%) of Combined Fixed Charges;  
  
 (ii) Total Debt of the Desert Valley Tenants shall not exceed  
 fifty percent (50%) of the greater of (A) the Total  
 Capitalization of the Desert Valley Tenants, or (B) the Market  
 Value of Desert Valley Tenants;  
  
 (iii) Combined EBITDAR shall equal or exceed two hundred fifty  
 percent (250%) of Combined Lease Payments; or  
  
 (iv) The Desert Valley Tenants shall not experience three (3)  
 consecutive quarters with declines in net revenue and generate  
 Combined EBITDAR of less than two hundred percent (200%) of  
 Combined Lease Payments.  
  
  
 36  
  
  
  
 The covenants described in this Section 16.2(a) (i) -- (iv) shall first  
become effective at the end of the first full calendar quarter subsequent to the  
Commencement Date and shall be tested at the end of each subsequent calendar  
quarter. Until the first anniversary of the Commencement Date, all operating  
measures shall be calculated from the Commencement Date and on a trailing twelve  
(12) month basis thereafter.  
  
 Upon the occurrence of any of the items set forth in Section 16.1 or in  
subparagraph (a) items (i) through (iv) of this Section 16.2(a), Lessor may, at  
its option, upon five (5) days' written notice to Lessee (any such notice  
requiring such termination being herein referred to as the "Removal Notice"),  
require Lessee to terminate the engagement of any Management Company managing  
the Facility and replace such Management Company with a manager chosen by Lessor  
(or, if there is no Management Company managing the Facility at that time,  
Lessor may require the Lessee to engage a Management Company acceptable to  
Lessor and enter into a contract with such Management Company upon terms and  
conditions acceptable to Lessor). In the event Lessor elects to require a change  
in the management of the Facility, such exercise to change management shall be  
subject to the right of Lessee to purchase the Leased Property (including the  
Parking Lot Interest) on the terms described in Article XXXV herein, provided  
Lessee gives Lessor written notice of its intention to exercise such purchase  
right within five (5) days following receipt of the Removal Notice. In the event  
Lessee exercises its right to purchase as allowed in this Section 16.2(a), such  
purchase shall be closed within the time period and subject to the provisions  
set forth in Article XXXV herein.  
  
 (b) The failure or breach of any one or more of the following  
covenants shall constitute a default and breach of this Section 16.2(b) and  
Lessor shall have the rights and remedies provided for herein:  
  
 (i) Total Debt of the Desert Valley Tenants shall not exceed  
 eighty percent (80%) of the greater of (A) the Total  
 Capitalization of the Desert Valley Tenants or (B) the Market  
 Value of Desert Valley Tenants;  
  
 (ii) The Desert Valley Tenants shall not experience six (6)  
 consecutive quarters with declines in net revenue and generate  
 Combined EBITDAR of less than two hundred percent (200%) of the  
 Combined Lease Payments; or  
  
 (iii) Neither Lessee nor any Guarantor shall be in payment  
 default on any of its corporate debt or other leases or be  
 declared to be in material default by any of its corporate  
 lenders, unless such default is cured within the cure periods  
 provided for therein.  
  
 The covenants described in this Section 16.2(b) (i) - (iii) shall first  
become effective at the end of the first full calendar quarter subsequent to the  
Commencement Date and shall be tested at the end of each subsequent calendar  
quarter. Until the first anniversary of the Commencement Date, all operating  
measures shall be calculated from the Commencement Date and on a trailing twelve  
(12) month basis thereafter.  
  
 Upon the occurrence of any of the items set forth in Section 16.1 or in  
subparagraph (b) items (i) through (iii) of this Section 16.2(b), Lessor may, at  
its option, upon delivery of the Removal Notice, require Lessee to terminate the  
engagement of the Management Company managing the Facility and replace such  
Management Company with manager chosen by Lessor (or, if there is no Management  
Company managing the facility at that time, Lessor may require the Lessee to  
engage a Management Company acceptable to Lessor and enter into a contract with  
such Management Company upon terms and conditions acceptable to Lessor), and  
Lessor may, at its option, proceed with all other remedies Lessor deems  
necessary, including, without limitation, terminating this Lease and pursuing  
all other customary remedies available hereunder, at law and in equity;  
provided, however, that in the event Lessor elects to require a change in the  
management of the Facility, such exercise to change management shall be subject  
to the right of Lessee to purchase the Leased Property (including the Parking  
Lot Interest) on the terms described in Article XXXV herein, provided Lessee  
gives Lessor written notice of its intention to exercise such purchase right  
within five (5) days following receipt of the Removal Notice. In the event  
Lessee  
  
  
 37  
  
  
  
exercises its right to purchase as allowed in this Section 16.2(a), such  
purchase shall be closed within the time period and subject to the provisions  
set forth in Article XXXV.  
  
 (c) Notwithstanding any provision hereof, any breach of items (i)  
 through (iv) of subparagraph (a) of this Section 16.2, or items (i) and  
 (ii) of subparagraph (b) of this Section 16.2 shall not be deemed to be a  
 default or breach permitting Lessor to exercise the remedies set forth in  
 such subparagraphs if, within fifteen (15) days following the date of such  
 breach, Lessee obtains and delivers to Lessor an unconditional and  
 irrevocable letter of credit from a bank acceptable to Lessor (the "Letter  
 of Credit") naming Lessor beneficiary thereunder, in a dollar amount which  
 would result in the various EBITDAR coverage ratios set forth in such  
 clauses being satisfied, or an amount which would adequately reduce the  
 debt amount used in the calculation of the EBITDAR coverage ratios to  
 satisfy such clauses, and upon terms, conditions and provisions acceptable  
 to Lessor (including, without limitation, provisions allowing Lessor to  
 assign all of its rights under such Letter of Credit to Lessor's lender).  
  
 (d) The parties hereto agree, that if Desert Valley Hospital, Inc.  
 ("DVH") exercises the option to purchase the Victorville Property, as  
 contemplated by the Victorville Lease, then, notwithstanding that DVH may  
 no longer satisfy all of the requirements to be included as a Desert Valley  
 Tenant under this Lease, the net cash flow after capital costs from DVH's  
 operation of the Victorville Property shall be taken into account in  
 determining whether the various EBITDAR coverage ratios set forth in this  
 Section 16.2 are or remain satisfied.  
  
 16.3 ADDITIONAL EXPENSES. It is further agreed that, in addition to  
payments required pursuant to subsections A and B of Section 16.1 above, Lessee  
shall compensate Lessor for (i) all administrative expenses, (ii) all expenses  
incurred by Lessor in repossessing the Leased Property (including among other  
expenses, any increase in insurance premiums caused by the vacancy of the Leased  
Property), (iii) all expenses incurred by Lessor in reletting (including among  
other expenses, repairs, remodeling, replacements, advertisements and brokerage  
fees), (iv) all concessions granted to a new tenant or tenants upon reletting  
(including among other concessions, renewal options), (v) Lessor's reasonable  
attorneys' fees and expenses, (vi) all losses incurred by Lessor as a direct or  
indirect result of Lessee's default (including among other losses any adverse  
action by mortgagees), and (vii) a reasonable allowance for Lessor's  
administrative efforts, salaries and overhead attributable directly or  
indirectly to Lessee's default and Lessor's pursuing the rights and remedies  
provided herein and under applicable law.  
  
 16.4 Intentionally Omitted.  
  
 16.5 WAIVER. If this Lease is terminated pursuant to Section 16.1, Lessee  
waives, to the extent permitted by applicable law, (a) any right of redemption,  
re-entry or repossession, (b) any right to a trial by jury in the event of  
summary proceedings to enforce the remedies set forth in this Article XVI, and  
(c) the benefit of any laws now or hereafter in force exempting property from  
liability for rent or for debt.  
  
 16.6 APPLICATION OF FUNDS. Any payments otherwise payable to Lessee which  
are received by Lessor under any of the provisions of this Lease during the  
existence or continuance of any Event of Default shall be applied to Lessee's  
obligations in the order which Lessor may reasonably determine or as may be  
prescribed by the laws of the state in which the Facility is located.  
  
 16.7 NOTICES BY LESSOR. The provisions of this Article XVI concerning  
notices shall be liberally construed insofar as the contents of such notices are  
concerned, and any such notice shall be sufficient if reasonably designed to  
apprise Lessee of the nature and approximate extent of any default, it being  
agreed that Lessee is in good or better position than Lessor to ascertain the  
exact extent of any default by Lessee hereunder.  
  
 16.8 LESSOR'S CONTRACTUAL SECURITY INTEREST. Subject to the Prior Lien of  
Lessee's Primary Lender (as such terms are defined herein), to secure the  
payment of all rent due and to become due hereunder and the faithful performance  
of this Lease by Lessee and to secure all other indebtedness, obligations and  
liabilities of Lessee to  
  
  
 38  
  
  
  
Lessor now existing or hereafter incurred, and all Obligations (as defined in  
the Security Agreements), Lessee and Prime hereby give to Lessor an express  
first and prior lien and security interest in all property (excluding the Power  
Generation Facility, unless and until Lessee purchases the Power Generation  
Facility at which time Lessee shall execute all documents necessary to xxxxx  
Xxxxxx a first and prior lien and security interest in the Power Generation  
Facility) which may be placed on the Leased Property (including all equipment  
affixed therein, fixtures, equipment (including medical equipment whether or not  
affixed to the Leased Property), chattels and merchandise and also upon all  
proceeds of any insurance which may accrue to Lessee and/or Prime by reason of  
destruction of or damage to any such property and also upon all of Lessee's  
interest as lessee and Lessee's rights and options to purchase fixtures,  
equipment and chattels placed on the Leased Property (in case of fixtures,  
equipment and chattels leased to Lessee which are placed on the Leased  
Property). All exemption laws are hereby waived in favor of such lien and  
security interest and in favor of Lessor's statutory landlord lien. This lien  
and security interest are given in addition to any statutory landlord lien and  
shall be cumulative thereto. Except as limited in favor of the Primary Lender as  
set forth in this Section 16.8, Lessor shall have at all times a valid security  
interest to secure payment of all rentals and other sums of money becoming due  
hereunder from Lessee, and to secure payment of any damages or loss which Lessor  
may suffer by reason of the breach by Lessee or Prime of any covenant, agreement  
or condition contained herein, upon all inventory, merchandise, goods, wares,  
equipment (including medical equipment whether or not affixed to the Leased  
Property), fixtures, furniture, improvements and other tangible personal  
property of Lessee presently, or which may hereafter be, situated in or about  
the Leased Property (excluding the Power Generation Facility, unless and until  
Lessee purchases the Power Generation Facility), and all proceeds therefrom and  
accessions thereto and, except as a result of sales made in the ordinary course  
of Lessee's business, such property shall not be removed without the consent of  
Lessor until all arrearages in rent as well as any and all other sums of money  
then due to Lessor or to become due to Lessor hereunder shall first have been  
paid and discharged and all the covenants, agreements and conditions hereof have  
been fully complied with and performed by Lessee. Upon the occurrence of an  
Event of Default by Lessee, Lessor may, in addition to any other remedies  
provided herein, enter upon the Leased Property and take possession of any and  
all inventory, merchandise, goods, wares, equipment, fixtures, furniture,  
improvements and other personal property of Lessee and Prime situated in or  
about the Leased Property (excluding the Power Generation Facility, unless  
Lessee purchases the Power Generation Facility), without liability for trespass  
or conversion, and sell the same at public or private sale, with or without  
having such property at the sale, after giving Lessee and Prime reasonable  
notice of the time and place of any public sale of the time after which any  
private sale is to be made, at which sale the Lessor or its assigns may purchase  
unless otherwise prohibited by law. Unless otherwise provided by law, and  
without intending to exclude any other manner of giving Lessee and/or Prime  
reasonable notice, the requirement of reasonable notice shall be met, if such  
notice is given in the manner prescribed in this Lease at least seven (7) days  
before the time of sale. Any sale made pursuant to the provision of this  
paragraph shall be deemed to have been a public sale conducted in commercially  
reasonable manner if held in the above-described premises or where the property  
is located after the time, place and method of sale and a general description of  
the types of property to be sold have been advertised in a daily newspaper  
published in the county in which the property is located, for five (5)  
consecutive days before the date of the sale. The proceeds from any such  
disposition, less any and all expenses connected with the taking of possession,  
holding and selling of the property (including reasonable attorney's fees and  
legal expenses), shall be applied as a credit against the indebtedness secured  
by the security interest granted in this paragraph. Any surplus shall be paid to  
Lessee and/or Prime, as applicable, or as otherwise required by law; the Lessee  
and/or Prime shall pay any deficiencies forthwith. Upon request by Lessor,  
Lessee and Prime agree to execute (if required by law; provided, however, Lessor  
shall have the right to file a UCC-1 financing statement (and all amendments,  
modifications and extensions thereto) at any time as provided in the Security  
Agreements) and deliver to Lessor a financing statement in form sufficient to  
perfect the security interest of Lessor in the aforementioned property and  
proceeds thereof under the provision of the Uniform Commercial Code (or  
corresponding state statute or statutes) in force in the state in which the  
Leased Property is located, as well as any other state the laws of which Lessor  
may at any time consider to be applicable.  
  
 As used herein, the term "Primary Lien of Lessee's Primary Lender" means  
any first priority lien granted by Lessee or Prime in any of Lessee's or Prime's  
machinery, equipment (including medical equipment whether or not affixed to the  
Leased Property, but excluding the Power Generation Facility, unless Lessee  
purchases the Power  
  
  
 39  
  
  
  
Generation Facility), furniture, furnishings, tools, movable walls or  
partitions, computers, signage, trade fixtures, supplies, inventory, or any  
other tangible personal property placed on the Leased Property and used or  
useful in Lessee's business conducted at or on the Leased Property (the  
"Collateral"), which may be given in connection with Lessee's or Prime's lender  
(the "Primary Lender") providing financing for Lessee and Prime to purchase such  
items of Collateral or in connection with the refinancing of any such items of  
Collateral. In the event Lessee and/or Prime obtains financing from a Primary  
Lender or refinances such items of Collateral, Lessee and/or Prime shall use  
commercially reasonable efforts to obtain from its Primary Lender a consent to a  
secondary lien on such Collateral in favor of Lessor, in form and content  
reasonably acceptable to the Primary Lender and the Lessor. Lessee and Prime, as  
applicable, covenant and agree not to place or allow any other liens to be  
placed on the Collateral. Lessee and Prime, as applicable, covenant and agree  
that all indebtedness (except for the indebtedness owed to the Primary Lender)  
owed by Lessee and/or Prime under all agreements executed in connection with the  
Lessee's and/or Prime's financing of Lessee's Personal Property and Prime's  
Personal Property to be used in connection with the operation of the Facility  
shall be subordinate to all monetary obligations under this Lease and Lessee and  
Prime shall not to place or allow any other liens to be placed on the Lessee's  
Personal Property or Prime's Personal Property, respectively. At the request of  
Lessor from time to time, Lessee and/or Prime shall execute and shall obtain  
from all parties to such financing arrangements executed written confirmation of  
such subordination (in form and content as is acceptable to Lessor), which shall  
be delivered to Lessor within ten (10) days from Lessor's request.  
  
 ARTICLE XVII  
  
 LESSOR'S RIGHT TO CURE  
  
 If Lessee shall fail to make any payment, or to perform any act required to  
be made or performed under this Lease and to cure the same within the relevant  
time periods provided in Section 16.1, Lessor, without waiving or releasing any  
obligation or Event of Default, may (but shall be under no obligation to) at any  
time thereafter make such payment or perform such act for the account and at the  
expense of Lessee, and may, to the extent permitted by law, enter upon the  
Leased Property for such purpose and take all such action thereon as, in  
Lessor's opinion, may be necessary or appropriate therefor. No such entry shall  
be deemed an eviction of Lessee. All sums so paid by Lessor and all costs and  
expenses (including, without limitation, reasonable attorneys' fees and  
expenses, in each case, to the extent permitted by law) so incurred, together  
with a late charge thereon (to the extent permitted by law) at the Overdue Rate  
from the date on which such sums or expenses are paid or incurred by Lessor,  
shall be paid by Lessee to Lessor on demand. The obligations of Lessee and  
rights of Lessor contained in this Article shall survive the expiration or  
earlier termination of this Lease.  
  
 ARTICLE XVIII  
  
 PURCHASE OF THE LEASED PROPERTY  
  
 18.1 In the event Lessee purchases the Leased Property from Lessor pursuant  
to any of the terms of this Lease, including, without limitation Section 35.1,  
Lessor shall, upon receipt from Lessee of the applicable purchase price,  
together with full payment of any unpaid Rent due and payable with respect to  
any period ending on or before the date of the purchase, deliver to Lessee an  
appropriate special warranty deed, assignment agreement or other instrument of  
conveyance conveying the entire interest of Lessor in and to the Leased Property  
to Lessee in the condition as received from Lessee and/or Prime, free and clear  
of all encumbrances other than (a) those that Lessee has agreed hereunder to pay  
or discharge, (b) those mortgage liens, if any, which Lessee has agreed in  
writing to accept and to take title subject to, (c) any other Encumbrances  
permitted to be imposed on the Leased Property under the provisions of Article  
XXXVII which are assumable at no cost to Lessee or to which Lessee may take  
subject without cost to Lessee, and (d) any matters affecting the Leased  
Property on or as of the Commencement Date. The difference between the  
applicable purchase price and the total of the encumbrances assigned or taken  
subject to shall be paid in cash to Lessor, or as Lessor may direct, in federal  
or other immediately available funds except as otherwise mutually agreed by  
Lessor and Lessee. The closing of any such sale shall be contingent upon and  
subject to Lessee obtaining all required governmental consents and approvals for  
such transfer and if such sale  
  
  
 40  
  
  
  
shall fail to be consummated by reason of the inability of Lessee to obtain all  
such approvals and consents, any options to extend the Term of this Lease which  
otherwise would have expired during the period from the date when Lessee elected  
or became obligated to purchase the Leased Property until Lessee's inability to  
obtain the approvals and consents is confirmed shall be deemed to remain in  
effect for thirty (30) days after the end of such period. All expenses of such  
conveyance, including, without limitation, the cost of title examination or  
standard coverage title insurance, survey, attorneys' fees incurred by Lessor in  
connection with such conveyance, transfer taxes, prepayment penalties and any  
other fees with respect to any Facility Instrument, recording fees and similar  
charges shall be paid for by Lessee.  
  
 ARTICLE XIX  
  
 HOLDING OVER  
  
 If Lessee shall for any reason remain in possession of the Leased Property  
after the expiration of the Term or any earlier termination of the Term hereof,  
such possession shall be as a tenancy at will during which time Lessee shall pay  
as rental each month, one and one-half times the aggregate of (a) one-twelfth of  
the aggregate Base Rent and Percentage Rent payable with respect to the last  
complete Lease Year prior to the expiration of the Term; (b) all Additional  
Charges accruing during the month and (c) all other sums, if any, payable by  
Lessee pursuant to the provisions of this Lease with respect to the Leased  
Property. During such period of tenancy, Lessee shall be obligated to perform  
and observe all of the terms, covenants and conditions of this Lease, but shall  
have no rights hereunder other than the right, to the extent given by law to  
tenancies at will, to continue its occupancy and use of the Leased Property.  
Nothing contained herein shall constitute the consent, express or implied, of  
Lessor to the holding over of Lessee after the expiration or earlier termination  
of this Lease.  
  
 ARTICLE XX  
  
 INTENTIONALLY OMITTED  
  
 ARTICLE XXI  
  
 INTENTIONALLY OMITTED  
  
 ARTICLE XXII  
  
 RISK OF LOSS  
  
 During the Term of this Lease, the risk of loss or of decrease in the  
enjoyment and beneficial use of the Leased Property in consequence of the damage  
or destruction thereof by fire, the elements, casualties, thefts, riots, wars or  
otherwise, or in consequence of foreclosures, attachments, levies or executions  
(other than by Lessor and those claiming from, through or under Lessor) is  
assumed by Lessee and, Lessor shall in no event be answerable or accountable  
therefor nor shall any of the events mentioned in this Section entitle Lessee to  
any abatement of Rent except as specifically provided in this Lease.  
  
 ARTICLE XXIII  
  
 INDEMNIFICATION  
  
 NOTWITHSTANDING THE EXISTENCE OF ANY INSURANCE OR SELF INSURANCE PROVIDED  
FOR IN ARTICLE XIII, AND WITHOUT REGARD TO THE POLICY LIMITS OF ANY SUCH  
INSURANCE OR SELF INSURANCE, LESSEE WILL PROTECT, INDEMNIFY,  
  
  
 41  
  
  
  
SAVE HARMLESS AND DEFEND LESSOR FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS,  
CLAIMS, DAMAGES, PENALTIES, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING,  
WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), TO THE EXTENT  
PERMITTED BY LAW, IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LESSOR BY  
REASON OF: (A) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF PERCENTAGE  
TO PROPERTY OCCURRING ON OR ABOUT THE LEASED PROPERTY OR ADJOINING SIDEWALKS,  
INCLUDING WITHOUT LIMITATION ANY CLAIMS OF MALPRACTICE, (B) ANY USE, MISUSE, NO  
USE, CONDITION, MAINTENANCE OR REPAIR BY LESSEE OF THE LEASED PROPERTY, (C) ANY  
IMPOSITIONS (WHICH ARE THE OBLIGATIONS OF LESSEE TO PAY PURSUANT TO THE  
APPLICABLE PROVISIONS OF THIS LEASE), (D) ANY FAILURE ON THE PART OF LESSEE TO  
PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS LEASE, AND (E) THE  
NON-PERFORMANCE OF ANY OF THE TERMS AND PROVISIONS OF ANY AND ALL EXISTING AND  
FUTURE SUBLEASES OF THE LEASED PROPERTY TO BE PERFORMED BY THE LANDLORD (LESSEE)  
THEREUNDER. ANY AMOUNTS WHICH BECOME PAYABLE BY LESSEE UNDER THIS SECTION SHALL  
BE PAID WITHIN FIFTEEN (15) DAYS AFTER LIABILITY THEREFOR ON THE PART OF LESSOR  
IS DETERMINED BY LITIGATION OR OTHERWISE AND, IF NOT TIMELY PAID, SHALL BEAR A  
LATE CHARGE (TO THE EXTENT PERMITTED BY LAW) AT THE OVERDUE RATE FROM THE DATE  
OF SUCH DETERMINATION TO THE DATE OF PAYMENT. LESSEE, AT ITS EXPENSE, SHALL  
CONTEST, RESIST AND DEFEND ANY SUCH CLAIM, ACTION OR PROCEEDING ASSERTED OR  
INSTITUTED AGAINST LESSOR OR MAY COMPROMISE OR OTHERWISE DISPOSE OF THE SAME AS  
LESSEE SEES FIT. NOTHING HEREIN SHALL BE CONSTRUED AS INDEMNIFYING LESSOR  
AGAINST ITS OWN NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT. LESSEE'S  
LIABILITY FOR A BREACH OF THE PROVISIONS OF THIS ARTICLE XXIII SHALL SURVIVE ANY  
TERMINATION OF THIS LEASE.  
  
 ARTICLE XXIV  
  
 ASSIGNMENT, SUBLETTING AND SUBLEASE SUBORDINATION  
  
 24.1 ASSIGNMENT AND SUBLETTING. Lessee shall not assign this Lease or  
sublease any portion of the Leased Property without Lessor's prior written  
consent. Lessor shall not unreasonably withhold its consent to any subletting or  
assignment, provided that (a) in the case of a subletting, the sublease and the  
sublessee shall comply with the provisions of this Article XXIV, (b) in the case  
of an assignment, the assignee shall assume in writing and agree to keep and  
perform all of the terms of this Lease on the part of Lessee to be kept and  
performed and shall be and become jointly and severally liable with Lessee for  
the performance thereof, (c) an original counterpart of each such sublease and  
assignment and assumption, duly executed by Lessee and such sublessee or  
assignee, as the case may be, in form and substance satisfactory to Lessor,  
shall be delivered promptly to Lessor, and (d) in case of either an assignment  
or subletting, Lessee shall remain primarily liable, as principal rather than as  
surety, for the prompt payment of the Rent and for the performance and  
observance of all of the obligations, covenants and conditions to be performed  
by Lessee hereunder and under all of the other documents executed in connection  
herewith. Notwithstanding anything contained herein to the contrary, Lessor and  
Lessee acknowledge that there currently exists certain leases or subleases on  
the Leased Property as described on EXHIBIT D attached hereto (collectively the  
"Existing Leases"). Any modifications, amendments and restatements of the  
Existing Leases must be approved by Lessor in accordance with this Article XXIV.  
Notwithstanding anything contained herein to the contrary, any proposed assignee  
of Lessee and any proposed sublessee or subtenant must each have an equal or  
stronger credit rating than the Lessee on the Commencement Date. Lessor's  
failure or refusal to approve an assignment to an assignee or a subletting to a  
sublessee or subtenant without the required credit rating shall be reasonable.  
Within ten (10) business days following the Commencement Date, Lessor shall  
obtain from the sublessees under the Existing Leases estoppel certificates in  
form and substance acceptable to Lessor.  
  
 24.2 SUBLEASE LIMITATIONS. In addition to the sublease limitations as set  
forth in Section 24.1 above, anything contained in this Lease to the contrary  
notwithstanding, Lessee shall not sublet the Leased Property on any basis such  
that the rental to be paid by the sublessee or subtenant thereunder would be  
based, in whole or in part, on either (a) the income or profits derived by the  
business activities of the sublessee or subtenant, or (b) any other formula such  
that any portion of the sublease rental received by Lessor would fail to qualify  
as "rents from real property" within the meaning of Section 856(d) of the Code,  
or any similar or successor provision thereto. Provided also, Lessee shall not  
sublet any portion of the Leased Property for a term extending beyond the Fixed  
Term hereof without the express consent of Lessor. In addition, all subleases  
shall comply with the Healthcare Laws. Lessor and Lessee acknowledge and agree  
that all subleases entered into relating to the Leased Property, whether or not  
  
  
 42  
  
  
  
approved by Lessor, shall not, without the prior written consent of Lessor, be  
deemed to be a direct lease between Lessor and any sublessee or subtenant.  
Lessee agrees that all subleases submitted for Lessor approval as provided  
herein must include provisions to the effect that (a) such sublease is subject  
and subordinate to all of the terms and provisions of this Lease, to the rights  
of Lessor hereunder, and to all financing documents relating to any Lessor  
financing in connection with the Facility, (b) in the event this Lease shall  
terminate or be terminated before the expiration of the sublease, the sublessee  
or subtenant will, at Lessor's option, attorn to Lessor and waive any right the  
sublessee or subtenant may have to terminate the sublease or to surrender  
possession thereunder, as a result of the termination of this Lease, (c) at  
Lessor's option, the sublease may be terminated or left in place by Lessor in  
the event of a termination of this Lease, (d) the obligations and performance of  
the sublessee or subtenant must be guaranteed by guarantors acceptable to  
Lessor, (e) sublessee or subtenant shall from time to time upon request of  
Lessee or Lessor furnish within ten (10) days from request an estoppel  
certificate in form and content acceptable to Lessor or its lender relating to  
the sublease, (f) in the event the sublessee or subtenant receives a written  
notice from Lessor or Lessor's assignees, if any, stating that Lessee is in  
default under this Lease, the sublessee or subtenant shall thereafter be  
obligated to pay all rentals accruing under said sublease directly to the party  
giving such notice, or as such party may direct (all rentals received from the  
sublessee by Lessor or Lessor's assignees, if any, as the case may be, shall be  
credited against the amounts owing by Lessee under this Lease), (g) and that  
such sublease shall at all times be subject to the obligations and requirements  
as set forth in this Article XXIV, and (h) sublessee or subtenant shall provide  
to Lessor upon written request such officer's certificates and financial  
statements as Lessor may request from time to time.  
  
 24.3 SUBLEASE SUBORDINATION AND NON-DISTURBANCE. Within ten (10) days after  
request by Lessor, Lessee shall cause any subtenant or sublessee to execute and  
deliver to Lessor a subordination agreement relating to the sublease of such  
subtenant or sublessee, which subordination agreement shall be in such form and  
content as is acceptable to Lessor. At the request from time to time by any  
Facility Lender, within ten (10) days from the date of request, Lessee shall  
cause any subtenant or sublessee of the Leased Property to execute and deliver  
within such ten (10) day period, to such Facility Lender a written agreement in  
a form reasonably acceptable to such Facility Lender whereby such subtenant or  
sublessee subordinates the sublease and all of its rights and estate thereunder  
to each Facility Instrument and agrees with each such Facility Lender that such  
subtenant or sublessee will attorn to and recognize such Facility Lender or the  
purchaser at any foreclosure sale or any sale under a power of sale contained in  
any such Facility Instrument, as Lessor under this Lease for the balance of the  
Term then remaining, subject to all of the terms and provisions of the sublease.  
Lessee shall use its best efforts to cause the service company under the Energy  
Services Agreement to execute and deliver to Lessor a subordination and estoppel  
certificate or agreement (the "Energy Services Estoppel") relating to the Energy  
Services Agreement as soon as practicable but in no event later than thirty (30)  
days following the Commencement Date, which Energy Services Estoppel shall be in  
form and content acceptable to Lessor. Lessee agrees to reimburse Lessor,  
immediately upon written request, for all amounts disbursed by Lessor and its  
Affiliates pursuant to the Energy Services Agreement and the Energy Services  
Estoppel.  
  
 ARTICLE XXV  
  
 OFFICER'S CERTIFICATES; FINANCIAL STATEMENTS; NOTICES AND OTHER CERTIFICATES  
  
 (a) At any time and from time to time within twenty (20) days  
 following written request by Lessor, Lessee will furnish to Lessor an  
 Officer's Certificate certifying that this Lease is unmodified and in full  
 force and effect (or that this Lease is in full force and effect as  
 modified and setting forth the modifications) and the dates to which the  
 Rent has been paid. Any such Officer's Certificate furnished pursuant to  
 this Article may be relied upon by Lessor and any prospective purchaser of  
 the Leased Property.  
  
 (b) Lessee will furnish, or cause to be furnished, the following  
 statements to Lessor, which must be in such form and detail as Lessor may  
 from time to time, but not unreasonably, request:  
  
  
 43  
  
  
  
 (i) within ninety (90) days after the end of each year, audited  
 financial statements of Lessee, the Guarantors and, if Lessee owns any  
 assets or conducts any other operations other than for the Facility, the  
 Facility separately, prepared by a nationally recognized accounting firm or  
 an independent certified public accounting firm reasonably acceptable to  
 Lessor, which statements shall include a balance sheet and statement of  
 income and expenses and changes in cash flow all in accordance with  
 generally accepted accounting principles for the year then ended (it being  
 agreed that Lessor shall bear the cost of any premium over normal charges  
 that such accounting firm may charge in order to prepare such statements on  
 an expedited basis (so long as Lessee has ordered such statements in a  
 timely manner)), and  
  
 (ii) within forty-five (45) days after the end of each quarter,  
 current financial statements of Lessee, the Guarantors and, if Lessee owns  
 any assets or conducts any other operations other than for the Facility,  
 the Facility separately, certified to be true and correct by an officer of  
 Lessee, and  
  
 (iii) within thirty (30) days after the end of each month current  
 operating statements of the Facility, including, but not limited to  
 operating statistics, certified to be true and correct by an officer of the  
 Lessee, and  
  
 (iv) within ten (10) days of receipt, any and all notices  
 (regardless of form) from any and all licensing and/or certifying agencies  
 that any license or certification, including, without limitation, the  
 Medicare and/or Medicaid certification and/or managed care contract of the  
 Facility is being downgraded to a substandard category, revoked, or  
 suspended, or that action is pending or being considered to downgrade to a  
 substandard category, revoke, or suspend such Facility's license or  
 certification, and  
  
 (v) with reasonable promptness, such other information respecting  
 the financial condition and affairs of Lessee and the Guarantors as Lessor  
 may reasonably request from time to time.  
  
 (c) Upon Lessor's request, Lessee will furnish to Lessor a certificate  
 in form acceptable to Lessor certifying that no Event of Default as defined  
 herein or in any of the Other Leases, then exists and no event has occurred  
 (that has not been cured) and no condition currently exists that would, but  
 for the giving of any required notice or expiration of any applicable cure  
 period, constitute a default.  
  
 (d) Within two (2) business days of receipt, Lessee shall furnish to  
 Lessor copies of all notices and demands from any third party payor,  
 including, without limitation, Medicare and/or Medicaid, concerning  
 overpayment which will or may result in a repayment or a refund in excess  
 of One Million Dollars ($1,000,000). Lessee hereby agrees that in the event  
 of receipt of such notices or demands Lessor shall have the right, at  
 Lessor's option, to participate in the appeal of such notices and demands.  
  
 (e) Lessee shall furnish to Lessor on a monthly basis ongoing status  
 reports (in form and content acceptable to Lessor) of any governmental  
 investigations of the Lessee, the Guarantors, or any of their respective  
 Affiliates, or the Facility, conducted by the United States Attorney, State  
 Attorney General, the Office of the Inspector General of the Department of  
 Health and Human Services, or any other Governmental Entity.  
  
 (f) Lessee shall furnish to Lessor immediately upon receipt thereof  
 copies of all notices of adverse events or deficiencies as defined by  
 regulations or standards of the American Osteopathic Association or the  
 equivalent of the accrediting body relied upon by the Lessee in the  
 operation of the Facility or any part thereof.  
  
 (g) Lessee shall furnish to Lessor immediately upon receipt thereof  
 copies of all notices that the Lessee and/or the Desert Valley Tenants are  
 not in compliance with the Standards for Privacy of Individually  
 Identifiable Health Information and the Transaction and Code Set Standards  
 which were promulgated pursuant to the Health Insurance Portability and  
 Accountability Act of 1996 ("HIPAA").  
  
  
 44  
  
  
  
 (h) Lessor reserves the right to (A) require such other financial  
 information from Lessee, and (B) require the Lessee to provide such other  
 financial information from the Desert Valley Tenants, at such other times  
 as it shall deem reasonably necessary. All financial statements and  
 information must be in such form and detail as Lessor shall from time to  
 time, but not unreasonably, request.  
  
 Subject to the rights of Lessor as provided in Section 42.8 of this  
 Lease, Lessor and Lessee agree that all financial information disclosed  
 pursuant to this Article XXV shall be kept in strictest confidence and  
 shall not be disclosed to any person or entity.  
  
 ARTICLE XXVI  
  
 INSPECTION  
  
 Lessee shall permit Lessor and its authorized representatives to inspect  
the Leased Property and the Power Generation Facility during usual business  
hours subject to any security, health, safety or confidentiality requirements of  
Lessee, any governmental agency, any Insurance Requirements relating to the  
Leased Property, or imposed by law or applicable regulations.  
  
 ARTICLE XXVII  
  
 NO WAIVER  
  
 No failure by Lessor or Lessee to insist upon the strict performance of any  
term hereof or to exercise any right, power or remedy consequent upon a breach  
thereof, and no acceptance of full or partial payment of Rent during the  
continuance of any such breach, shall constitute a waiver of any such breach or  
any such term. To the extent permitted by law, no waiver of any breach shall  
affect or alter this Lease, which shall continue in full force and effect with  
respect to any other then existing or subsequent breach.  
  
 ARTICLE XXVIII  
  
 REMEDIES CUMULATIVE  
  
 To the extent permitted by law, each legal, equitable or contractual right,  
power and remedy of Lessor or Lessee now or hereafter provided either in this  
Lease or by statute or otherwise shall be cumulative and concurrent and shall be  
in addition to every other right, power and remedy and the exercise or beginning  
of the exercise by Lessor or Lessee of any one or more of such rights, powers  
and remedies shall not preclude the simultaneous or subsequent exercise by  
Lessor or Lessee of any or all of such other rights, powers and remedies.  
  
 ARTICLE XXIX  
  
 SURRENDER  
  
 No surrender to Lessor of this Lease or of the Leased Property or any part  
of any thereof, or of any interest therein, shall be valid or effective unless  
agreed to and accepted in writing by Lessor and no act by Lessor or any  
representative or agent of Lessor, other than such a written acceptance by  
Lessor, shall constitute an acceptance of any such surrender.  
  
  
 45  
  
  
  
 ARTICLE XXX  
  
 NO MERGER OF TITLE  
  
 There shall be no merger of this Lease or of the leasehold estate created  
hereby by reason of the fact that the same person, firm, corporation or other  
entity may acquire, own or hold, directly or indirectly, (a) this Lease or the  
leasehold estate created hereby or any interest in this Lease or such leasehold  
estate and (b) the fee estate in the Leased Property.  
  
 ARTICLE XXXI  
  
 TRANSFERS BY LESSOR  
  
 If Lessor or any successor owner of the Leased Property shall convey the  
Leased Property in accordance with the terms hereof, other than as security for  
a debt, and the grantee or transferee of the Leased Property shall expressly  
assume all obligations of Lessor hereunder arising or accruing from and after  
the date of such conveyance or transfer, and shall be reasonably capable of  
performing the obligations of Lessor hereunder, Lessor or such successor owner,  
as the case may be, shall thereupon be released from all future liabilities and  
obligations of the Lessor under this Lease arising or accruing from and after  
the date of such conveyance or other transfer as to the Leased Property and all  
such future liabilities and obligations shall thereupon be binding upon the new  
owner.  
  
 ARTICLE XXXII  
  
 QUIET ENJOYMENT  
  
 So long as Lessee shall pay all Rent as the same becomes due and shall  
fully comply with all of the terms of this Lease and fully perform its  
obligations hereunder and under the Other Leases, Lessee shall peaceably and  
quietly have, hold and enjoy the Leased Property for the Term hereof, free of  
any claim or other action by Lessor or anyone claiming by, through or under  
Lessor, but subject to all liens and encumbrances of record as of the date  
hereof or hereafter consented to by Lessee. No failure by Lessor to comply with  
the foregoing covenant shall give Lessee any right to cancel or terminate this  
Lease, or to fail to pay any other sum payable under this Lease, or to fail to  
perform any other obligation of Lessee hereunder. Notwithstanding the foregoing,  
Lessee shall have the right by separate and independent action to pursue any  
claim it may have against Lessor as a result of a breach by Lessor of the  
covenant of quiet enjoyment contained in this Article.  
  
 Notwithstanding anything contained herein to the contrary, Lessor and  
Lessee acknowledge that the Lessee has received and reviewed copies of the  
Existing Leases. Lessee agrees that it will not disturb the rights of the  
tenants under the Existing Leases.  
  
 Lessee agrees that it will not disturb the rights of the tenants under the  
Tenant Leases, if any, and will enforce all of the obligations of the tenants  
under such Tenant Leases and will pay and perform all of the obligations to be  
performed under the Tenant Leases as if Lessee is the lessor or landlord  
thereunder. In addition, Lessor and Lessee acknowledge that the Lessee has taken  
an assignment of certain contracts relating to the operation of the facility  
located on the Leased Property (the "Contracts"), which Contracts require that  
certain space in the Leased Property be provided as more particularly described  
in the Contracts. Lessee agrees to abide by the terms and perform the  
obligations under the Contracts. Lessee hereby agrees to indemnify and hold  
Lessor harmless from any liabilities and damages incurred by the Lessor as a  
result of the Lessee's default under the Tenant Leases and the Contracts.  
  
  
 46  
  
  
  
 ARTICLE XXXIII  
  
 NOTICES  
  
 All notices, demands, consents, approvals, requests and other  
communications under this Lease shall be in writing and shall be either (a)  
delivered in person, (b) sent by certified mail, return receipt requested, (c)  
delivered by a recognized over-night delivery service or (d) sent by facsimile  
transmission and addressed as follows:  
  
 (a) if to Lessee: Veritas Health Services, Inc.  
 0000 Xxxxxx Xxxxxx  
 Xxxxx, Xxxxxxxxxx 00000  
 Attention: Xxxxx X. Xxxxx  
 Fax: (000)000-0000  
  
 if to Prime: Prime Healthcare Services, LLC  
 00000 Xxxx Xxxxxx Xxxx  
 Xxxxxxxxxxx, Xxxxxxxxxx 00000  
 Attn: Xx. Xxx Xxxxx  
 Fax: (000) 000-0000  
  
 with a copies to: Desert Valley Hospital, Inc.  
 00000 Xxxx Xxxxxx Xxxx  
 Xxxxxxxxxxx, Xxxxxxxxxx 00000  
 Attention: Xxxxxxx Xxxxx, Esq.  
 Fax: (000) 000-0000  
  
 (b) if to Lessor: MPT of Chino, LLC  
 0000 Xxxxx Xxxxxx Xxxxx, Xxxxx 000  
 Xxxxxxxxxx, Xxxxxxx 00000  
 Attn: Xxxxxxx X. Xxxxxxx, Esq.  
 Fax: (000) 000-0000  
  
 with a copy to: Xxxxxx X. Xxxx, Esq.  
 Baker, Donelson, Bearman, Xxxxxxxx & Xxxxxxxxx  
 0000 XxxxxXxxxx Xxxxx  
 Xxxxxxxxxx, Xxxxxxx 00000  
 Fax: (000) 000-0000  
  
or to such other address as either party may hereafter designate, and shall be  
effective upon receipt. A notice, demand, consent, approval, request and other  
communication shall be deemed to be duly received if delivered in person or by a  
recognized delivery service, when left at the address of the recipient and if  
sent by facsimile, upon receipt by the sender of an acknowledgment or  
transmission report generated by the machine from which the facsimile was sent  
indicating that the facsimile was sent in its entirety to the recipient's  
facsimile number; provided that if a notice, demand, consent, approval, request  
or other communication is served by hand or is received by facsimile on a day  
which is not a Business Day, or after 5:00 p.m. on any Business Day at the  
addressee's location, such notice or communication shall be deemed to be duly  
received by the recipient at 9:00 a.m. on the first Business Day thereafter.  
  
  
 47  
  
  
  
 ARTICLE XXXIV  
  
 APPRAISAL  
  
 In the event that it becomes necessary to determine the Fair Market Value,  
Fair Market Value Purchase Price or Fair Market Added Value of the Leased  
Property for any purpose of this Lease, the party required or permitted to give  
notice of such required determination shall include in the notice the name of a  
person selected to act as an appraiser on its behalf. Lessor and Lessee agree  
that any appraisal of the Leased Property shall be without regard to the  
termination of this Lease or any purchase options contained herein and shall  
assume the Lease is in place for a term of fifteen (15) years, and based solely  
on the rents and other revenues generated and to be generated pursuant to this  
Lease without any regard to Lessee's operations. Within ten (10) days after  
receipt of any such notice, Lessor (or Lessee, as the case may be) shall by  
notice to Lessee (or Lessor, as the case may be) appoint a second person as an  
appraiser on its behalf. The appraisers thus appointed (each of whom must be a  
member of the American Institute of Real Estate Appraisers or any successor  
organization thereto) shall, within forty-five (45) days after the date of the  
notice appointing the first (1st) appraiser, proceed to appraise the Leased  
Property to determine the Fair Market Value, Fair Market Value Purchase Price or  
Fair Market Added Value thereof as of the relevant date (giving effect to the  
impact, if any, of inflation from the date of their decision to the relevant  
date); provided, however, that if only one (1) appraiser shall have been so  
appointed, or if two (2) appraisers shall have been so appointed but only one  
(1) such appraiser shall have made such determination within fifty (50) days  
after the making of Lessee's or Lessor's request, then the determination of such  
appraiser shall be final and binding upon the parties. If two (2) appraisers  
shall have been appointed and shall have made their determinations within the  
respective requisite periods set forth above and if the difference between the  
amounts so determined shall not exceed ten percent (10%) of the lesser of such  
amounts, then the Fair Market Value, Fair Market Value Purchase Price or Fair  
Market Added Value shall be an amount equal to fifty percent (50%) of the sum of  
the amounts so determined. If the difference between the amounts so determined  
shall exceed ten percent (10%) of the lesser of such amounts, then such two (2)  
appraisers shall have twenty (20) days to appoint a third (3rd) appraiser, but  
if such appraisers fail to do so, then either party may request the American  
Arbitration Association or any successor organization thereto to appoint an  
appraiser within twenty (20) days of such request, and both parties shall be  
bound by any appointment so made within such 20-day period. If no such appraiser  
shall have been appointed within such twenty (20) days or within ninety (90)  
days of the original request for a determination of Fair Market Value, Fair  
Market Value Purchase Price or Fair Market Added Value, whichever is earlier,  
either Lessor or Lessee may apply to any court having jurisdiction to have  
appointment made by such court. Any appraiser appointed, by the American  
Arbitrator Association or by such court shall be instructed to determine the  
Fair Market Value, Fair Market Value Purchase Price or Fair Market Added Value  
within thirty (30) days after appointment of such appraiser. The determination  
of the appraiser which differs most in terms of dollar amount from the  
determinations of the other two (2) appraisers shall be excluded, and fifty  
percent (50%) of the sum of the remaining two (2) determinations shall be final  
and binding upon Lessor and Lessee as the Fair Market Value, Fair Market Value  
Purchase Price or Fair Market Added Value for such interest. This provision for  
determination by appraisal shall be specifically enforceable to the extent such  
remedy is available under applicable law, and any determination hereunder shall  
be final and binding upon the parties except as otherwise provided by applicable  
law. Lessor and Lessee shall each pay the fees and expenses of the appraiser  
appointed by it and each shall pay one-half of the fees and expenses of the  
third appraiser and one-half of all other costs and expenses incurred in  
connection with each appraisal.  
  
 ARTICLE XXXV  
  
 PURCHASE RIGHTS  
  
 35.1 LESSEE'S OPTION TO PURCHASE. So long as Lessee is not in monetary or  
payment default of any kind, or no event has occurred which with the giving of  
notice or the passage of time or both would constitute such a default (except as  
otherwise expressly provided in Section 16.2) under the terms of this Lease, the  
Other Leases and the Tenant Leases, at any time from and after the third  
anniversary of the Commencement Date, Lessee shall have the option, to be  
exercised by ninety (90) days' prior written notice to the Lessor, to purchase  
the Leased Property  
  
  
 48  
  
  
  
(including the Parking Lot Interest) at a purchase price sufficient to cause  
Lessor to receive, on an unleveraged basis, a sum equal to (i) the Purchase  
Price of the Leased Property, and (ii) an amount sufficient to yield to Lessor  
an internal rate of return thereon that is equal to eleven percent (11%) per  
year, taking into account all payments of Base Rent received by Lessor prior to  
the closing date of such purchase (the "Option Price"). Unless expressly  
otherwise provided in this Section 35.1, in the event Lessee exercises such  
option to purchase the Leased Property, (i) the terms set forth in Article XVIII  
shall apply, (ii) Lessee shall continue paying Rent as required under this Lease  
until the purchase is closed, and (iii) the sale/purchase must be closed within  
ninety (90) days after the date of the written notice from Lessee to Lessor of  
Lessee's intent to purchase, unless a different closing date is agreed upon in  
writing by Lessor and Lessee.  
  
 35.2 LESSOR'S OPTION TO PURCHASE LESSEE'S AND PRIME'S PERSONAL PROPERTY.  
Effective on not less than ninety (90) days' prior written notice given at any  
time within one hundred eighty (180) days prior to the expiration of the Term of  
this Lease, but not later than ninety (90) days prior to such expiration, or  
such shorter notice as shall be appropriate if this Lease is terminated prior to  
its expiration date, Lessor shall have the option to purchase all (but not less  
than all) of Lessee's Personal Property and Prime's Personal Property, if any,  
at the expiration or termination of this Lease, for an amount equal to the net  
sound insurable value thereof (current replacement cost less accumulated  
depreciation on the books of Lessee pertaining thereto), subject to, and with  
appropriate price adjustments for, all equipment leases, conditional sale  
contracts, security interests and other encumbrances to which Lessee's Personal  
Property and Prime's Personal Property are subject. Notwithstanding anything  
contained in this Section 35.2 to the contrary, the options to purchase granted  
under this Section 35.2 do not pertain to any of the Licenses, it being  
understood and agreed that all matters relating to the transfer of the Licenses  
are addressed in Article XXXIX hereof.  
  
 35.3 LESSOR'S PUT OPTION. Subject to the terms and conditions of Section  
35.1 above and Section 35.4 below, if, at any time during the Term, Lessor  
receives notice that the Parking Lot Lease will not be renewed in favor of the  
Lessor beyond December 31, 2013, or that Lessor's rights with respect thereto  
are or will be terminated, or if Lessor receives notice that the Parking Lot  
Property cannot be used for parking for the Facility (each, a "Put Event"), then  
Lessor, subject to terms and provisions of Section 35.4 below, shall have the  
right and option (the "Put Option") to sell and convey to Lessee, and to cause  
Lessee to purchase and acquire from Lessor, all of the Leased Property  
(including the Parking Lot Interest which will be assigned to and assumed by  
Lessee at the time of closing) for the Option Price (as defined in Section  
35.1). In the event Lessor exercises the Put Option, the terms set forth in  
Article XVIII shall apply and the sale/purchase must be closed within ninety  
(90) days after the date of Lessor's written notice (the "Put Notice") to Lessee  
of the Put Event, unless a different closing date is agreed upon in writing by  
Lessor and Lessee.  
  
 35.4 LESSEE SUBSTITUTION FOR PARKING LOT PROPERTY. If in Lessor's  
discretion, it becomes necessary to exercise the Put Option, Lessee shall first  
have the right, within thirty (30) days following the Put Notice and subject to  
the other terms and provisions of this Section 35.4, to substitute one or more  
properties (collectively referred to as the "Substitute Property") to be used  
for parking for the Facility; it being understood and agreed that Lessor shall  
not be obligated to accept any Substitute Property which: (i) does not satisfy  
applicable zoning and use laws, ordinances, rules and regulations; or (ii) in  
Lessor's sole discretion would create an undue burden or inconvenience for  
parking at the Facility. If Lessor accepts the Substitute Property, the  
Substitute Property shall be conveyed to Lessor by general warranty deed, the  
terms of Article XVIII shall apply and the purchase and conveyance to Lessor  
must be closed within ninety (90) days after the Put Notice (or, if the  
Substitute Property is obtained by Lessee by a lease, such lease shall be  
assigned to Lessor by written instrument in form and substance reasonably  
acceptable to Lessor within ninety (90) days after the Put Notice) and Lessor  
and Lessee agree to enter into a written amendment to this Lease in form and  
substance acceptable to Lessor to make the Substitute Property subject to all of  
the terms and provisions of this Lease. In the event Lessor rejects the  
Substitute Property pursuant to this Section 35.4, Lessee shall purchase the  
Leased Property in accordance with the terms and provisions of Section 35.3  
above. Lessee shall obtain and deliver to Lessor all due diligence documentation  
required by Lessor in connection with or relating to the Substitute Property  
(including, without limitation, surveys, environmental reports, soil test  
reports and property condition reports) and Lessee shall pay all costs and  
expenses of Lessee and Lessor paid or incurred in connection  
  
  
 49  
  
  
  
with the substitution (or attempted substitution) of property under this Section  
35.4, including, without limitation, any increase in rents or expenses related  
to the Substitute Property.  
  
 ARTICLE XXXVI  
  
 INTENTIONALLY OMITTED  
  
 ARTICLE XXXVIII  
  
 FINANCING OF THE LEASED PROPERTY  
  
 37.1 FINANCING BY LESSOR. Lessor agrees that, if it grants or creates any  
mortgage, lien, encumbrance or other title retention agreement ("Encumbrances")  
upon the Leased Property, Lessor will use reasonable efforts to obtain an  
agreement from the holder of each such Encumbrance whereby such holder agrees  
(a) to give Lessee the same notice, if any, given to Lessor of any default or  
acceleration of any obligation underlying any such Encumbrance or any sale in  
foreclosure of such Encumbrance, (b) to permit Lessee, after twenty (20) days  
prior written notice, to cure any such default on Lessor's behalf within any  
applicable cure period, in which event Lessor agrees to reimburse Lessee for any  
and all reasonable out-of-pocket costs and expenses incurred to effect any such  
cure (including reasonable attorneys' fees), (c) to permit Lessee to appear with  
its representatives and to bid at any foreclosure sale with respect to any such  
Encumbrance, (d) that, if subordination by Lessee is requested by the holder of  
each such Encumbrance, to enter into an agreement with Lessee containing the  
provisions described in Article XXXVIII of this Lease, and (e) Lessor further  
agrees that no such Encumbrance shall in any way prohibit, derogate from, or  
interfere with Lessee's right and privilege to collaterally assign its leasehold  
and contract rights hereunder provided such collateral assignment and rights  
granted to the assignee thereunder shall be subordinate to the rights of the  
holder of an Encumbrance as provided in Article XXXVIII hereof.  
  
 ARTICLE XXXVIII  
  
 SUBORDINATION AND NON-DISTURBANCE  
  
 At the request from time to time by one or more Facility Lenders, within  
ten (10) days from the date of request, Lessee shall execute and deliver to such  
Facility Lender a written agreement in a form reasonably acceptable to such  
Facility Lender whereby Lessee subordinates this Lease and all of its rights and  
estate hereunder (except for Lessee's purchase options as expressly provided in  
this Lease) to each Facility Instrument that encumbers the Leased Property or  
any part thereof and agrees with each such Facility Lender that Lessee will  
attorn to and recognize such Facility Lender or the purchaser at any foreclosure  
sale or any sale under a power of sale contained in any such Facility  
Instrument, as the case may be, as Lessor under this Lease for the balance of  
the Term then remaining, subject to all of the terms and provisions of this  
Lease; provided, however, that each such Facility Lender simultaneously executes  
and delivers a written agreement consenting to this Lease and agreeing that,  
notwithstanding any such other mortgage, deed of trust, right, title or  
interest, or any default, expiration, termination, foreclosure, sale, entry or  
other act or omission under, pursuant to or affecting any of the foregoing,  
Lessee shall not be disturbed in peaceful enjoyment of the Leased Property nor  
shall this Lease be terminated or canceled at any time, except in the event  
Lessee is in default under this Lease.  
  
  
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 ARTICLE XXXIX  
  
 LICENSES  
  
 Lessee shall maintain at all times during the Term hereof and any holdover  
period all federal, state and local governmental licenses, approvals,  
qualifications, variances, certificates of need, franchises, accreditations,  
certificates, certifications, consents, permits and other authorizations and all  
contracts, including contracts with governmental or quasi-governmental entities  
which may be necessary or useful in the operation of the Facility (collectively,  
the "Licenses'), and shall qualify and comply with all applicable laws as they  
may from time to time exist, including those applicable to certification and  
participation as a provider under Medicare and Medicaid legislation and  
regulations.  
  
 Lessee shall not, without the prior written consent of Lessor, which may be  
granted or withheld in its sole discretion, effect or attempt to effect any  
change in the license category or status of the Facility or any part thereof.  
Under no circumstances shall Lessee have the right to transfer any of the  
Licenses to any location other than the Facility or to any other person or  
entity (except to Lessor as contemplated herein), whether before, during or  
after the Term hereof. Following the termination of this Lease, Lessee shall  
retain no rights whatsoever to the Licenses, and Lessee will not move or attempt  
to move the Licenses to any other location. To the extent that Lessee has or  
will extend any right, title, or claim of right whatsoever in and to the  
Licenses or the right to operate the Facility, all such right, title, or claim  
of right shall automatically revert to the Lessor or to Lessor's designee upon  
termination of this Lease, to the extent permitted by law. Upon any termination  
of this Lease or any breach or default by Lessee hereunder (which breach or  
default is not cured within any applicable grace period and which results in  
Lessor terminating this Lease), to the extent permitted by law, Lessor shall  
have the sole, complete, unilateral, absolute and unfettered right to cause all  
Licenses to be reissued in Lessor's name or in the name of Lessor's designee  
upon application therefor to the issuing authority, and to further have the  
right to have any and all provider and/or third party payor agreements as a  
provider in the Medicare and/or Medicaid and other federal healthcare programs  
issued in Lessor's name or in the name of Lessor's designee.  
  
 Upon the termination of this Lease and for reasonable periods of time  
immediately before and after such termination, Lessee shall use its best  
efforts, without additional consideration to Lessee, to facilitate an orderly  
transfer of the operation and occupancy of the Facility to Lessor or any new  
lessee or operator selected by Lessor, it being understood and agreed that such  
cooperation shall include, without limitation, (a) Lessee's transfer and  
assignment, if and to the extent permitted by law, to Lessor, Lessor's nominee  
or Lessor's new lessee or operator of any and all Licenses, (b) Lessee's use of  
best efforts to maintain, to the maximum extent allowed by applicable law, the  
effectiveness of any and all such Licenses until such time as any new Licenses  
necessary for any new Lessee or operator to operate the Facility have been  
issued, and (c) the taking of such other actions as are required by applicable  
law or as are reasonably requested by Lessor. Upon any termination of this Lease  
or any breach or default by Lessee hereunder (which breach or default is not  
cured within any applicable grace period and which results in Lessor terminating  
this Lease), to the extent permitted by law, Lessor shall have the sole,  
complete, unilateral, absolute and unfettered right to cause any and all  
Licenses to be reissued in Lessor's name or in the name of Lessor's designee  
upon application therefor to the appropriate authority, if required, and to  
further have the right, to the extent permitted by law, to have any and all  
Medicare and Medicaid and any other provider and/or third party payor agreements  
issued in Lessor's name or in the name of Lessor's designee. The provisions of  
this Section are in addition to the other provisions of this Lease.  
  
 It is an integral condition of this Lease that Lessee covenants and agrees  
not to sell, move, modify, cancel, surrender, transfer, assign, sell, relocate,  
pledge, secure, convey or in any other manner encumber any License or any  
governmental or regulatory approval, consent or authorization of any kind to  
operate the Facility. To the extent permitted by law, Lessee hereby grants to  
Lessor a landlord's lien on the Licenses.  
  
 Lessee shall immediately (within two (2) business days) notify Lessor in  
writing of any notice, action or other proceeding or inquiry of any governmental  
agency, bureau or other authority whether federal, state, or local, of any kind,  
nature or description, which could adversely affect any material License or  
Medicare and/or Medicaid-  
  
  
 51  
  
  
  
certification status, or accreditation status of the Facility, or the ability of  
Lessee to maintain its status as the licensed and accredited operator of the  
Facility or which alleges noncompliance with any law. Lessee shall immediately  
(within two (2) business days) upon Lessee's receipt, furnish Lessor with a copy  
of any and all such notices and Lessor shall have the right, but not the  
obligation, to attend and/or participate, in Lessor's sole and absolute  
discretion, in any such actions or proceedings. Lessee shall act diligently to  
correct any deficiency or deal effectively with any "adverse action" or other  
proceedings, inquiry or other governmental action, so as to maintain the  
licensure and Medicare and/or Medicaid-certification status stated herein in  
good standing at all times. Lessee shall not agree to any settlement or other  
action with respect to such proceedings or inquiry which affects the use of the  
Leased Property or any portion thereof as provided herein without the prior  
written consent of Lessor, which consent shall not be unreasonably withheld or  
delayed. Lessee agrees to sign, acknowledge, provide and deliver to Lessor (and  
if Lessee fails to do so upon request of Lessor, Lessee hereby irrevocably  
appoints Lessor, as agent of Lessee for such express purposes) any and all  
documents, instruments or other writings which are or may become necessary,  
proper and/or advisable to cause any and all hospital licenses required for the  
Primary Intended Use, Department of Human Services of the State of California  
("DHS") provider agreements, and/or state or federal Title XVIII and/or Title  
XIX provider agreements to be obtained (either in total or individually) in the  
name of Lessor or the name of Lessor's designee in the event that Lessor  
reasonably determines in good faith that (irrespective of any claim, dispute or  
other contention or challenge of Lessee) there is any breach, default or other  
lapse in any representation, warranty, covenant or other delegation of duty to  
Lessee (beyond any applicable grace or cure period) and the issuing government  
agency has threatened or asserted that such license or provider agreement will  
terminate or has lapsed or that Lessee's license or certification or  
accreditation status is in jeopardy. This power is coupled with the ownership  
interest of Lessor in and to the Facility and all incidental rights attendant to  
any and all of the foregoing rights.  
  
 ARTICLE XL  
  
 COMPLIANCE WITH HEALTHCARE LAWS  
  
 Lessee hereby covenants, warrants and represents to Lessor that as of the  
Commencement Date and throughout the Term: (i) Lessee shall be, and shall  
continue to be validly licensed, Medicare and/or Medicaid certified, and, if  
required, accredited to operate the Facility in accordance with the applicable  
rules and regulations of the State of California, federal governmental  
authorities and accrediting bodies, including, but not limited to, the United  
States Department of Health and Human Services, DHSS, DHS and CMS; and/or (ii)  
Lessee shall be, and shall continue to be, certified by and the holder of valid  
provider agreements with Medicare/Medicaid issued by DHHS, DHS and/or CMS and  
shall remain so certified and shall remain such a holder in connection with its  
operation of the Primary Intended Use on the Leased Property as a licensed and  
Medicare and/or Medicaid certified acute care hospital facility; (iii) Lessee  
shall be, and shall continue to be in substantial compliance with and shall  
remain in substantial compliance with all state and federal laws, rules,  
regulations and procedures with regard to the operation of the Facility,  
including, without limitation, substantial compliance under HIPAA; (iv) Lessee  
shall operate the Facility in a manner consistent with high quality acute care  
services and sound reimbursement principles under the Medicare and/or Medicaid  
programs and as required under state and federal law; and (v) Lessee shall not  
abandon, terminate, vacate or fail to renew any license, certification,  
accreditation, certificate, approval, permit, waiver, provider agreement or any  
other authorization which is required for the lawful and proper operation of the  
Facility or in any way commit any act which will or may cause any such license,  
certification, accreditation, certificate, approval, permit, waiver, provider  
agreement or other authorization to be revoked by any federal, state or local  
governmental authority or accrediting body having jurisdiction thereof.  
  
  
 52  
  
  
  
 ARTICLE XLI  
  
 LESSOR'S RIGHT TO SELL AND LESSEE'S RIGHT OF FIRST REFUSAL  
  
 41.1 LESSOR'S RIGHT TO SELL. Lessee understands that Lessor may sell its  
interest in the Leased Property in whole or in part at any time, subject to this  
Lease and the rights of Lessee as expressly provided in this Lease. The Lessee  
agrees that any purchaser may exercise any and all rights of Lessor as fully as  
if such had made the purchase of the Leased Property directly from the Lessee as  
set out in the Purchase Agreement. Lessor may divulge to any such purchaser all  
information, reports, financial statements, certificates and documents obtained  
by it from Lessee.  
  
 41.2 LESSEE'S RIGHT OF FIRST REFUSAL. If, during the Term, Lessor shall  
receive from Health Care Property Investors, Inc., a Maryland corporation (or  
any affiliate thereof) (the "Transferee") a written, bona fide offer to purchase  
the Leased Property, and Lessor is willing to accept such offer, so long as  
Lessee is not in monetary or payment default of any kind, or no event has  
occurred which with the giving of notice or the passage of time or both would  
constitute such a default under the terms of this Lease, the Other Leases and  
the Tenant Leases, Lessor must first present such offer to Lessee and allow  
Lessee the right to purchase the Leased Property upon the same price, terms and  
conditions as set forth in such offer except as otherwise expressly set forth  
herein; provided, however, in the event Transferee makes a bona fide offer to  
purchase any time after the second anniversary of the Commencement Date, in lieu  
of such right of first refusal, Lessee may exercise its option to purchase as  
provided in Section 35.1. Lessor shall make such offer by delivery of written  
notice to Lessee (the "Notice") which shall contain the amount to be paid for  
the Leased Property (including the amount and type of any consideration other  
than cash), the terms of payment, the date on which the Leased Property is  
proposed to be sold and all other terms and conditions of such transfer. For a  
period of ten (10) days following the date of the Notice (the "Option Period"),  
Lessee shall have the right, option and privilege (but not the obligation) to  
purchase the Leased Property. If Lessee determines to purchase the Leased  
Property, it shall deliver written notice of that fact to Lessor within the  
Option Period and such delivery shall create an agreement between Lessor and  
Lessee pursuant to which Lessor shall sell and Lessee shall purchase the Leased  
Property from Lessor (i) at the price and upon the terms and conditions stated  
in the Notice, and (ii) in accordance with the terms, conditions and provisions  
set forth in Article XVIII, and the sale/purchase must be closed on the earlier  
of (A) the closing date as stated in the Notice, or (B) ninety (90) days (the  
"Closing Period") from the date of the written notice from Lessee to Lessor of  
Lessee's intent to purchase. If Lessee does not exercise its option to purchase  
the Leased Property within the Option Period, or if Lessee does not close the  
purchase within the Closing Period, then Lessee's option and the right of first  
refusal shall be deemed not to have been exercised and Lessor may thereafter  
sell the Property to the Transferee or any other party on any terms as Lessor  
deems acceptable in its sole discretion, subject to this Lease and the rights of  
Lessee as expressly provided in this Lease.  
  
 ARTICLE XLII  
  
 MISCELLANEOUS  
  
 42.1 GENERAL. Anything contained in this Lease to the contrary  
notwithstanding, all claims against, and liabilities of, Lessee or Lessor  
arising prior to any date of expiration or termination of this Lease shall  
survive such expiration or termination. If any term or provision of this Lease  
or any application thereof shall be invalid or unenforceable, the remainder of  
this Lease and any other application of such term or provision shall not be  
affected thereby. If any late charges provided for in any provision of this  
Lease are based upon a rate in excess of the maximum rate permitted by  
applicable law, the parties agree that such charges shall be fixed at the  
maximum permissible rate. Neither this Lease nor any provision hereof may be  
changed, waived, discharged or terminated except by an instrument in writing and  
in recordable form signed by Lessor and Lessee. All the terms and provisions of  
this Lease shall be binding upon and inure to the benefit of the parties hereto  
and their respective successors and assigns. The headings in this Lease are for  
convenience of reference only and shall not limit or otherwise affect the  
meaning hereof.  
  
  
 53  
  
  
  
 42.2 LESSOR'S EXPENSES. In addition to other provisions herein, Lessee  
agrees and shall pay and/or reimburse Lessor's reasonable costs and expenses,  
including legal fees, incurred or resulting from and relating to (a) requests by  
Lessee for approval or consent under this Lease Agreement; (b) requests by  
Lessor for approval or consent under this Lease and all other documents executed  
between Lessor and Lessee in connection herewith, (c) any circumstances or  
developments which give rise to Lessor's right of consent or approval, (d)  
circumstances resulting from any action or inaction by Lessee contrary to the  
lease provisions, and (e) a request for changes including, but not limited to,  
(i) the permitted use of the Leased Property, (ii) alterations and improvements  
to the Leased Improvements, (iii) subletting or assignment, and (iv) any other  
changes in the terms, conditions or provisions of this Lease. Such expenses and  
fees shall be paid by Lessee within thirty (30) days of the submission of a  
statement for the same or such amount(s) shall become Additional Charges and  
subject to the Overdue Rate after the 30 days.  
  
 42.3 ASSETS PURCHASED PURSUANT TO PURCHASE OPTIONS. In connection with any  
purchase options granted to Lessee hereunder, in the event Lessee exercises such  
purchase options, the term "Leased Property" shall also include any "Assets" as  
such term is defined in the Purchase Agreement.  
  
 42.4 ENTIRE AGREEMENT; MODIFICATIONS. This Lease embodies and constitutes  
the entire understanding between the parties with respect to the transactions  
contemplated herein, and all prior to contemporaneous agreements,  
understandings, representations and statements (oral or written) are merged into  
this Lease. Neither this Lease nor any provision hereof may be modified or  
amended except by an instrument in writing signed by Lessor and Lessee.  
  
 42.5 LEASE GUARANTY. Lessee shall cause to be delivered to Lessor  
simultaneously herewith the fully executed Lease Guaranty.  
  
 42.6 FUTURE FINANCING. Lessee hereby agrees that if at any time during the  
Term Lessee purchases or contemplates the purchase of a facility, or property to  
be used, for the operation of a business for the Primary Intended Use, Lessee  
shall notify Lessor in writing ("Lessee's Notice") of such purchase or  
contemplated purchase, and Lessor shall have the first opportunity to provide  
financing for such purchase, expansion or renovation upon terms mutually  
agreeable to Lessor and Lessee. Lessor shall notify Lessee in writing on or  
before the expiration of twenty (20) business days after receipt of Lessee's  
Notice whether Lessor is interested in providing such financing. If Lessor  
agrees to provide the financing, the terms and conditions of such financing will  
be contingent upon, among other things, performance benchmarks acceptable to  
Lessor and the Lessor's satisfaction and approval of other due diligence  
requirements.  
  
 42.7 CHANGE IN OWNERSHIP/CONTROL. So long as this Lease remains in effect,  
the aggregate ownership of the current members or shareholders of Lessee and the  
Guarantors shall not be reduced below fifty-one (51%) percent.  
  
 42.8 LESSOR SECURITIES OFFERING AND FILINGS. Notwithstanding anything  
contained herein to the contrary, Lessee shall cooperate with Lessor or MPT in  
connection with any securities offerings and filings, or MPT's efforts to  
procure or maintain financing for or related to the Leased Property and  
Facility, and in connection therewith, the Lessee shall furnish MPT with such  
financial and other information as MPT shall request. MPT may disclose that  
Lessor has entered into this Lease with Lessee and Prime and may provide and  
disclose information regarding this Lease, the Lessee, the Guarantors, the  
Leased Property and the Facility, and such additional information which MPT may  
reasonably deem necessary, to its proposed investors in such public offering or  
private offering of securities, or any current or prospective lenders with  
respect to such financing. Upon reasonable advance notice, MPT and any lender  
providing financing for the Leased Property shall have the right, subject to the  
execution of a written confidentiality agreement on terms reasonably acceptable  
to MPT, such lender and Lessee, to access, examine and copy all agreements,  
records, documentation and information relating to the Lessee and the  
Guarantors, the Leased Property and Facility, and to discuss such affairs and  
information with the officers, employees and independent public accountants of  
the Lessee and Guarantors as often as may reasonably be desired.  
  
  
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 42.9 NON-RECOURSE AS TO LESSOR. Anything contained herein to the contrary  
notwithstanding, any claim based on or in respect of any liability of Lessor  
under this Lease shall be enforced only against the Leased Property and not  
against any other assets, properties or funds of (i) Lessor, (ii) any director,  
officer, general partner, shareholder, limited partner, beneficiary, employee or  
agent of Lessor or any general partner of Lessor or any of its general partners  
(or any legal representative, heir, estate, successor or assign of any thereof),  
(iii) any predecessor or successor partnership or corporation (or other entity)  
of Lessor or any of its general partners, shareholders, officers, directors,  
employees or agents, either directly or through Lessor or its general partners,  
shareholders, officers, directors, employees or agents or any predecessor or  
successor partnership or corporation (or other entity), or (iv) any person  
affiliated with any of the foregoing, or any director, officer, employee or  
agent of any thereof.  
  
 42.10 MANAGEMENT AGREEMENTS. Lessee shall not engage any Management Company  
or allow any tenants, subtenants or sublessees of the Facility to engage any  
Management Company, without Lessor's prior written consent, which consent shall  
not be unreasonably withheld; provided, however, Lessor's rights relating to any  
Management Company as set forth in Section 16.2 hereof shall be at Lessor's sole  
and absolute discretion. Lessee shall, if required by Lessor, assign all of  
Lessee's rights under the Management Agreements to Lessor and Lessor shall be  
entitled to assign same to Lessor's lender. At the request of the Lessor from  
time to time, Lessee shall execute and deliver (and require the tenants,  
subtenants or sublessees to execute and deliver, if applicable) an assignment  
and/or subordination agreement relating to the Management Agreements, which  
assignment and/or subordination agreement shall be in such form and content as  
reasonably acceptable to Lessor and/or any lender providing financing to Lessor,  
and shall be delivered to Lessor within ten (10) days after Lessor's request.  
Lessee hereby agrees that all payments and fees payable under the Management  
Agreements are and shall be subordinate to the payment of the obligations under  
this Lease and all other documents executed in connection with this Lease and  
the Purchase Agreement. Lessee agrees that all Management Agreements entered  
into in connection with the Leased Property shall expressly contain provisions  
acceptable to Lessor which (i) require an assignment of the Management  
Agreements to Lessor upon request by Lessor, (ii) confirm and warrant that all  
sums due and payable under the Management Agreements are subordinate to this  
Lease, (iii) xxxxx Xxxxxx the right to terminate the Management Agreement  
(individually or collectively, if more than one (1)) upon a default hereunder or  
upon a default under such applicable Management Agreement, (iv) require the  
Management Company to execute and deliver to Lessor within ten (10) days from  
Lessor's request an estoppel certificate, assignment and/or subordination  
agreement as required by Lessor and/or Lessor's lender providing financing to  
Lessor, in such form and content as is acceptable to Lessor and/or its lender,  
and (v) all fees due and payable under any Management Agreements, shall be  
subordinate to all monetary obligations under this Lease. At the request of the  
Lessor from time to time, Lessee shall execute and obtain from all parties  
subject to such Management Agreements executed written confirmation of such  
assignment or subordination, which shall be delivered to Lessor within ten (10)  
days from Lessor's request.  
  
 42.11 PRIME'S RIGHT TO EXERCISE PURCHASE OPTIONS. Lessor hereby consents to  
and agrees that Prime may exercise any of Lessee's rights and options to  
purchase as set forth herein pursuant to the same terms and conditions provided  
to Lessee under this Lease.  
  
 42.12 GOVERNING LAW. THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN  
ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS  
EXECUTED AND PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW  
PRINCIPLES.  
  
 42.13 JURISDICTION AND VENUE. LESSOR AND LESSEE CONSENT TO PERSONAL  
JURISDICTION IN THE STATE OF DELAWARE. LESSOR AND LESSEE AGREE THAT ANY ACTION  
OR PROCEEDING ARISING FROM OR RELATED TO THIS LEASE SHALL BE BROUGHT AND TRIED  
EXCLUSIVELY IN THE STATE OR FEDERAL COURTS OF THE STATE OF DELAWARE. EACH OF THE  
PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF  
VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. LESSEE  
EXPRESSLY ACKNOWLEDGES THAT DELAWARE IS A FAIR, JUST AND REASONABLE FORUM AND  
LESSEE AGREES NOT TO SEEK REMOVAL OR TRANSFER OF ANY ACTION FILED BY LESSOR IN  
SAID  
  
  
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COURTS. FURTHER, LESSOR AND LESSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY  
CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN ANY INCONVENIENT  
FORUM. SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY CERTIFIED MAIL  
ADDRESSED TO A PARTY AT THE ADDRESS DESIGNATED PURSUANT TO ARTICLE XXXIII HEREOF  
SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PARTY FOR ANY ACTION OR  
PROCEEDING BROUGHT IN ANY SUCH COURT. A FINAL JUDGMENT IN ANY SUCH ACTION OR  
PROCEEDING BROUGHT IN ANY SUCH COURT MAY BE ENFORCED IN ANY OTHER COURT TO WHOSE  
JURISDICTION ANY OF THE PARTIES IS OR MAY BE SUBJECT.  
  
 42.14 COUNTERPARTS. This Lease may be executed in any number of  
counterparts, each of which shall be an original, but all of which together  
shall constitute one and the same instrument.  
  
 ARTICLE XLIII  
  
 MEMORANDUM OF LEASE  
  
 Lessor and Lessee shall, promptly upon the request of either, enter into a  
short form memorandum of this Lease, in form suitable for recording under the  
laws of the state in which the Leased Property is located in which reference to  
this Lease, and all options contained herein, shall be made.  
  
 [SIGNATURES APPEAR ON FOLLOWING PAGES]  
  
  
 56  
  
  
  
 IN WITNESS WHEREOF, the parties have caused this Lease to be executed and  
their respective corporate seals to be hereunto affixed and attested by their  
respective officers thereunto duly authorized.  
  
 LESSOR:  
  
 MPT OF CHINO, LLC  
  
 By: MPT OPERATING PARTNERSHIP, L.P.  
 Its: Sole Member  
  
  
 By: /s/ Xxxxxx X. Xxxxx, Xx.  
 ------------------------------------  
 Name: Xxxxxx X. Xxxxx, Xx.  
 Its: President and Chief Executive  
 Officer  
  
  
 57  
  
  
  
 LESSEE:  
  
 VERITAS HEALTH SERVICES, INC.  
  
  
 By: /s/ Xxx Xxxxx  
 ------------------------------------  
 Name: Xxx Xxxxx  
 ----------------------------------  
 Its: CEO  
 -----------------------------------  
  
  
 PRIME:  
  
 PRIME HEALTHCARE SERVICES, LLC  
  
  
 By: /s/ Xxxx Xxxxx  
 ------------------------------------  
 Name: Xxxx Xxxxx  
 ----------------------------------  
 Its: Manager  
 -----------------------------------  
  
  
 58  
  
  
  
STATE OF ALABAMA  
JEFFERSON COUNTY  
  
 On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2005, before me, the undersigned  
authority, a Notary Public of said State, duly commissioned and sworn,  
personally appeared XXXXXX X. XXXXX, XX., personally known to me (or proved to  
me on the basis of satisfactory evidence) to be the person who executed the  
within instrument as President and Chief Executive Officer of MPT Operating  
Partnership, L.P., the Sole Member of MPT OF CHINO, LLC, a Delaware limited  
liability company, and acknowledged to me that such limited partnership, as the  
Sole Member of such limited liability company executed the same.  
  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day  
and year in this certificate first above written.  
  
  
 ----------------------------------------  
 NOTARY PUBLIC  
 Printed Name:  
 --------------------------  
 My Commission Expires:  
 -----------------  
[AFFIX NOTARY SEAL]  
  
  
 00  
  
  
  
XXXXX XX XXXXXXXXXX  
XXX XXXXXXXXXX XXXXXX  
  
 Xx this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2005, before me, the undersigned  
authority, a Notary Public of said State, duly commissioned and sworn,  
personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person who executed the within  
instrument as \_\_\_\_\_\_\_\_\_\_\_\_\_ of VERITAS HEALTH SERVICES, INC., a California  
corporation, and acknowledged to me that such corporation executed the same.  
  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day  
and year in this certificate first above written.  
  
  
 ----------------------------------------  
 NOTARY PUBLIC  
 Printed Name:  
 --------------------------  
 My Commission Expires:  
 -----------------  
[AFFIX NOTARY SEAL]  
  
  
 00  
  
  
  
XXXXX XX XXXXXXXXXX  
XXX XXXXXXXXXX XXXXXX  
  
 Xx this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2005, before me, the undersigned  
authority, a Notary Public of said State, duly commissioned and sworn,  
personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me (or proved to me on  
the basis of satisfactory evidence) to be the person who executed the within  
instrument as \_\_\_\_\_\_\_\_\_\_\_\_\_ of PRIME HEALTHCARE SERVICES, LLC, a California  
limited liability company, and acknowledged to me that such corporation executed  
the same.  
  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day  
and year in this certificate first above written.  
  
  
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 NOTARY PUBLIC  
 Printed Name:  
 --------------------------  
 My Commission Expires:  
 -----------------  
[AFFIX NOTARY SEAL]  
  
  
 61  
  
  
  
 SCHEDULE 8.6  
  
 Exceptions to Single Purpose Entity Requirements  
  
 None.  
  
  
 62  
  
  
  
 EXHIBIT A  
  
 Legal Description  
  
PARCEL A: Parcel 1 of Parcel Map No. 11169 in the City of Chino, County of San  
Bernardino, State of California, as per Map recorded in Book 131, Pages 29 and  
30 of Parcel Maps, in the Office of the County Recorder of said County, together  
with those portions of 00xx Xxxxxx, Xxxxxx Xxxxxx and Jefferson Avenue which  
would pass with a conveyance of said parcels by operation of law.  
  
PARCEL A-1: And the non-exclusive easements and rights for vehicular and  
pedestrian ingress and egress, parking of motor vehicles, and use of drainage  
facilities as set forth in the Declaration of Reciprocal Easements for Parking,  
Driveways and Drainage recorded August 7, 1992, as Instrument No. 92-328555, and  
May 27, 1993, as Instrument No. 93-227512, Official Records.  
  
  
 63  
  
  
  
 EXHIBIT B  
  
 Parking Lot Land Legal Description  
  
Being a portion of the Southerly 402 feet of the Northerly 562.71 feet of the  
Westerly 394.26 feet of the Easterly 515.26 feet of Xxx 00, Xxxxxxx 0, Xxxxxxxx  
0 Xxxxx, Xxxxx 8 West, San Bernardino Meridian, according to Map of Subdivision  
of Part of Rancho Santa Xxx Del Chino, in the City of Chino, County of San  
Bernardino, State of California, as per Map recorded in Book 6, Page 15 of Maps,  
in the Office of the County Recorder of said County, more particularly described  
as follows:  
  
Beginning at the most northwesterly corner of the land described above; thence N  
89 degrees 49' 32" E, 394.26 feet to the Northeasterly corner of said land;  
thence S 0 degrees 12' 12" E, 147.50 feet to a point in said Easterly line of  
said land; thence S 89 degrees 49' 32" W, 394.26 feet to the Westerly line of  
said land; thence N 0 degrees 12' 12" W, 147.50 feet to the point of beginning.  
  
  
 64  
  
  
  
 EXHIBIT C  
  
 Permitted Exceptions  
  
1. General and special taxes and assessments for the fiscal year 2005-2006, a  
lien not yet due or payable.  
  
2. Supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with  
Section 75 of the California Revenue and Taxation Code, a lien not yet due or  
payable.  
  
3. An easement for pipelines and incidental purposes in the document recorded in  
Book 373 of Deeds, Page 49.  
  
4. An easement for pipelines and incidental purposes in the document recorded in  
Book 373 of Deeds, Page 50.  
  
5. An easement for pipelines and incidental purposes in the document recorded in  
Book 754 of Deeds, Page 14.  
  
6. An easement for road and utilities and incidental purposes in the document  
recorded in Book 3526, Page 577 of Official Records.  
  
7. An easement for above ground or underground conduits or both and incidental  
purposes, recorded in Book 7976, Page 868 of Official Records.  
  
8. An easement for street and highway purposes and incidental purposes, recorded  
in Book 8142, Page 582 of Official Records.  
  
9. An easement for street and highway purposes and incidental purposes, recorded  
in Book 8142, Page 584 of Official Records.  
  
10. An easement for above ground or underground conduits or both and incidental  
purposes, recorded in Book 8479, Page 932 of Official Records.  
  
11. An easement for above ground or underground conduits or both and incidental  
purposes, recorded in Book 8560, Page 673 of Official Records.  
  
12. The fact that the land lies within the boundaries of the Central City  
Amended Redevelopment Project Area, as disclosed by the document recorded  
December 28, 1981, as Instrument No. 81-279411 of Official Records.  
  
  
 65  
  
  
  
13. An easement shown or dedicated on Parcel Map No. 11169 filed or recorded in  
Book 131, Pages 29 and 30 of Parcel Maps for vehicular ingress and egress, storm  
water drainage and incidental purposes.  
  
14. An easement for above ground or underground conduits or both and incidental  
purposes in the document recorded November 19, 1987, as Instrument No. 87-410734  
of Official Records.  
  
15. An easement for above ground or underground conduits or both and incidental  
purposes in the document recorded June 9, 1988, as Instrument No. 87-183995 of  
Official Records.  
  
16. The terms and provisions contained in an easement for parking, driveways and  
drainage purposes and incidental purposes in the document recorded August 7,  
1992, as Instrument No. 92-328555 of Official Records.  
  
17. An easement for street, road and utilities and incidental purposes in the  
document recorded August 31, 1992, as Instrument No. 92-360268 of Official  
Records.  
  
18. The terms and provisions contained in an easement for walkways, driveways  
and parking areas and incidental purposes in the document recorded May 27, 1993,  
as Instrument No. 93-227512 of Official Records.  
  
19. The terms and provisions contained in the document entitled "Declaration of  
Reciprocal Easements for Parking, Driveways, Drainage" recorded January 5, 2005  
as Instrument No. 2005-0008635 of Official Records.  
  
  
 66  
  
  
  
 EXHIBIT D  
  
 Existing Leases  
  
Medical Office Building Lease dated January 20, 2000, with Xxxxx Xxxx, M.D.  
  
Medical Office Building Lease dated December 10, 1999, with Mao-Jin Fu, M.D.  
  
Medical Office Building Lease dated January 20, 2000, with Xxxxxx X. Xxxxxxxxxx,  
M.D.  
  
Medical Office Building Lease dated January 20, 2000, with Xxxxxx X. Xxx, M.D.  
  
Ground Lease dated as of January 21, 1994, as amended by that certain Amendment  
to Ground Lease dated as of June 16, 1995, wherein DHS Management Services, Inc.  
is the current tenant for the MRI Facility.  
  
  
 67