# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# FORM 10-K

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<b>☑</b>	ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.
	For the fiscal year ended December 31, 2021. OR
	TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934. For the transition period from $\_\_\_\_\_\_\_\_\_\_\_\_\_\_$ .
	Commission file number: 001-33757



Delaware

(State or Other Jurisdiction of Incorporation or Organization)

33-0861263 (I.R.S. Employer Identification No.)

29222 Rancho Viejo Road, Suite 127 San Juan Capistrano, CA 92675 (Address of Principal Executive Offices and Zip Code) (949) 487-9500 (Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u> Common Stock, par value \$0.001 per share Trading Symbol(s)
ENSG

NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act:

		None						
Indicate by check mark:								
if the registrant is a well-known seaso	ned issuer, as defined in Rule 405 of	the Securities Act.			$\checkmark$	Yes		No
if the registrant is not required to file	reports pursuant to Section 13 or Sect	tion 15(d) of the Act.				Yes	$\checkmark$	No
whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.					$   \overline{\checkmark} $	Yes		No
whether the registrant has submitted electronically, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).					$   \overline{\mathbf{A}} $	Yes		No
whether the registrant is a large accelerated filer, an accelerated filer, non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "larg accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act:								
Large accelerated filer	Accelerated filer	Non-accelerated filer	Smaller reporting company	Emerging growth company				
If an emerging growth company, indicate if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provide pursuant to Section 13(a) of the Exchange Act.						Yes		No
Whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section-404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.				<b>V</b>	Yes		No	
whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).						Yes	$\overline{\checkmark}$	No

As of June 30, 2021, the aggregate market value of the Registrant's Common Stock held by non-affiliates was:

Common Stock \$2,800,287,000

The aggregate market value of Common Stock was computed by reference to the closing price as of the last business day of the registrant's most recently completed second fiscal quarter. Shares of Common Stock held by each executive officer, director and each person owning more than 10% of the outstanding Common Stock of the registrant have been excluded (in the amount of \$1,726,185,000) in that such persons may be deemed to be affiliates of the registrant. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 4, 2022, 55,086,434 shares of the registrant's common stock, \$0.001 par value, were outstanding.

# DOCUMENTS INCORPORATED BY REFERENCE:

Part III of this Form 10-K incorporates information by reference from the Registrant's definitive proxy statement for the Registrant's 2022 Annual Meeting of Stockholders to be filed within 120 days after the close of the fiscal year covered by this annual report.

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# CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements, which include, but are not limited to our expected future financial position, results of operations, cash flows, financing plans, business strategy, budgets, capital expenditures, competitive positions, growth opportunities and plans and objectives of management. Forward-looking statements can often be identified by words such as "anticipates," "expects," "intends," "plans," "predicts," "believes," "seeks," "estimates," "may," "will," "should," "would," "could," "potential," "continue," "ongoing," similar expressions, and variations or negatives of these words. These statements are subject to the safe harbors under Private Securities Litigation Reform Act of 1995. These statements are not guarantees of future performance and are subject to risks, uncertainties and assumptions that are difficult to predict. Additionally, many of these risks and uncertainties are currently, and in the future may continue to be, amplified by surges in the coronavirus (COVID-19) pandemic. Therefore, our actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors, some of which are listed under the section "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K. Accordingly, you should not rely upon forward-looking statements as predictions of future events. These forward-looking statements speak only as of the date of this Annual Report, and are based on our current expectations, estimates and projections about our industry and business, management's beliefs, and certain assumptions made by us, all of which are subject to change. We undertake no obligation to revise or update publicly any forward-looking statement for any reason, except as otherwise required by law.

As used in this Annual Report on Form 10-K, the words, "Ensign," "Company," "we," "our" and "us" refer to The Ensign Group, Inc. and its consolidated subsidiaries. All of our operating subsidiaries, the Service Center (defined below) and our wholly owned captive insurance subsidiary (the Captive Insurance) and captive real estate investment trust called Standard Bearer Healthcare REIT, Inc. (Standard Bearer REIT) are operated by separate, wholly-owned, independent subsidiaries that have their own management, employees and assets. References herein to the consolidated "Company" and "its" assets and activities, as well as the use of the terms "we," "our" and similar terms in this Annual Report on Form 10-K is not meant to imply, nor should it be construed as meaning, that The Ensign Group, Inc. has direct operating assets, employees or revenue, or that any of the subsidiaries are operated by The Ensign Group.

The Ensign Group, Inc. is a holding company with no direct operating assets, employees or revenues. In addition, certain of our wholly-owned independent subsidiaries, collectively referred to as the Service Center, provide centralized accounting, payroll, human resources, information technology, legal, risk management and other centralized services to the other operating subsidiaries through contractual relationships with such subsidiaries. The Captive Insurance provides some claims-made coverage to our operating subsidiaries for general and professional liability, as well as for certain workers' compensation insurance liabilities. Standard Bearer REIT owns and manages our real estate business.

The Service Center address is 29222 Rancho Viejo Rd Suite 127, San Juan Capistrano, CA 92675, and our telephone number is (949) 487-9500. Our corporate website is located at www.ensigngroup.net. The information contained in, or that can be accessed through, our website does not constitute a part of this Annual Report on Form 10-K.

Ensign<sup>38</sup> is our United States trademark. All other trademarks and trade names appearing in this annual report are the property of their respective owners.

# PART I.

#### Item 1. BUSINESS

Founded in 1999, The Ensign Group, Inc. ("Ensign") is a holding company with subsidiaries that provide skilled nursing, senior living and rehabilitative services, as well as other ancillary businesses (including mobile diagnostics and medical transportation), in 13 states. As part of our investment strategy, we also acquire, lease and own healthcare real estate to service the post-acute care continuum through acquisition and investment opportunities in healthcare properties. For the year ended December 31, 2021, we generated approximately 96.0% of our revenue from our skilled nursing facilities. The remainder of our revenue is primarily generated from our real estate properties, senior living services and other ancillary services.

#### **OPERATIONS**

#### Overview

As of December 31, 2021, we offered skilled nursing, senior living and rehabilitative care services through 245 skilled nursing and senior living facilities. Of the 245 facilities, we operated 176 facilities under long-term lease arrangements, and have options to purchase 11 of those 176 facilities. Our real estate portfolio includes 100 owned real estate properties, which includes 69 operations we operated and managed, the real estate associated with 32 senior living operations that were leased to and operated by The Pennant Group, Inc. (Pennant) as part of the Spin-Off (defined below), and the Service Center location. Of the 32 real estate operations leased to Pennant, two senior living operations are located on the same real estate properties as skilled nursing facilities that the Company owns and operates.

# Our Unique Approach and Structure

The name "Ensign" is synonymous with a "flag" or a "standard" and refers to our goal of setting the standard by which all others in our industry are measured. We believe that through our efforts and leadership, we can foster a new level of patient care and professional competence at our affiliated operating subsidiaries, and set a new industry standard for each patient we service. We view healthcare services primarily as a local business. We believe our success is largely driven by our proven ability to build strong relationships with key stakeholders in local healthcare communities, in part, by leveraging our reputation for providing superior care. Accordingly, our brand strategy and organizational structure promotes the empowerment of local leadership and staff to make their facility the "operation of choice" in their community. This is accomplished by allowing local leadership to discern and address the unique needs and priorities of healthcare professionals, customers and other stakeholders in the local community or market, and then work to create a superior service offering for, and reputation in, their particular community. This local empowerment is unique within the healthcare services industry.

We believe that our localized approach encourages prospective customers and referral sources to choose or recommend the operation. In addition, our leaders are enabled and motivated to share real-time operating data and otherwise benchmark clinical and operational performance against their peers in order to improve clinical care, enhance patient satisfaction and augment operational efficiencies, promoting the sharing of best practices.

We organize our operating subsidiaries into portfolio companies, which we believe has enabled us to maintain a local, field-driven organizational structure, attract additional qualified leadership talent, and to identify, acquire, and improve operations at a generally faster rate. Each of our portfolio companies has its own leader. These leaders, who are generally taken from the ranks of operational CEOs, serve as leadership resources within their own portfolio companies, and have the primary responsibility for recruiting qualified talent, finding potential acquisition targets, and identifying other internal and external growth opportunities. We believe this organizational structure has improved the quality of our recruiting and will continue to facilitate successful acquisitions.

Since we spun-off our owned real estate properties into a public real estate investment trust (REIT) in 2014, we have continued to expand our real estate portfolio. Following the real estate spin-off, we have acquired and currently own 100 real estate properties, including 32 real estate properties that are leased to a third party under triple-net long-term leases. We manage and operate the remaining real estate properties, including the Service Center location. We are committed to growing our real estate portfolio, which we believe will further enhance our earnings and maximize long-term shareholder value.

On October 1, 2019, we completed the separation of our home health and hospice operations and substantially all of our senior living operations into Pennant, a separate and publicly traded company, through a tax-free distribution of all of the outstanding shares of common stock of Pennant to Ensign stockholders on a pro rata basis (the Spin-Off). For further details on the Spin-Off, refer to Note 22, Spin-Off Of Subsidiaries, in Notes to the Consolidated Financial Statements of this Annual Report on Form 10-K.

To continue with our growth strategy on our real estate portfolio, on January 1, 2022, we formed Standard Bearer REIT. Standard Bearer REIT owns and manages our real estate business. We believe the REIT structure will allow us to better demonstrate the growing value of our owned real estate and provide us with an efficient vehicle for future acquisitions of properties that could be operated by Ensign affiliates or other third parties. We believe this structure will give us new pathways to growth with transactions we would not have considered in the past. Standard Bearer REIT intends to qualify and elect to be taxed as a REIT, for U.S. federal income tax purposes, commencing with its taxable year ending December 31, 2022. The real estate portfolio in Standard Bearer REIT consists of 93 of our 100 owned real estate properties.

#### SEGMENTS

We have two reportable segments: (1) skilled services, which includes the operation of skilled nursing facilities and rehabilitation therapy services; and (2) real estate, which is primarily comprised of properties owned by us and leased to skilled nursing and senior living operations, including our own operating subsidiaries and third-party operators and are subject to triple-net long-term leases

We also report an "all other" category that includes operating results from our senior living operations, mobile diagnostics, transportation and other ancillary operations. Our senior living, mobile diagnostics, transportation and other ancillary operations are neither significant individually, nor in aggregate and therefore do not constitute a reportable segment. Our Chief Executive Officer, who is our chief operating decision maker, or CODM, reviews financial information at the operating segment level. We have presented our segment results in this Annual Report on Form 10-K on a comparative basis to conform to the segment structure. For more information about our operating segments, as well as financial information, see Part II Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and Note 7, Business Segments of the Notes to the Consolidated Financial Statements.

#### Skilled Services

As of December 31, 2021, our skilled nursing companies provided skilled nursing care at 236 operations, with 25,032 operational beds, in Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin. We provide short and long-term nursing care services for patients with chronic conditions, prolonged illness, and the elderly. Our residents are often high-acuity patients that come to our facilities to recover from strokes, cardiovascular and respiratory conditions, neurological conditions, joint replacements, and other muscular or skeletal disorders. We use interdisciplinary teams of experienced medical professionals to provide services prescribed by physicians. These medical professionals provide individualized comprehensive nursing care to our short-stay and long-stay patients. Many of our skilled nursing facilities are equipped to provide specialty care, such as on-site dialysis, ventilator care, cardiac and pulmonary management. We also provide standard services such as room and board, special nutritional programs, social services, recreational activities, entertainment, and other services. We are dedicated to ensuring our residents are happy, comfortable, and motivated to achieve their health goals through the provision of quality care. We generate our skilled services revenue from Medicaid, Medicare, managed care, commercial insurance, and private pay. During the year ended December 31, 2021, approximately 46.7% and 28.8% of our skilled services revenue was derived from Medicaid and Medicare programs, respectively.

#### Real Estate

We engage in the acquisition and leasing of skilled nursing and senior living properties. As of December 31, 2021, our owned real estate portfolio was comprised of 100 real estate properties located in Arizona, California, Colorado, Idaho, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin. Of these properties, 69 are leased to affiliated skilled nursing facilities, wholly-owned and managed by the Company, 32 are leased to senior living operations, wholly-owned and managed by Pennant, and our Service Center location. The Service Center real estate is leased to our Service Center and numerous third-parties for commercial office space. Of the 32 real estate operations leased to Pennant, two senior living operations are located on the same real estate properties as skilled nursing facilities that the Company owns and operates.

We generate real estate revenue primarily by leasing post-acute care properties we have acquired, to healthcare operators, including our own operating subsidiaries, under triple-net lease arrangements whereby the tenant is solely responsible for the costs related to the property, including property taxes, insurance and maintenance and repair costs, subject to certain exceptions. During the year ended December 31, 2021, we generated rental revenue of \$65.5 million, of which \$49.6 million was derived from affiliated wholly-owned healthcare facilities. Intercompany rental revenue is eliminated in consolidation, along with corresponding intercompany rent expenses of related healthcare facilities.

#### Other

Revenue from our senior living operations, mobile diagnostics and other ancillary operations comprise approximately 3.4% of our annual revenue.

Senior Living. As of December 31, 2021, we had an aggregate of 2,237 senior living units across 31 operations, of which 22 are located on the same site location as our skilled nursing care operations. Our senior living communities located in Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Texas, and Utah, provide residential accommodations, activities, meals, housekeeping and assistance in the activities of daily living to seniors who are independent or who require some support, but not the level of nursing care provided in a skilled nursing operation. Our independent living units are non-licensed independent living apartments in which residents are independent and require no support with the activities of daily living.

Substantially all our senior living operations were contributed to Pennant as part of the Spin-Off. Thus, our remaining senior living operations are not significant to our consolidated operations, only comprising approximately 1.8% of our annual revenue. We generate revenue at these units primarily from private pay sources, with a small portion derived from Medicaid or other state-specific programs. Specifically, during the year ended December 31, 2021, approximately 86.6% of our senior living revenue was derived from private pay sources.

Ancillary. As of December 31, 2021, we held a majority membership interest of ancillary operations located in Arizona, California, Colorado, Idaho, Texas, Utah and Washington. We have invested in and are exploring new business lines that are complementary to our existing skilled services and senior living services. These new business lines consist of mobile ancillary services, including digital x-ray, ultrasound, electrocardiograms, sub-acute services and patient transportation to people in their homes or at long-term care facilities. To date these businesses were not meaningful contributors to our operating results.

# GROWTH

We have an established track record of successful acquisitions. Much of our historical growth can be attributed to implementing our expertise in acquiring real estate or leasing both underperforming and performing post-acute care operations and transforming them into market leaders in clinical quality, staff competency, employee loyalty and financial performance. With each acquisition, we apply our core operating expertise to improve these operations, both clinically and financially. In years where pricing has been high, we have focused on the integration and improvement of our existing operating subsidiaries while limiting our acquisitions to strategically situated properties.

From January 1, 2011 through December 31, 2021, we acquired 278 facilities, which added 16,484 operational skilled nursing beds and 5,409 senior living units to our operating subsidiaries, which included the operations that were contributed to Pennant. The following table summarizes cumulative skilled nursing and senior living operation, operational skilled nursing bed and senior living unit counts at the end of 2011 and each of the last five years to reflect our growth over a ten-year period and five-year period as a result of the acquisition of these facilities:

		December 31,				
	2011(2)	2017(1)(2)	2018(2)	2019(1)(2)	2020	2021
Cumulative number of skilled nursing and senior living operations	102	230	244	223	228	245
Cumulative number of operational skilled nursing beds	9,787	18,870	19,615	22,625	23,172	25,032
Cumulative number of senior living units	1,509	5,011	5,664	2,154	2,254	2,237

(1) Number of operational beds and number of operations for 2017 through 2019 include operational beds and operations that we no longer operated. The number of operations and operational beds do not include the closed facilities beginning in the year of their closures.

(2) Included in the 2011 and 2017-2018 number of operational units and number of operations are the operations and operations of senior living facilities that we transferred to Pennant as part of the 2019 Spin-Off transaction. In 2019, the number of operations and operational units do not include operations transferred to Pennant.

We have also invested in new business lines that are complementary to our existing businesses, such as ancillary services. We plan to continue to grow our revenue and earnings by:

- · continuing to grow our talent base and develop future leaders;
- · increasing the overall percentage or "mix" of higher-acuity patients;
- · focusing on organic growth and internal operating efficiencies;
- · continuing to acquire additional operations in existing and new markets;
- · expanding and renovating our existing operations, and

strategically investing in and integrating other post-acute care healthcare businesses.

New Market CEO and New Ventures Programs. In order to broaden our reach into new markets, and in an effort to provide existing leaders in our company with the entrepreneurial opportunity and challenge of entering a new market and starting a new business, we established our New Market CEO program in 2006. Supported by our Service Center and other resources, a New Market CEO evaluates a target market, develops a comprehensive business plan, and relocates to the target market to find talent and connect with other providers, regulators and the healthcare community in that market, with the goal of ultimately acquiring businesses and establishing an operating platform for future growth. In addition, this program includes other lines of business that are closely related to the skilled nursing industry. For example, we entered into the home health and hospice industry as part of this program, which was a part of the Spin-Off. The New Ventures program encourages our local leaders to evaluate service offerings with the goal of establishing an operating platform in new markets and new businesses. We believe that this program will not only continue to drive growth, but will also provide a valuable training ground for our next generation of leaders, who will have experienced the challenges of growing and operating a new business.

#### **EXPANSIONS**

During the year ended December 31, 2021, we expanded our operations and real estate portfolio through a combination of long-term leases and real estate purchases, with the addition of 17 stand-alone skilled nursing operations and five real estate purchases, four of which we previously operated and continue to operate. These new operations added a total of 1,832 operational skilled nursing beds operated by our affiliated operating subsidiaries. The aggregate purchase price for these acquisitions during the year ended December 31, 2021 was \$104.2 million.

Subsequent to December 31, 2021, we expanded our operations and real estate portfolio through a combination of two long-term leases and one real estate purchase, which added three standalone skilled nursing operations. These new operations added 379 operational skilled nursing beds to be operated by our affiliated operating subsidiaries. The aggregate purchase price for these acquisitions was approximately \$27.4 million and we did not assume any liabilities other than the tenant's post-assumption rights and obligations under the long-term leases. We entered into a separate operations transfer agreement with the prior operator as part of each transaction.

For further discussion of our acquisitions, see Note 8, Operation Expansions in the Notes to the Consolidated Financial Statements.

# QUALITY OF CARE MEASURES

Improvement in Acquired Facilities. In December 2008, the Centers for Medicare and Medicaid Services (CMS) introduced the Five-Star Quality Rating System to help consumers, their families and caregivers compare nursing homes more easily. The Five-Star Quality Rating System gives each skilled nursing operation a rating between one and five stars in various categories. We have a strong history of quickly improving the quality of care in the facilities we acquire. Thus, as new assessments are conducted post-acquisition, the star ratings see consistent improvement. At the time of acquisition, the majority of our facilities have 1 and 2-Star ratings.

Over the last few years, CMS had modified the Star rating requirements. These changes have been significant and made it more difficult to achieve a 4 or 5-Star rating. The 2019 changes resulted in nursing centers losing stars in their "Quality" and "Staffing" ratings, which negatively impacted the "Overall" ratings. Nevertheless, we continue to demonstrate strong performance in the Five-Star Quality Rating System. We believe compliance and quality outcomes are precursors to outstanding financial performance. Thus, we strive to aggressively increase quality and compliance in every facility we acquire, and to adjust our overall policies to adapt to CMS's changing criteria for the Five-Star Quality Rating System. As a result of the COVID-19 pandemic, CMS temporarily waived certain reporting timeframes and suspended certain inspections that impacted the underlying data used for calculating star-ratings. This resulted in CMS freezing affected quality measures by only using data collected for periods not impacted by the COVID-19 waivers. CMS continues to change the way the star-rating is calculated, both through ongoing regulation changes and CMS's enactment or expiration of waivers regarding reporting and calculation requirements for five-star ratings. Therefore, depending on the changes, we may experience periods of times where the number of facilities with 4 or 5-Star ratings decline. The star-rating calculations resumed on January 27, 2021.

The table below summarizes the number of our facilities with 4 and 5-Star ratings since 2017:

4 and 5-Star Quality Rated skilled nursing facilities

As of December 31,					
2017	2018	2019	2020	2021	
100	91	102	116	114	

Above-Average Ratings. Additionally, despite the fact that Ensign's acquisition of facilities with 1 or 2-Star ratings skews our company-wide ratings, our mean score on the Five-Star Quality Rating System is 67.4%, which exceeds the national average score of 63.0%.

#### INDUSTRY TRENDS

The post-acute care industry has evolved to meet the growing demand for post-acute and long-term healthcare services generated by an aging population, increasing life expectancies and the trend toward shifting patient care to lower cost settings. The industry has evolved in recent years, which we believe has led to a number of favorable improvements in the industry, as described below:

- Shift of Patient Care to Lower Cost Alternatives The growth of the senior population in the U.S. continues to increase healthcare costs, often faster than the available funding from government-sponsored healthcare programs. In response, federal and state governments have adopted cost-containment measures that encourage the treatment of patients in more cost-effective settings such as skilled nursing facilities, for which the staffing requirements and associated costs are often significantly lower than acute care hospitals and other post-acute care settings. As a result, skilled nursing facilities are generally serving a larger population of higher-acuity patients than in the past.
- Significant Acquisition and Consolidation Opportunities The skilled nursing industry is large and highly fragmented, characterized predominantly by numerous local and regional providers. Due to the increasing demands from hospitals and insurance carriers to implement sophisticated and expensive reporting systems, we believe this fragmentation provides us with significant acquisition and consolidation opportunities.
- Improving Supply and Demand Balance The number of skilled nursing facilities has declined modestly over the past several years. We expect that the supply and demand balance in the skilled nursing industry will continue to improve due to the shift of patient care to lower cost settings, an aging population and increasing life expectancies.
- Increased Demand Driven by Aging Populations As seniors account for an increasing percentage of the total U.S. population, we believe the demand for skilled nursing and senior living services will continue to increase. According to the census projection released by the U.S. Census Bureau in early 2020, between 2016 and 2030, the number of individuals over 65 years old is projected to be one of the fastest growing segments of the United States population, growing from 16% to 21%. The Bureau expects this segment to increase nearly 50% to 73 million, as compared to the total U.S. population which is projected to increase by 10% over that time period. Furthermore, the generation currently retiring has accumulated less savings than prior generations, creating demand for more affordable senior housing and skilled nursing services. As a high-quality provider in lower cost settings, we believe we are well-positioned to benefit from this trend.
- Transition to Value-Based Payment Models In response to rising healthcare spending in the United States, commercial, government and other payors are generally shifting away from feefor-service (FFS) payment models towards value-based models, including risk-based payment models that tie financial incentives to quality, efficiency and coordination of care. We believe
  that patient-centered outcomes driven reimbursement models will continue to grow in prominence. Many of our operations already receive value-based payments, and as valued-based
  payment systems continue to increase in prominence, it is our view that our strong clinical outcomes will be increasingly rewarded.
- Accountable Care Organizations and Reimbursement Reform A significant goal of U.S. federal health care reform is to transform the delivery of health care by changing reimbursement to reflect and support the quality and safety of care that providers deliver, increase efficiency, and reduce growth in spending. Reimbursement models that provide financial incentives to encourage efficiency, affordability, and high-quality care have been developed and implemented by government and commercial third-party payers. The most prolific of these models, the Accountable Care Organization (ACO) model, incentivizes groups of providers to share in savings that are achieved through the coordination of care and chronic disease management of an assigned patient population. Reimbursement methodology reform includes Value-Based Purchasing (VBP), in which a portion of provider reimbursement is redistributed based on relative performance, or improvement on designated economic, clinical quality, and patient satisfaction metrics. In addition, CMS has implemented Episode-based demonstration, voluntary and mandatory payment initiatives that bundle acute care and post-acute care reimbursement. These bundled payment models incentivize cross-continuum care coordination and include financial and performance accountability for episodes of care. These reimbursement methodologies and similar programs are likely to continue and expand, both in government and commercial health plans. Many of our operations already participate in ACOs. With our focus on quality care and strong clinical outcomes, Ensign is well-positioned to benefit from these outcome-based payment models.

We believe the post-acute industry has been and will continue to be impacted by several other trends. The use of long-term care insurance is increasing among seniors as a means of planning for the costs of skilled nursing services. In addition, as a result of increased mobility in society, reduction of average family size, and the increased number of two-wage earner couples, more residents are looking for alternatives outside the family for their care.

Our business is affected by seasonal fluctuations in occupancy and acuity which are most prominent when comparing the summer and winter months of the calendar year (including volatility arising from COVID-19).

# REVENUE SOURCES

We derive revenue primarily from the Medicaid and Medicare programs, managed care and commercial insurance payors, and private pay patients. The majority of our revenue is derived from skilled nursing, which is highly dependent upon the Medicaid and Medicare programs. Thus, any changes to payment models, reimbursements and budgets impact our revenue, some positively and some negatively. A detailed discussion of the regulatory framework impacting our business is found in the *Government Regulation* section below. See also, Item 1A., *Risk Factors*.

A brief overview of each of our revenue sources is as follows:

Medicaid. Medicaid is a program financed by state funds and matching federal funds administered by the states and their political subdivisions, and often go by state-specific names, such as Medi-Cal in California and the Arizona Healthcare Cost Containment System in Arizona. Medicaid programs generally provide health benefits for qualifying individuals, and may supplement Medicare benefits for the disabled and for persons aged 65 and older meeting financial eligibility requirements. Medicaid reimbursement formulas are established by each state with the approval of the federal government in accordance with federal guidelines. Seniors who enter skilled nursing facilities as private pay clients can become eligible for Medicaid once they have substantially depleted their assets. Medicaid is generally the largest source of funding for most skilled nursing facilities.

Medicaid reimbursement varies from state to state and is based upon a number of different systems, including cost-based, prospective payment; case mixed adjusted payments and negotiated rate systems. Rates are subject to a state's annual budgetary requirements and funding, statutory and regulatory changes and interpretations and rulings by individual state agencies and State Plan Amendments approved by CMS.

Medicaid typically covers patients that require standard room and board services and provides reimbursement rates that are generally lower than rates earned from other sources. We monitor our payor mix to measure the level received from each payor across each of our business units. We intend to continue to focus on enhancing our care offerings to accommodate more high acuity patients.

Approximately 77.8% of our Medicaid revenue comes from Arizona, California, Texas, and Utah. In California, the state enacted legislation expanding their Medicaid program, which in recent years has continued to see budget increases. It is projected that California General Fund spending on California Medicaid will increase by about \$1.6 billion in 2022-2023, to a total of \$31.1 billion. Further, the 2025-2026 estimated California General Fund expenditures on Medicaid will increase to a total of \$34.6 billion. In California, reimbursement rates for long term care facilities are calculated based upon the median rate of each peer group, which results in varying reimbursement rates among facilities. Texas is one of the remaining states that has not expanded Medicaid under the Affordable Care Act. Texas lawmakers have, in the past, underfunded Medicaid, requiring an infusion of state and federal funds. Funding for the 2022-2023 Texas biennium includes \$25.1 billion in general revenue funds, which is a decrease of \$400 million in general funds from the 2020-2021 biennium amounts. In Arizona, the state enacted legislation expanding their Medicaid program in 2013 but has seen decreased Medicaid enrollments in recent years. Their 2021 budget for the state Medicaid program included \$1.9 billion from the general fund, and the 2022 budget rose to over \$1.92 billion.

Medicare. Medicare is a federal program that provides healthcare benefits to individuals who are 65 years of age or older or are disabled. To achieve and maintain Medicare certification, a skilled nursing facility must sign a Medicare provider agreement and meet the CMS "Conditions of Participation" on an ongoing basis, as determined in periodic facility inspections or "surveys" conducted primarily by the state licensing agency in the state where the facility is located. Medicare pays for inpatient skilled nursing facility services under the prospective payment system (PPS). Under PPS, facilities are paid a predetermined amount per patient, per day, for certain services. Medicare Part A skilled nursing facility coverage is limited to 100 days per episode of illness for those beneficiaries who require daily care following discharge from an acute care hospital.

For Medicare beneficiaries who qualify for the Medicare Part A coverage, rehabilitation services are included in the per diem payment. For beneficiaries who do not meet the coverage criteria for Part A services, rehabilitation services may qualify for the services to be provided under Medicare Part B.

Managed Care and Private Insurance. Managed care patients consist of individuals who are insured by certain third-party entities, or who are Medicare beneficiaries who have assigned their Medicare benefits to a senior managed care organization plan. Another type of insurance, long-term care insurance, is also becoming more available to consumers, but is not expected to contribute significantly to industry revenues in the near term.

Private and Other Payors. Private and other payors consist primarily of individuals, family members or other third parties who directly pay for the services we provide.

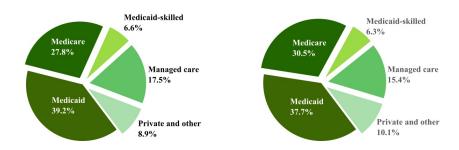
Rental Revenue. Real estate rental revenue is generated by leasing post-acute care properties that we acquired to healthcare operators under triple-net lease arrangements, whereby the tenant is solely responsible for the costs related to the property, including property taxes, insurance, and maintenance and repair costs, subject to certain exceptions.

The following charts sets forth our total service revenue by payor source generated by our consolidated operations and skilled services segment as a percentage of total revenue for the years ended December 31, 2021 and 2020, respectively:

# CONSOLIDATED SERVICE REVENUE BY PAYOR

December 31, 2021

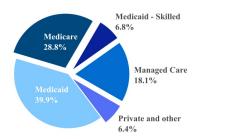
December 31, 2020

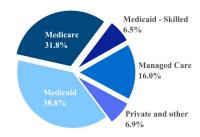


# SKILLED SERVICES REVENUE BY PAYOR

December 31, 2021

December 31, 2020





Payor Sources as a Percentage of Skilled Nursing Services. The following table sets forth our percentage of skilled nursing patient days by payor source:

	Year Ended December 31,		
	2021	2020	
Percentage of Skilled Nursing Days:			
Medicare	13.5 %	15.6 %	
Managed care	13.0	11.2	
Other skilled	5.2	4.9	
Skilled mix	31.7	31.7	
Private and other payors	10.2	10.9	
Medicaid	58.1	57.4	
Total skilled nursing	100.0 %	100.0 %	

# REIMBURSEMENT FOR SPECIFIC SERVICES

Reimbursement for Skilled Nursing Services. Skilled nursing facility revenue is primarily derived from Medicaid, Medicare, managed care and private payors. Our skilled nursing operations provide Medicaid-covered services to eligible individuals consisting of nursing care, room and board and social services. In addition, states may, at their option, cover other services such as physical, occupational and speech therapies.

Historically, adjustments to reimbursement under Medicare and Medicaid have had a significant effect on our revenue and results of operations. Recently enacted, pending and proposed legislation and administrative rulemaking at the federal and state levels could have similar effects on our business. Efforts to impose reduced reimbursement rates, greater discounts and more stringent cost controls by government and other payors are expected to continue for the foreseeable future and could adversely affect our business, financial condition and results of operations. Additionally, any delay or default by the federal or state governments in making Medicare and/or Medicaid reimbursement payments could materially and adversely affect our business, financial condition and results of operations.

Reimbursement for Rehabilitation Therapy Services. Rehabilitation therapy revenue is primarily received from private pay, managed care and Medicare for services provided at skilled nursing operations and senior living operations. The payments are based on negotiated patient per diem rates or a negotiated fee schedule based on the type of service rendered.

Reimbursement for Senior Living. Senior living facility revenue is primarily derived from private pay patients at rates we established, with only a small portion of such revenue derived from state-specific programs such as Medicaid.

Reimbursement for Other Ancillary Services. Other ancillary revenue, such as mobile diagnostics and medical transportation, is primarily derived from Medicare Part B, Medicaid, managed care and private payors at rates we establish based upon the services we provide and market conditions in the area of operation.

# RENTAL REVENUE

Rental revenue from third party rental property tenants. Owned properties are leased pursuant to non-cancelable operating leases, generally with an initial term of 10 to 15 years. All of the post-acute care healthcare properties leased to third parties contain renewal options. The leases provide for fixed minimum base rent during the initial and renewal periods. The majority of our leases contain provisions for specified annual increases over the rents of the prior year and those increases are generally computed on a calculation based on the Consumer Price Index.

Each lease is a triple net lease which requires the lessee to pay all taxes, insurance, maintenance and repairs, capital and non-capital expenditures and other costs necessary in the operations of the facilities. In addition, our leases with third-parties are typically structured as master leases. The master leases consist of multiple leases, each with its own pool of properties, that have varying maturities and diversity in property geography.

If a lessee makes payments for taxes and insurance directly to a third-party on our behalf, we are required to exclude these payments from variable payments and from revenue recognition in our consolidated statements of income. Otherwise, tenant reimbursements paid to us for taxes and insurance are classified as additional rental revenue recognized by us on a gross basis.

Rental revenue from Ensign-affiliated tenants. Rental revenue from Ensign-affiliated operations is based on mutually agreed-upon base rents that are subject to change from time to time. Intercompany revenue is eliminated in consolidation, along with the corresponding intercompany rent expenses of the related healthcare facilities.

# COMPETITION

The post-acute care industry is highly competitive, and we expect that the industry will become increasingly competitive in the future. The industry is highly fragmented and characterized by numerous local and regional providers, in addition to large national providers that have achieved geographic diversity and economies of scale. Our operating subsidiaries also compete with inpatient rehabilitation facilities and long-term acute care hospitals. Increasingly, we are competing with home health and community-based providers who have developed programs designed to provide services to seniors outside a facility-based setting, potentially decreasing the time they need the higher level of care provided in a skilled nursing facility. Competitiveness may vary significantly from location to location, depending upon factors such as the number of competing facilities, availability of services, expertise of staff, and the physical appearance and amenities of each location. We believe that the primary competitive factors in the post-acute care industry are:

- ability to attract and to retain qualified management and caregivers;
- · reputation and achievements of quality healthcare outcomes;
- · attractiveness and location of facilities:
- · the expertise and commitment of the management team and employees; and
- · community value, including amenities and ancillary services.

We seek to compete effectively in each market by establishing a reputation within the local community as the "operation of choice." This means that the operation leaders are generally free to discern and address the unique needs and priorities of healthcare professionals, customers and other stakeholders in the local community or market, and then create a superior service offering and reputation for that particular community or market that is calculated to encourage prospective customers and referral sources to choose or recommend the operation.

Increased competition could limit our ability to attract and retain patients, maintain or increase rates or to expand our business. Some of our competitors have greater financial and other resources than we have, may have greater brand recognition and may be more established in their respective communities than we are. Competing companies may also offer newer facilities or different programs or services than we offer, and may therefore attract individuals who are currently patients of our facilities,

potential patients of our facilities, or who are otherwise receiving our healthcare services. Other competitors may have lower expenses or other competitive advantages than us and, therefore, provide services at lower prices than we offer.

Our other services, such as senior living facilities and other ancillary services, also compete with local, regional, and national companies. The primary competitive factors in these businesses are similar to those for our skilled nursing facilities and include reputation, cost of services, quality of clinical services, responsiveness to patient/resident needs, location and the ability to provide support in other areas such as third-party reimbursement, information management and patient recordkeeping.

Our real estate segment competes for real property investments with healthcare providers, healthcare-related REITs, real estate partnerships, banks, private equity funds, venture capital funds and other investors. Some of these competitors are significantly larger and have greater financial resources and lower costs of capital than us. Our ability to compete successfully for real property investments will be determined by numerous factors, including our ability to identify suitable acquisition targets, our ability to negotiate acceptable terms for any such acquisition and our cost of capital in the event an acquisition requires debt or equity financing.

# OUR COMPETITIVE STRENGTHS

We believe that we are well positioned to benefit from the ongoing changes within our industry. We believe that our ability to acquire, integrate and improve our facilities is a direct result of the following key competitive strengths:

Experienced and Dedicated Employees. We believe that our operating subsidiaries' employees are among the best in their respective industries. We believe each of our operating subsidiaries is led by an experienced and caring leadership team, including dedicated front-line care staff, who participates daily in the clinical and operational improvement of their individual operations. We have been successful in attracting, training, incentivizing and retaining a core group of outstanding business and clinical leaders to spearhead our operating subsidiaries. These leaders operate as separate local businesses. With broad local control, these talented leaders and their care staffs are able to quickly meet the needs of their patients and residents, employees and local communities, without waiting for permission to act or being bound to a "one-size-fits-all" corporate strategy.

Unique Incentive Programs. We believe that our employee compensation programs are unique within the industry. Employee stock options and performance bonuses, based on achieving target clinical quality, cultural, compliance and financial benchmarks, represent a significant component of total compensation for our operational leaders. We believe that these compensation programs assist us in encouraging our leaders and key employees to act with a shared ownership mentality. Furthermore, our leaders are motivated to help local operations within a defined "cluster" and "market," which is a group of geographically proximate operations that share clinical best practices, real-time financial data and other resources and information.

Staff and Leadership Development. We have a company-wide commitment to ongoing education, training and professional development. Accordingly, our operational leaders participate in regular training. Most participate in training sessions at Ensign University, our in-house educational system. Other training opportunities are generally offered via on-demand training tools, including podcasts. In addition, we offer weekly cultural and interactive educational topics including leadership development, our values, updates on Medicaid and Medicare billing requirements, updates on new regulations or legislation, infection control, COVID-19 clinical and regulations, emerging healthcare service alternatives and other relevant clinical, business and industry specific coursework. Additionally, we encourage and provide ongoing education classes for our clinical staff to maintain licensing and increase the breadth of their knowledge and expertise. We believe that our commitment to, and substantial investment in, ongoing education will further strengthen the quality of our operational leaders and staff, and the quality of the care they provide to our patients and residents.

Innovative Service Center Approach. We do not maintain a corporate headquarters; rather, we operate a Service Center to support the efforts of each operation. Our Service Center is a dedicated service organization that acts as a resource and provides centralized information technology, human resources, accounting, payroll, legal, risk management, educational and other back office support services, so that local leaders can focus on delivering top-quality care and efficient business operations. Our Service Center approach allows individual operations to function with the strength, synergies and economies of scale found in larger organizations, but without what we believe are the disadvantages of a top-down management structure or corporate hierarchy. We believe our Service Center approach is unique within the industry, and allows us to preserve the "one-operation-at-a-time" focus and culture that has contributed to our success.

Proven Track Record of Successful Acquisitions. We have established a disciplined acquisition strategy that is focused on selectively acquiring operations within our target markets. Our acquisition strategy is driven by our operations team.

Prospective leaders are included in the decision-making process and compensated as these acquired operations reach pre-established clinical quality and financial benchmarks, helping to ensure that we only undertake acquisitions that key leaders believe can become clinically sound and contribute to our financial performance.

As of December 31, 2021, we have expanded to 245 facilities with an aggregate of 25,032 operational skilled nursing beds and 2,237 senior living units, through both long-term leases and purchases. We believe our experience in acquiring these operations and our demonstrated success in significantly improving their operations enables us to consider a broad range of acquisition targets. In addition, we believe we have developed expertise in transitioning newly acquired operations to our unique organizational culture and systems, which enables us to acquire operations with limited disruption to patients, residents and operating staff, while significantly improving quality of care. We have also constructed new facilities to target demand, which exists for high-end healthcare facilities when we determine that market conditions justify the cost of new construction in some of our markets.

Successful Real Estate Investment Strategy. We maintain a portfolio of long-term healthcare facilities of high-quality assets diversified by geographic location and operated by a diverse group of established healthcare providers. We are focused on selectively acquiring real estate properties based on our industry experience and opportunistic strategy, which we believe provides us with greater investment and purchasing opportunities. Due to our credit strength, we have the ability to acquire large portfolios of real estate properties; a portion of which can be managed and operated by our Ensign affiliated established healthcare leaders and a portion of which can be leased to third parties.

As of December 31, 2021, our real estate portfolio consists of 100 owned facilities, which include properties leased to and operated by third parties and properties we managed and operated. We believe our real estate investment strategy has allowed us to accumulate a portfolio that aids our healthcare operators in improving performance and generating additional returns through leases with third parties.

Reputation for Quality Care. We believe that we have achieved a reputation for high-quality and cost-effective care and services to our patients and residents within the communities we serve. We believe that our achievement of quality outcomes enhances our reputation for quality, that when coupled with the integrated services that we offer, allows us to attract patients that require more intensive and medically complex care and generally result in higher reimbursement rates than lower acuity patients.

Community Focused Approach. We view our services primarily as a local, community-based business. Our local leadership-centered management culture enables each operation's nursing support staff and leaders to meet the unique needs of their patients and local communities. We believe that our commitment to this "one-operation-at-a-time" philosophy helps to ensure that each operation, its patients, their family members and the community will receive the individualized attention they need. By serving our patients, their families, the community and our fellow healthcare professionals, we strive to make each individual business the operation of choice in its local community.

We further believe that when choosing a healthcare provider, consumers usually choose a person or people they know and trust, rather than a corporation or business. Therefore, rather than pursuing a traditional organization-wide branding strategy, we actively seek to develop the operations brand at the local level, serving and marketing one-on-one to caregivers, our patients, their families, the community and our fellow healthcare professionals in the local market.

Investment in Information Technology. We utilize information technology that enables our operational leaders to access, and to share with their peers, both clinical and financial performance data in real time. Armed with relevant and current information, our operation leaders and their management teams are able to share best practices and the latest information, adjust to challenges and opportunities on a timely basis, improve quality of care, mitigate risk and improve both clinical outcomes and financial performance. We have also invested in specialized healthcare technology systems to assist our nursing and support staff. We have installed software and touch-screen interface systems in each operation to enable our clinical staff to more efficiently monitor and deliver patient care and record patient information. We believe these systems have improved the quality of our medical and billing records, while improving the productivity of our staff.

# OUR GROWTH STRATEGY

We believe that the following strategies are primarily responsible for our growth to date, and will continue to drive the growth of our business:

Grow Talent Base and Develop Future Leaders. Our primary growth strategy is to expand our talent base and develop future leaders. A key component of our organizational culture is our belief that strong local leadership is a primary key to the success of each operation. While we believe that significant acquisition opportunities exist, we have generally followed a disciplined approach to growth that permits us to acquire an operation only when we believe, among other things, that we will have qualified leadership for that operation. To develop these leaders, we have a rigorous "CEO-in-Training Program" that attracts proven business leaders from various industries and backgrounds, and provides them the knowledge and hands-on training they need to successfully lead one of our operating subsidiaries. We generally have between 25 and 30 prospective administrators progressing through the various stages of this training program, which is generally much more rigorous, hands-on and intensive than the minimum 1,000 hours of training mandated by the licensing requirements of most states where we do business. Once administrators are licensed and assigned to an operation, they continue to learn and develop in our operational Chief Executive Officer Program (CEO Program), which facilitates the continued development of these talented business leaders into outstanding operational chief executive officers, through regular peer review, our Ensign University and on-the-job training.

In addition, our Chief Operating Officer Program (COO Program) recruits and trains highly qualified Directors of Nursing to lead the clinical programs in our operations. Working together with their operational CEO and/or administrator, other key operational leaders and front-line staff, these experienced nurses manage delivery of care and other clinical personnel and programs to optimize both clinical outcomes and employee and patient satisfaction.

Increase Mix of High Acuity Patients. Many skilled nursing facilities are serving an increasingly larger population of patients who require a high level of skilled nursing and rehabilitative care, whom we refer to as high acuity patients, as a result of government and other payors seeking lower-cost alternatives to traditional acute-care hospitals. We generally receive higher reimbursement rates for providing care for these medically complex patients. In addition, many of these patients require therapy and other rehabilitative services, which we are able to provide as part of our integrated service offerings. Where higher complex services are medically necessary and prescribed by a patient's physician or other appropriate healthcare professional, we generally receive additional revenue in connection with the provision of those services. By making these integrated services available to such patients, and maintaining established clinical standards in the delivery of those services, we are able to increase our overall revenues. We believe that we can continue to attract high acuity patients to our operations by maintaining and enhancing our reputation for quality care and continuing our community focused approach.

Focus on Organic Growth and Internal Operating Efficiencies. We plan to continue to grow organically by focusing on increasing patient occupancy within our existing operations. Although some of the facilities we have acquired were in good physical and operating condition, the majority have been clinically and financially troubled, with some facilities having had occupancy rates as low as 30% at the time of acquisition. Additionally, we believe that incremental operating margins on the last 20% of our beds/units are significantly higher than on the first 80%, offering opportunities to improve financial performance within our existing facilities. Our overall occupancy is impacted significantly by the number of facilities acquired and the operational occupancy on the acquisition date. Therefore, consolidated occupancy will vary significantly based on these factors. Our average occupancy rates for our skilled nursing facilities was 72.8% and 73.5% for the years ended December 31, 2021 and 2020, respectively. Our average occupancy rates in 2021 and 2020 have been negatively impacted by surges in COVID-19 caused by COVID-19 variants.

We also believe we can generate organic growth by improving operating efficiencies and the quality of care at the patient level. By focusing on staff development, clinical systems and the efficient delivery of quality patient care, we believe we are able to deliver higher quality care at lower costs than many of our competitors.

Historically, we have achieved incremental occupancy and revenue growth by creating or expanding clinical service offerings in existing operations. For example, by expanding clinical programs to provide outpatient therapy services in many markets, we are able to increase revenue while spreading the fixed costs of maintaining these programs over a larger patient base. Outpatient therapy has also proven to be an effective marketing tool, raising the visibility of our facilities in their local communities and enhancing the reputation of our facilities with short-stay rehabilitation patients.

Add New Facilities and Expand Existing Facilities. One of our growth strategies includes the acquisition of new and existing facilities from third parties and the expansion and upgrade of current facilities. In the near term, we plan to take advantage of the fragmented skilled nursing industry by acquiring operations within select geographic markets and may consider the construction of new facilities. In addition, we have targeted facilities that we believed were performing and operations that were underperforming, where we believed we could improve service delivery, occupancy rates and cash flow. With experienced leaders in place at the community level and demonstrated success in significantly improving operating conditions at acquired facilities, we believe that we are well positioned for continued growth. While the integration of

underperforming facilities generally has a negative short-term effect on overall operating margins, these facilities are typically accretive to earnings within 12 to 18 months following their acquisition. For the 232 facilities that we acquired from 2001 through 2021, the aggregate EBITDAR as a percentage of revenue improved from 11.8% during the first full three months of operations to 15.7% during the thirteenth through fifteenth months of operation and to 18.8% during the 45th quarter of operation.

Real Estate Portfolio Growth. An important part of our business strategy is to continue to expand and diversify our real estate portfolio through accretive acquisition and investment opportunities in healthcare properties. Our execution of this strategy hinges on our ability to successfully identify, secure and consummate beneficial transactions. We have a proven track record of acquiring properties that we have determined are investment opportunities and develop these into thriving properties that are well-suited for operational purposes. We then use these properties for our skilled nursing or assisted living operations or we lease the properties to other long-term care facility operators. We expect that our newly formed REIT structure will allow us to expand our real estate footprint while bringing the best operational practices to our own and other operators in the industry.

#### HUMAN CAPITAL

At December 31, 2021, we had approximately 25,900 full-time equivalent employees who were employed by our Service Center and our operating subsidiaries. For the year ended December 31, 2021, approximately 60.0% of our total expenses were payroll related. Periodically, market forces, which vary by region, require that we increase wages in excess of general inflation or in excess of increases in reimbursement rates we receive. We believe that we staff appropriately, focusing primarily on the acuity level and day-to-day needs of our patients and residents. In most of the states where we operate, our skilled nursing facilities are subject to state mandated minimum staffing ratios, so our ability to reduce costs by decreasing staff, notwithstanding decreases in acuity or need, is limited and subject to government audits and penalties in some states. We seek to manage our labor costs by improving staff retention, improving operating efficiencies, maintaining competitive wage rates and benefits and reducing reliance on overtime compensation and temporary nursing agency services. Our Chief Human Capital Officer reports to our Board of Directors and oversees the following human capital initiatives:

Our Culture. The operation of our skilled nursing and senior living facilities requires a large number of highly skilled healthcare professionals and support staff. Our employees are at the heart of our Company and we are committed to their health, professional development and workplace satisfaction. Our core values, which focuses on developing our employees, fostering an ownership mentality and allowing for intelligent risk taking, guide us in our decision making and inspire us to be better people, both professionally and personally.

Compensation and Benefits. The healthcare industry as a whole has been experiencing shortages of qualified professional clinical staff. We believe that our ability to attract and retain qualified professional clinical staff stems from our ability to offer attractive wage and benefits packages, a high level of employee training, an empowered culture that provides incentives for individual efforts and a quality work environment.

Diversity and Inclusion. We value diversity in our recruiting, hiring and career development practices. Our commitment is to provide equal opportunity and fair treatment to all individuals based on merit and without discriminations.

Training and Development. We provide training and development to all employees. We have many training programs at all levels such as our CEO in Training, Director of Nursing in Training, Preceptors, Young Gun Program, weekly culture trainings, boot camps and annual meetings, where we focus on both career and professional development.

Social Sustainability. We continuously working toward bridging the gap between what the healthcare system currently provides and the basic needs of individuals. We aim to have an enduring impact on the communities in which we live and work. Elevate Charities is a non-profit organization that is dedicated to elevating the condition and quality of life for members of the senior healthcare community - employees, caregivers, family members, patients and residents. Elevate Charities has three unique funds: Heritage Fund, Heritage Scholarship Fund and the Emergency Fund.

The Heritage Fund and the Heritage Scholarship Fund engage in a mission to enhance the quality of life for seniors in our communities through caring service, fulfilling essential needs and providing education to caregivers. The Heritage Fund helps the caregiver identify specific and practical ways to meet the needs of those under their care. This can help provide a better life, improved experience and greater satisfaction for our aging population. The financial support provided by the Heritage Fund benefits seniors directly. In addition, the Heritage Scholarship Fund helps qualified clinical professionals who may not be able to afford to advance in the field of long-term care. Through grants and scholarships, the fund helps these qualified professionals gain the education needed to advance in the field of senior-focused healthcare. Since 2019, we awarded 97 scholarships to employees in our workforce.

Lastly, the Emergency Fund is a way of passing the hat to help our co-workers whose lives are affected by tragedy. This program is funded for Company team members by the Company team members. All Company team members can contribute to the fund either through a one-time donation or by recurring payroll deduction. In 2021, over 19,800, or 76% of our employees employed by our operating subsidiaries contributed to the Emergency Fund. In 2021, we distributed approximately \$2.0 million in grants to 1,819 members of our Ensign-affiliated family. To date, the Emergency Fund has distributed over 8,400 grants totaling almost \$10.0 million to members of our Ensign-affiliated family in their time of need.

COVID-19. Our employees nationwide have been on the front lines in the battle against COVID-19. When it would have been easier to simply hunker down and wait for the challenges to pass, the heroes in our operations continued to provide selfless service to all their patients, including COVID patients. To recognize these front-line workers, our company, along with each individual operating subsidiary, provided financial awards to our employees for their tirelessly daily efforts to provide outstanding care to each resident they serve. We are beyond grateful for their enormous efforts and will continue to recognize the sacrifices of these employees as we navigate through the pandemic. Additionally, to date, we granted \$0.7 million from the Emergency Fund for our employees in need as a result of COVID-19.

For additional information on human capital matters, please see our most recent proxy statement or sustainability report, each of which is available on our website at www.ensigngroup.net. For additional information on Elevate Charities, please visit www.elevatecharities.org.

#### GOVERNMENT REGULATION

#### General

Healthcare is an area of extensive and frequent regulatory change. Changes in the law or new interpretations of existing laws may have a significant impact on revenue, costs and business operations. Our independent, operating subsidiaries that provide healthcare services are subject to federal, state and local laws relating to, among other things, licensure, quality and adequacy of care, physical plant requirements, life safety, personnel and operating policies. In addition, these same subsidiaries are subject to federal and state laws that govern billing and reimbursement, relationships with vendors and business relationships with physicians, and workplace protection for healthcare staff. Such laws include the Anti-Kickback Statue, the federal False Claims Act (FCA), the Stark Law, the Health Care Emergency Temporary Standard, and state corporate practice of medicine statutes.

Governmental and other authorities periodically inspect the skilled nursing facilities, senior living facilities and outpatient rehabilitation agencies of our independent operating subsidiaries to verify continued compliance with applicable regulations and standards. The operations must pass these inspections to remain licensed under state laws and to comply with Medicare and Medicaid provider agreements. The operations can only participate in these third-party payment programs if inspections by regulatory authorities reveal that the operations are in substantial compliance with applicable requirements. In the ordinary course of business, federal or state regulatory authorities may issue notices to the operations alleging deficiencies in certain regulatory practices. These statements of deficiency may require corrective action to regain and maintain compliance. In some cases, federal or state regulators may impose other remedies including imposition of civil monetary penalties, temporary payment bans, loss of certification as a provider in the Medicare or Medicaid program, or revocation of a state operating license.

We believe that the regulatory environment surrounding the healthcare industry subjects providers to intense scrutiny. In the ordinary course of business, providers are subject to inquiries, investigations and audits by federal and state agencies related to compliance with participation and payment rules under government payment programs. These inquiries may originate from the United States Department of Health and Human Services (HHS) Office of the Inspector General (OIG), state Medicaid agencies, state Attorney Generals, local and state ombudsman offices and CMS Recovery Audit Contractors, among other agencies. In response to the inquiries, investigations and audits, the federal and state governments continue to impose citations for regulatory deficiencies and other regulatory penalties, including demands for refund of overpayments, expanded civil monetary penalties that extend over long periods of time and date back to incidents prior to surveyor visits, Medicare and Medicaid payment bans and terminations from the Medicare and Medicaid programs. We vigorously contest each such regulatory outcome when appropriate; however, there are significant legal and other expenses involved that consume our financial and personnel resources. Expansion of enforcement activity could adversely affect our business, financial condition or the results of operations.

# Coronavirus

In an effort to promote efficient care delivery and to decrease the spread of COVID-19, federal, state and local regulators have implemented new regulations and waived (in some cases, temporarily) certain existing regulations, including those set forth below.

Temporary suspension of certain patient coverage criteria and documentation and care requirements - The Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act) and a series of temporary waivers and guidance issued by CMS suspended various Medicare patient coverage criteria to ensure patients continue to have adequate access to care, notwithstanding the burdens placed on healthcare providers as related to the COVID-19 pandemic. Many of these regulatory waivers were issued pursuant to Section 1135 of the Social Security Act, which authorizes the HHS Secretary to temporarily waive or modify Medicare and Medicaid requirements for affected health care providers and facilities following the declaration of a public health emergency (Section 1135 Waivers). HHS also waived requirements specific to skilled nursing facilities pursuant to its authority under Section 1812(f) of the Social Security Act (Section 1812(f) Waiver, and together with the Section 1135 Waivers, the Emergency Waivers). While many of the Emergency Waivers are expected to last throughout the duration of the COVID-19 public health emergency, CMS ended several Emergency Waivers effective May 10, 2021. Due to the prevalence of waves of COVID-19 variants in 2021 and continuing into 2022, it is unclear when the remaining Emergency Waivers will expire, or whether previously expired Emergency Waivers will be reinstated. On January 14, 2022, the COVID-19 Public Health Emergency (PHE) was extended until at least April 16, 2022.

Examples of requirements that were waived due to the COVID-19 emergency declaration include the following: (1) approving temporary expansion sites to ensure that local hospitals and health systems have the capacity to handle a potential surge of COVID-19 patients (e.g. CMS Hospital Without Walls); (2) removing barriers to practice for physicians, nurses, and other clinicians from the community or from other states to allow healthcare systems to provide clinical and workforce support where needed; (3) increasing access to telehealth and corresponding reimbursement through Medicare to ensure patients have access to healthcare while remaining safe at home; (4) expanding in-place COVID-19 testing to allow for more testing at home or in community based settings; and (5) temporarily waiving certain documentation, reporting and audit requirements to allow provision of care (e.g., Patients Over Paperwork). Many states have also waived regulations to ease regulatory burdens on the healthcare industries. It remains uncertain when federal and state regulators will resume enforcement of those regulations, which remain waived or are otherwise not being enforced during the public health emergency. We believe these regulatory actions could contribute to changes in skilled mix, which may have been different without the existence of the waivers.

Pursuant to the Emergency Waivers, CMS also authorized temporary waivers on medical review requirements, effective March 1, 2020, for the duration of the public health emergency. In addition, CMS is re-prioritizing scheduled program audits and contract-level Risk Adjustment Data Validation audits for MA organizations, Part D sponsors, Medicare-Medicaid Plans, and Programs of All-Inclusive Care for the Elderly organizations. Re-prioritizing these audit activities allows providers, CMS and organizations to focus on patient care.

In July 2020, CMS updated its COVID-19 Provider Burden Relief Frequently Asked Questions (FAQ) related to claim audit waivers for multiple services. On March 30, 2020, CMS suspended most Medicare FFS medical reviews because of the COVID-19 pandemic. This included pre-payment medical reviews conducted by Medicare Administrative Contractors (MACs) under the Targeted Probe and Educate program and post-payment reviews conducted by the MACs, Supplemental Medical Review Contractors (SMRC), and Recovery Audit Contractors (RAC). CMS authorized MACs to resume these audit activities beginning on August 3, 2020, regardless of the status of the public health emergency. All reviews will be conducted in accordance with statutory and regulatory provisions, as well as related billing and coding requirements. Available waivers and flexibilities for the claims selected for review will also be applied. In December of 2021, CMS issued a 2019 Novel Coronavirus Medicare Provider Enrollment Relief FAQ document, which addressed Medicare enrollment and re-enrollment during the ongoing public health emergency. Within this December 2021 FAQ, CMS indicated that it would resume collecting application fees in 2021 and revalidating enrollees in 2022.

Under the Emergency Waivers, CMS is also allowing skilled nursing facilities to provide a skill-in-place program for Medicare beneficiaries who are residents of the skilled nursing facilities that meet the skill-in-place criteria, foregoing the usual three-day qualifying hospital stay. This waiver remains valid for the duration of the COVID-19 public health emergency. As patients qualify for skill-in-place for Medicare Part A stays, we could see a decrease in long-term care Medicare Part B programs.

On August 24, 2020, CMS released a Medicaid Informational Bulletin providing guidance to states on flexibilities that are available to increase reimbursement for nursing facilities implementing specific infection control practices. On September 8, 2021, CMS clarified that CMS's waivers do not waive or change other requirements for SNF coverage under Medicare, including the SNF level of care criteria, which is unchanged by the public health emergency. CMS used this update of its March 16, 2021 Medicare FFS Response to the PHE on COVID-19 article to further clarify that CMS will review and take action in connection with SNF admissions that do not satisfy SNF level of care criteria that existed prior to the public health emergency and CMS's institution of applicable waivers that facilitated payment for SNF services.

**Resuming visitation and resident rights** — CMS has issued guidance to facilities throughout the public health emergency regarding patients' rights to visitation. While the CMS guidance issued in March 2020 directed that facilities severely restrict visitation, CMS has subsequently provided guidance through the course of the pandemic (and most recently updated in November 2021 and January 2022) that broadens visitation and provides guidance on visitation procedures.

Testing requirements — Beginning in April 2020, authorities in several states in which our independent operating subsidiaries are located began to mandate widespread COVID-19 testing at all nursing home and long-term care facilities. This came after the Centers for Disease Control and Prevention (CDC) stated that older adults are at a higher risk for serious illness from the coronavirus and issued updated testing guidelines for nursing homes. Some of these states were also publicly reporting COVID-19 outbreaks in facilities. On July 22, 2020, CMS announced that nursing homes in states with a 5% or greater positivity rate for COVID-19 will be required to test all nursing home staff each week. On August 26, 2020, CMS issued new parameters for testing, requiring routine monthly testing of all facility staff if the facility's county positivity rate is between 5% and 10%; and twice weekly testing if the county positivity rate exceeds 10%. On April 27, 2021, CMS again issued revised parameters for testing, specifying that the requirement for routine testing of staff applies only to those staff members that are unvaccinated - fully vaccinated staff do not have to be routinely tested. On September 9, 2021, the Biden-Harris administration (the Administration) announced a forthcoming interim final rule (IFR) that would require all workers in Medicare and Medicaid participating health facilities to be fully vaccinated.

On November 5, 2021, CMS issued the Omnibus COVID-19 Health Care Staff Vaccination IFR, requiring all eligible staff to receive their first dose of a two-dose primary vaccination series by December 5, 2021, and the second dose of a two-dose primary vaccination series by January 4, 2022. CMS's enforcement of this IFR was temporarily blocked in certain states pending appeal to the United States Supreme Court. On January 13, 2022, the United States Supreme Court entered an order allowing CMS's enforcement of the IFR and its vaccination requirements by March 15, 2022 for skilled nursing and long term facilities in (among other states) Arizona, Idaho, Iowa, Kansas, Nebraska, South Carolina and Utah and by February 28, 2022 for all other states except Texas. On January 20, 2022, the authority of CMS to enforce the IFR in Texas was affirmed and CMS set a deadline of March 21, 2022 for full compliance with its vaccination requirements. The routine testing requirements are in addition to obligations to screen staff each shift, residents daily, and all persons entering the facility for signs and symptoms of COVID-19. Facilities must test any staff or resident, regardless of vaccination status, who has signs or symptoms of COVID-19. In the event of a COVID-19 outbreak in the facility, all staff and residents must be tested at regular intervals until repeat testing identifies no new cases of COVID-19 infection among staff or residents for a 14-day period. Additional guidance may be issued in connection with the forthcoming IFRs regarding mandatory worker vaccinations expected by CMS for Medicare and Medicaid-participating facilities, which may also contain provisions affecting the testing and vaccination of residents. In addition to CMS's testing mandates, some states have imposed their own testing requirements for residents and staff, or are enforcing testing mandates under existing or expanded workplace safety regulations.

In addition to the IFR mandating vaccinations for health facility workers by CMS and vaccinations, several states where our independent operating facilities are located have issued vaccine mandates that apply to facility employees. As discussed in greater detail below in Item 1A., *Risk Factors*, the United States Supreme Court has halted enforcement of OSHA's vaccination and testing emergency temporary standard (ETS). California, the most populous state, issued an order on August 5, 2021, requiring workers in nursing homes and other health facilities to receive at least one vaccine dose by September 30, 2021. California's Department of Public Health expanded its mandate on September 28, 2021, requiring adult care facilities and direct care workers to be vaccinated as well, and for all affected workers to be fully vaccinated (including both shots of the two-shot Pfizer or Moderna vaccination course) by November 30, 2021. On August 20, 2021, the State of Washington's governor issued a proclamation requiring workers in long-term care facilities and healthcare settings—including employees, contractors, and volunteers—to be fully vaccinated against COVID-19 by October 2021. On August 30, 2021, the Colorado Board of Health approved a COVID-19 vaccine requirement for employees, contractors, and other individuals working in certain health care facilities including nursing homes and assisted living facilities, mandating that these workers be fully vaccinated by October 2021, which was extended by 120 days on December 15, 2021. Additionally, none of these states have been enjoined from enforcing their respective mandates. Non-compliance with state or federal mandates may result in imposition of fines or other administrative action. Compliance with these federal and state vaccine mandates, whether a result of changes in law, regulation,

or the result of an executive or agency order, may be difficult due to legal challenges and differing requirements imposed by numerous authorities.

Reporting requirements — Effective May 8, 2020, CMS published an IFR requiring skilled nursing facilities to report information related to COVID-19 cases among facility residents and staff directly to the CDC National Health Safety Network no less than weekly; the reported information is made publicly available on a dedicated website. In addition, skilled nursing facilities are required to inform residents, their families and representatives of confirmed or suspected COVID-19 cases in their facilities. This resident/family/representative notification is required to take place by 5:00 p.m. (local time) the next calendar day following the occurrence of: (1) a single confirmed infection of COVID-19, or (2) three or more residents or staff with new-onset of respiratory symptoms that occur within 72 hours of one another.

Effective May 21, 2021, CMS published an IFR requiring long-term care facilities to report weekly COVID-19 vaccination data of both residents and staff to the CDC National Healthcare Safety Network. Facilities are also required to provide residents and staff with vaccine education and offer vaccines, when available, to residents and staff. CMS may initiate enforcement activities and assess civil monetary penalties for not meeting any of these COVID-19 related requirements.

Effective June 11, 2021, HHS revised the Post-Payment Notice of Reporting Requirements which are applicable to recipients of Provider Relief Funds. The revised requirements provide additional information on the data elements that recipients are required to report as part of the post-payment reporting process, as well as the timing of such reporting.

Effective August 23, 2021, CMS published an IFR incorporating comments on its May 21, 2021 IFR which continued the obligation for long-term care and intermediate care facilities to report COVID-19 vaccination data for both residents and staff to the CDC National Healthcare Safety Network. This new IFR requires facilities to develop policies and procedures to ensure the availability of the COVID-19 vaccine to residents and staff, and to educate residents and staff concerning the benefits, risks, and potential side effects associated with the vaccine. This IFR also addresses responses to vaccination refusal by residents and staff in compliance with U.S. Equal Employment Opportunity Commission guidance. CMS may initiate enforcement activities and assess civil monetary penalties for not meeting any of these COVID-19 related reporting requirements under this IFR. We do not believe these COVID-19 related requirements will have a material impact on our Consolidated Financial Statements

Survey Activity and Enforcement — On March 20, 2020, CMS announced the initiation of focused infection control surveys intended to assess long-term care facility compliance with infection control requirements in connection with the COVID-19 pandemic. CMS prioritized infection control surveys over annual recertification and complaint surveys at the non-immediate jeopardy level, confirming its commitment to infection prevention and control in the skilled nursing industry. Effective August 17, 2020, CMS provided guidance authorizing resumption of traditional survey activity.

On June 1, 2020 (and subsequently updated in January 2021), CMS introduced an enhanced enforcement program with respect to infection control deficiencies. The program contemplates more significant remedies against facilities with a prior history of infection control deficiencies and imposes more stringent penalties with deficiencies identified at a higher scope and severity. The spectrum of remedies available to CMS for imposition on skilled nursing facilities in connection with this enhancement includes increased monetary fines, shortened time periods to return to compliance, and other administrative penalties.

Federal COVID-19 Vaccination Program — On December 11, 2020, the U.S. Food and Drug Administration (FDA) issued the first emergency use authorization (EUA) for the Pfizer-BioNTech vaccine for the prevention of COVID-19, followed by the second EUA for the use of the Moderna COVID-19 vaccine on December 28, 2020, and the third EUA for the Johnson & Johnson vaccine on February 27, 2021. Vaccine distribution is now widespread in all 50 states.

On August 18, 2021, the Administration announced that CMS was developing an emergency regulation requiring all workers within Medicare and Medicaid-participating nursing homes to be vaccinated against COVID-19 as a condition of participation in the Medicare and Medicaid programs. The Administration expanded the scope of this forthcoming emergency regulation on September 9, 2021, and on the same day the Administration announced that OSHA would introduce a rule requiring employers with more than 100 employees to mandate that its employees be fully vaccinated against COVID-19 or submit to weekly testing for the virus. As further discussed below in Item 1A., Risk Factors, both CMS's IFR and OSHA's ETS for vaccination were challenged in court and halted from enforcement in certain states. On January 13, 2022, the United States Supreme Court halted any enforcement of OSHA's rule but allowed CMS's enforcement of the IFR and its vaccination requirements by March 15, 2022 for skilled nursing and long term care facilities in Arizona, Idaho, Iowa, Kansas, Nebraska, South Carolina and Utah and by February 28, 2022 for skilled nursing and long term care facilities in all other states except in Texas. On January 20, 2022, Texas ended its litigation against CMS'sm enforcement of the IFR, and CMS published guidance that employees of affected health facilities in that State must receive a first vaccination dose by February 19, 2022 and any second dose by March 21, 2022, or apply for and receive exemptions within those timeframes.

Through a series of amendments to the EUA beginning in 2021 through early January 2022, the FDA approved and the CDC recommended the use of a single booster of the vaccines to be administered to individuals 12 years and older, at least six months after completing the primary vaccination series of Pfizer-BioNTech or Moderna, or two months after completing the primary Johnson & Johnson vaccination.

# Medicare

Medicare presently accounts for approximately 28.8% of our skilled nursing services revenue year-to-date, being our second-largest payor. The Medicare program and its reimbursement rates and rules are subject to frequent change. These include statutory and regulatory changes, rate adjustments (including retroactive adjustments), administrative or executive orders and government funding restrictions, all of which may materially adversely affect the rates at which Medicare reimburses us for our services. Budget pressures often lead the federal government to reduce or place limits on reimbursement rates under Medicare. Implementation of these and other types of measures has in the past, and could in the future, result in substantial reductions in our revenue and operating margins.

# Patient-Driven Payment Model (PDPM)

The Skilled Nursing Facility Prospective Payment System (SNF PPS) Rule became effective October 1, 2019. The SNF PPS Rule includes a new case-mix model that focuses on the patient's condition (clinically relevant factors) and resulting care needs, rather than on the volume of care provided, to determine Medicare reimbursement. The case mix-model is called the Patient-Driven Payment Model (PDPM), which utilizes clinically relevant factors for determining Medicare payment by using International Classification of Diseases, Tenth Revision diagnosis codes and other patient characteristics as the basis for patient classification. PDPM utilizes five case-mix adjusted payment components: physician therapy, occupational therapy, speech language pathology, nursing and social services and non-therapy ancillary services. It also uses a sixth non-case mix component to cover utilization of skilled nursing facilities resources that do not vary depending on resident characteristics.

PDPM replaces the existing case-mix classification methodology, Resource Utilization Groups, Version IV. The structure of PDPM moves Medicare towards a more value-based, unified post-acute care payment system. For example, PDPM adjusts Medicare payments based on each aspect of a resident's care, thereby more accurately addressing costs associated with medically complex patients. PDPM also removes therapy minutes as the basis for therapy payment. Finally, PDPM adjusts the skilled nursing facilities per diem payments to reflect varying costs throughout the stay, through the physician therapy, occupational therapy and non-therapy ancillary services components.

In addition, PDPM is intended to reduce paperwork requirements for performing patient assessments. Under the SNF PPS PDPM system, the payment to skilled nursing facilities and nursing homes is based heavily on the patient's condition rather than the specific services provided by each skilled nursing facility. On August 4, 2021, CMS published the SNF PPS final rule for fiscal year 2022, which included a 1.2% net market basket increase in payment to SNFs, and reduced the negative impact of readmissions for providers with more than 25 stays by returning 60% of the 2% withheld by CMS regardless of that provider's performance measures. Providers with lower volume and fewer than 25 stays will not have any adjustments made to their payment.

# Skilled Nursing Facility - Quality Reporting Program (SNF QRP)

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) imposed new data reporting requirements for certain Post-Acute-Care (PAC) providers. The IMPACT Act requires that each skilled nursing facility submit their quality measures data. Beginning with fiscal year 2018, and each subsequent year, if a skilled nursing facility does not submit required quality data, their payment rates are reduced by 2.0% for each such fiscal year. Application of the 2.0% reduction may result in payment rates for a fiscal year being less than the preceding fiscal year. In addition, reporting-based reductions to the market basket increase factor will not be cumulative; they will only apply for the fiscal year involved. A skilled nursing facility's MAC will issue the facility a notice of non-compliance if it does not satisfy its Quality Reporting Program reporting requirements.

Updated performance measures mandated for the SNF QRP for fiscal year 2020 were established in the final SNF PPS rule adopted on August 8, 2019 (fiscal year 2020 SNF PPS Rule). The final rule continues implementation of the SNF QRP measures to improve program interoperability, operational quality and safety. Specifically, the rule adopts a number of standardized patient assessment data elements. The SNF QRP applies to freestanding skilled nursing facilities, skilled nursing facilities affiliated with acute care facilities, and all non-critical access hospital swing-bed rural hospitals.

On July 29, 2021, CMS issued a final rule for the SNF QRP that adopted two new reporting measures and updated the specifications for another measure. Starting with the FY 2023 SNF QRP, SNFs are required for the first time to report the SNF

Healthcare-Associated Infections (HAI) measure, which tracks the number of infections requiring hospitalization following a medical intervention, and the COVID-19 Vaccination Coverage among Healthcare Personnel (HCP) measure, which tracks vaccination of staff in order to assess whether SNFs are taking steps to limit the spread of COVID-19. The Transfer of Healthcare (TOH) information data SNFs must report, which is included in the Patient-Post-Acute Care measurement, will be changed to exclude SNF patients discharged to their homes under the care of either a home health service or hospice. The elimination of this information will change how the TOH is used in calculating Patient-Post-Acute Care measurement, and may have an impact on our quality ratings and reimbursement from Medicare and Medicaid on a prospective basis.

Beginning in March 2020, due to the COVID-19 pandemic, CMS issued a temporary suspension of SNF QRP reporting requirements effective until June 30, 2020. This effectively gave skilled nursing facilities discretion as to whether to report data from the fourth quarter (October 1, 2019 – December 31, 2019), and removed reporting requirements entirely for the first and second quarters of 2020 (January 1, 2020 – June 30, 2020). Skilled nursing facilities were required to resume timely quality data collection and submission of measure and patient assessment data effective June 30, 2020. In January 2022, SNF ratings based on the resumed data reporting were recalculated for publication on the SNF Care Compare website.

#### Medicare Annual Market Basket

CMS is required to calculate an annual Medicare market-basket update to the payment rates. On July 31, 2020, CMS issued a final rule for fiscal year 2021 that updates the Medicare payment rates and the quality programs for skilled nursing facilities. Under the final rule, effective October 1, 2020, the aggregate payments to skilled nursing facilities increased by 2.2% for fiscal year 2021, compared to fiscal year 2020. This estimated increase is attributable to a 2.2% market basket increase factor.

On July 29, 2021, CMS issued a final rule for fiscal year 2022 that updates the Medicare payment rates and the quality programs for skilled nursing facilities. Under the final rule, effective October 1, 2021, the aggregate net market basket rate increased by 1.2% for fiscal year 2022, compared to fiscal year 2021. This increase is attributable to a 2.7% market basket increase factor with a 0.8% point reduction for forecast error adjustment and a 0.7% point reduction for multifactor productivity adjustment.

On April 12, 2021, CMS revealed its intent to recalibrate PDPM's parity adjustment up to 5.0% based on the prior year aggregate spending under the new model. On July 29, 2021, CMS's final rule for fiscal year 2022 did not include this parity adjustment and indicated that this PDPM parity adjustment would be revisited in CMS's proposed rule for the 2023 fiscal year. The reimbursement change, if proposed and finalized in a future fiscal year, could adversely impact our reimbursement rates.

### Sequestration of Medicare Rates

The Budget Control Act of 2011 requires a mandatory, across the board reduction in federal spending, called a sequestration. Medicare FFS claims with dates of service or dates of discharge on or after April 1, 2013 incur a 2.0% reduction in Medicare payments. All Medicare rate payments and settlements have incurred this mandatory reduction and it will continue to be in place through at least 2023, unless Congress takes further action. In response to COVID-19, the CARES Act temporarily suspended the automatic 2.0% reduction of Medicare claim reimbursements for the period of May 1, 2020 through December 31, 2020. On December 27, 2020, the Consolidated Appropriations Act further suspended the 2.0% payment adjustment through March 31, 2021. On April 14, 2021, Congress extended the suspension of the 2.0% payment adjustment through December 31, 2021. On December 10, 2021, President Biden signed into law a bill to postpone the 2.0% payment adjustment through April 1, 2022; from April 1, 2022 through June 30, 2022, the 2.0% payment adjustment is reduced from 2.0% to 1.0%. To pay for the change, Congress would increase the sequester cuts by one year to fiscal year 2030.

# Skilled Nursing Facility Value-Based Purchasing (SNF-VBP) Program

The SNF-VBP Program rewards skilled nursing facilities with incentive payments based on the quality of care they provide to Medicare beneficiaries, as measured by a hospital readmissions measure. CMS annually adjusts its payment rules for skilled nursing facilities using the SNF-VBP Program. Effective October 1, 2018, CMS began withholding 2.0% to fund the SNF-VBP incentive payment pool and will redistribute 60% of the withheld payments back to skilled nursing facilities through the program. The fiscal year 2020 SNF PPS Rules estimate the economic impact of the SNF-VBP Program to be a reduction of \$213.6 million in aggregate payments to skilled nursing facilities during fiscal year 2020. The Rule also introduced two new quality measures to assess how health information is shared and adopted a number of standardized patient assessment data elements that assess factors such as cognitive function and mental status, special services, and social determinants of health. The fiscal year 2021 SNF PPS rule updated the deadlines for baseline period quality measure quarterly reporting and announced performance periods and standards for the fiscal year 2023 program year, but otherwise made no changes to the measures, scoring or payment policies. In the fiscal year 2022 program, CMS proposed changes to account for COVID-19 impacting

readmission rates and SNF admissions during the performance periods of fiscal year 2020. These proposed changes would impact the SNF-VBP rate adjustment. On July 29, 2021, CMS published its final rule for the fiscal year 2022 program in the Federal Register, adopting the proposed changes for measuring the performance period and amending the data to be reported to CMS, which impacted the SNF-VBP rate adjustment.

# Part B Rehabilitation Requirements

Some of our revenue is paid by the Medicare Part B program under a fee schedule. Part B services are limited with a payment cap by combined speech-language pathology services (SLP) and physical therapy (PT) services and a separate annual cap for occupational therapy (OT) services. These caps were implemented under the authority of the Balanced Budget Amendments of 1997. These amounts were previously associated with the financial limitation amounts. The Bipartisan Budget Act of 2018 (BBA) repealed those caps while retaining and adding additional limitations to ensure appropriate therapy services. This policy does not limit the amount of medically necessary Medicare Part B therapy services a beneficiary may receive. The BBA establishes coding modifier requirements to obtain payments beyond the updated KX modifier thresholds, discussed below, and reaffirms the specific \$3,000 claim audit threshold requirements for the Medicare Administrative Contractors. For PT and SLP combined the threshold for coding modifier requirements is \$2,110 for 2021, compared to \$2,080 for 2020. The KX Modifier Threshold is set at \$2,150 for CY 2022. The threshold is the same for OT services.

Consistent with CMS's "Patients over Paperwork" initiative, the agency has also been moving toward eliminating burdensome claims-based functional reporting requirements for Part B therapy services. For example, beginning in January 2019, skilled nursing facilities are no longer required to append selected G-codes or the severity modifiers on outpatient therapy claims. This reduces the reporting burden on therapists providing outpatient services and increases the amount of time that therapists can spend with their patients. Effective January 1, 2021, CMS rescinded 21 problematic National Correct Coding Initiative edits impacting outpatient therapy services furnished under Medicare Part B primarily related to PT and OT services. These code edits were previously implemented on October 1, 2020 and required additional documentation and claim modifier coding burden when procedure codes representing many PT or OT evaluation codes or treatment codes performed under a PT, OT, or SLP plan of care was billed on the same date. This additional coding burden has been removed.

On December 1, 2020, CMS issued the calendar year 2021 Physician Fee Schedule (PFS) Final Rule, which reduced the conversion factor (i.e. the number by which CMS determine all current procedural terminology code payments) by 10.2%. These changes lowered the reimbursement rate for therapy Medicare Part B specialty providers, specific to our industry by 9% for PT and OT and by 6% for SLP Codes.

The Consolidated Appropriations Act of 2021 (CAA, also referred to as The Omnibus Appropriations Law) was signed into law on December 27, 2020. The CAA includes three components relevant to the Medicare Part B PFS. First, the CAA incorporates a rate relief of approximately 3.75% for fiscal year 2021. Additionally, the CAA incorporates a freeze to the payment for the physician add-on code for three years which would effectively create relief on the initial cuts through 2023. Finally, the relief calls for the 2% sequester to not be applied to the Medicare Part B program for the first quarter of 2021. CMS incorporated the first and second components of the CAA relief into the fiscal year 2021 PFS files which were published on January 5, 2021. While the 2021 PFS Final Rule reduced the fiscal year 2021 factor to \$32.4085 (calendar year conversion factor was \$36.0896), subsequently, the CAA restored part of the reductions resulting in the final fiscal year 2021 conversion factor of \$34.8931. This conversion factor rate does not include the 2% sequester which has been suspended until April 1, 2022 and then will be implemented as a 1% sequestration until June 30, 2022.

On July 13, 2021, CMS issued the calendar year 2022 PFS proposed rule, which proposes to implement the portion of the BBA requiring the use of new modifiers to allow CMS to identify and make payments at 85% of the otherwise applicable Part B payment amount for PT and OT services furnished in whole or in part by PT and OT assistants. Other changes in the proposed rule, including reducing the conversion factor by 3.89%, will have the effect of lowering the reimbursement rate for Part B therapy services if implemented. On November 19, 2021, CMS published the 2022 PFS, which required the use of new modifiers (the CO modifier) to identify and make payments at 85% of the otherwise applicable Part B payment amount for PT and OT services furnished in whole, or in part by PT and OT assistants. On December 10, 2021, President Biden signed the Protecting Medicare and American Farmers from Sequester Cuts Act into law, which restored funding for Medicare payments that was removed in the 2022 PFS. Following passage of this law, CMS announced forthcoming payment changes to the 2022 PFS on December 16, 2021. Based on these announced adjustments, Medicare payments would not be adjusted from January 1, 2022 through March 31, 2022; FFS Medicare payments would then be adjusted by 1% from April 1, 2022 through June 30, 2022, and further adjusted by a total of 2% from July 1, 2022 through December 31, 2022. Under the recalculated 2022 PFS announced by CMS in December 07 2021, the conversion factor was reduced from the 2021 conversion factor of \$34.8931 by 0.82% to \$34.6062, rather than the expected 3.89% in the proposed rule, or by the more than 3.7% expected based on the calculations contained within the original 2022 PFS announced in November of 2021, which would have reduced the conversion factor to \$33.5983.

The Multiple Procedure Payment Reduction (MPPR) continues at a 50% reduction, which is applied to therapy procedures by reducing payments for practice expense of the second and subsequent procedures when services provided beyond one unit of one procedure are provided on the same day. The implementation of MPPR includes (1) facilities that provide Medicare Part B speech-language pathology, occupational therapy, and physical therapy services and bill under the same provider number; and (2) providers in private practice, including speech-language pathologists, who perform and bill for multiple services in a single day.

On May 27, 2020, pursuant to its authority under the Emergency Waivers, CMS added physical therapy, occupational therapy and speech-language pathology to list of approved telehealth Providers for the Medicare Part B programs provided by a skilled nursing facility. This waiver allows the reimbursement of certain Healthcare Common Procedure Coding System (HCPCS) codes delivered by PT, OT, SLP through telehealth through the end of the public health emergency. Subsequently, the calendar year 2021 PFS Final Rule added certain of these PT and OT services to the list of Medicare telehealth services on a temporary basis through the end of the calendar year in which the COVID-19 public health emergency ends. These services have been used to provide some services to community-based outpatients from our skilled nursing facilities that are eligible through local rules to provide community-based outpatient services. Under the calendar year 2022 PFS, these certain telehealth services would continue to be included on the Medicare telehealth services list until the end of calendar year 2023.

Pursuant to the Emergency Waivers, CMS allowed for the facility to bill an originating site fee to CMS for telehealth services provided to Medicare Part B beneficiary residents of the facility when the services are provided by a physician from an alternate location, effective March 6, 2020 through the end of the public health emergency, which is currently in effect through April 16, 2022 and could be further extended (or expired Emergency Waivers even reinstated) due to waves of COVID-19 variants that affected the country and globe in 2021 and continuing into 2022. The PFS Final Rule also increased the frequency limitation on nursing facility telehealth visits from once every 30 days to once every fourteen days. Our facilities are utilizing this waiver as physicians elect to provide telehealth visits to Medicare Part B beneficiaries residing in the skilled nursing facility.

On December 31, 2020, CMS announced the annual update to the list of codes that describe Medicare Part B outpatient therapy services, effective January 1, 2021. Several existing and new codes introduced during the COVID-19 public health emergency impacting skilled nursing facilities providers for use under physical therapy, occupational therapy, or speech-language pathology plans of care were recently made permanent including several telehealth codes. CMS designated all these new HCPCS/Current Procedural Terminology (CPT) codes as "sometimes therapy," to permit physicians and certain non-physician practitioners, including nurse practitioners, physician assistants, and clinical nurse specialists, to render these services outside a therapy plan of care when appropriate. "Sometimes therapy" codes will not have the MPPR applied. On November 19, 2021, CMS expanded these "sometimes therapy" codes further for the 2022 PFS, including five new codes for remote therapeutic monitoring (RTM) treatment. These RTM codes affect skilled nursing facilities and be used to measure and evaluate adherence to medication and therapy, as well as response to medication and therapy. The use of RTM codes is anticipated to be broader than the existing remote patient monitoring codes approved by CMS.

# Programs of All-Inclusive Care for the Elderly

CMS issued a final rule on June 3, 2019, which updates the requirements for the Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs. The regulation is intended to provide greater operational flexibility, remove redundancies and outdated information and codify existing programs. Such flexibility includes: (i) more lenient standards applicable to the current requirement that the PACE organization be monitored for compliance with the PACE program requirements during and after a 3-year trial period and (ii) relieving certain restrictions placed upon the interdisciplinary team that comprehensively assesses and provides for the individual needs of each PACE participant by allowing one person to fill two roles and permitting secondary participation in the PACE program. Further, non-physician primary care providers can provide certain services in place of primary care physicians. On October 21, 2021, CMS published an extension of the timeline to complete further final rulemaking for the PACE program until November 1, 2022, based on a proposed rule published on November 1, 2018, regarding policy and technical changes to Medicare Advantage, Medicare Prescription Drug Benefit, PACE, Medicaid FFS, and Medicaid managed care programs for 2020 and 2021. Based on completed studies, public comments, and the intervening COVID-19 pandemic that required CMS's focus, CMS extended the timeline to issue a final rule regarding new policy and technical changes to the PACE program until November of 2022. The November 2018 proposed rule suggests changes to payment and appeals of disputes within the PACE program which may affect our business.

# Preadmission Screening and Resident Review

On February 20, 2020, CMS published a proposed rule which would modernize requirements for the Preadmission Screening and Resident Review process. This process assesses the needs of individuals with mental illness or intellectual

disability that are applying to or residing in Medicaid-certified nursing facilities. The proposed rule, if enacted as currently drafted, would impose additional resident review requirements that are not reflected in current regulations, authorize the use of telehealth, and simplify the list of information that must be collected during evaluations.

# Decisions Regarding Skilled Nursing Facility Payment

Medicare reimbursement rates and rules are subject to frequent change. Historically, adjustments to reimbursement under Medicare have had a significant effect on our revenue. The federal government and state governments continue to focus on efforts to curb spending on healthcare programs such as Medicare and Medicaid. We are not able to predict the outcome of the legislative process. We also cannot predict the extent to which proposals will be adopted or, if adopted and implemented, what effect, if any, such proposals and existing new legislation will have on us. Efforts to impose reduced allowances, greater discounts and more stringent cost controls by government and other payors are expected to continue and could adversely affect our business, financial condition and results of operations.

These include statutory and regulatory changes, rate adjustments (including retroactive adjustments), administrative or executive orders and government funding restrictions, all of which may materially adversely affect the rates at which Medicare reimburses us for our services. Budget pressures often lead the federal government to reduce or place limits on reimbursement rates under Medicare. Implementation of these and other types of measures has in the past, and could in the future, result in substantial reductions in our revenue and operating margins. For a discussion of historic adjustments and recent changes to the Medicare program and related reimbursement rates, see Part I, Item 1A Risk Factors under the headings Risks Related to Our Business and Industry "Our revenue could be impacted by federal and state changes to reimbursement and other aspects of Medicaid and Medicare," "Our future revenue, financial condition and results of operations could be impacted by continued cost containment pressures on Medicaid spending," "We may not be fully reimbursed for all services for which each facility bills through consolidated billing, which could adversely affect our revenue, financial condition and results of operations" and "Reforms to the U.S. healthcare system will impose new requirements upon us and may lower our reimbursements."

# Patient Protection and Affordable Care Act

Various healthcare reform provisions became law upon enactment of the Patient Protection and Affordable Care Act and the Healthcare Education and Reconciliation Act (collectively, the ACA). The reforms contained in the ACA have affected our operating subsidiaries in some manner and are directed in large part at increased quality and cost reductions. Several of the reforms are very significant and could ultimately change the nature of our services, the methods of payment for our services and the underlying regulatory environment. These reforms include modifications to the conditions of qualification for payment, bundling of payments to cover both acute and post-acute care and the imposition of enrollment limitations on new providers. The upcoming Congressional elections in the United States and policies implemented by the current and former Presidential administration have resulted in significant changes in legislation, regulation, implementation of Medicare, Medicaid, and government policy. The 2022 midterm elections may significantly alter the current regulatory framework and impact our business and the health care industry. We continually monitor these developments so we can respond to the changing regulatory environment impacting our business.

# Requirements of Participation

CMS has requirements that providers, including skilled nursing facilities and other long-term care (LTC) facilities must meet in order to participate in the Medicare and Medicaid Programs. Some requirements can be burdensome and costly, and in recent years, CMS has modified these requirements. For example, beginning in 2016, skilled nursing facilities were required to comply with emergency preparedness requirements, which requirements have since been strengthened via promulgation of additional rules.

Another relevant change is a 2019 final rule that removed the prohibition on the use of pre-dispute, binding arbitration agreements by LTC facilities. The rule imposed specific requirements on the use of these agreements, including requiring the use of plain language in drafting; that facilities post a notice in plain language that describes the policy on the use of agreements for binding arbitration in an area that is visible to residents and visitors; that admission to the facility not be conditioned on the signing of an arbitration agreement; and that the facility expressly inform the resident or his/her representative of the right not to sign the agreement as a condition of admission. Congress has routinely introduced, but not passed, legislation addressing the issue of arbitration agreements used by LTC facilities. While legislative action is possible in the future, federal and state regulations remain our primary source of authority over the use of pre-dispute binding arbitration agreements.

As discussed under the "Coronavirus" heading above, the Administration announced that CMS and OSHA would implement emergency rules requiring all workers within all Medicare and Medicaid-participating nursing homes, and all employees of companies with more than 100 employees, to be fully vaccinated against COVID-19. Significant litigation

followed, including enforcement of both the CMS and OSHA vaccination mandates being halted by certain courts. On January 13, 2022, the United States Supreme Court held that the OSHA vaccination mandate could not be enforced against large employers, but that the CMS vaccination mandate could be enforced upon Medicare- and Medicaid-participating facilities. Those states except Texas where the CMS rule had been halted against enforcement then had to enforce the rule. On January 20, 2022, the United States District Court for the Northern District of Texas dismissed the block of the CMS's vaccination IFR in Texas. That same day, CMS became empowered to enforce the IFR in Texas and set a deadline of March 21, 2022 for full compliance with its vaccination requirements.

# Civil and Criminal Fraud and Abuse Laws and Enforcement

Various complex federal and state laws exist which govern a wide array of referrals, relationships and arrangements, and prohibit fraud by healthcare providers. Governmental agencies are devoting increasing attention and resources to such anti-fraud efforts. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Balanced Budget Act of 1997 expanded the penalties for healthcare fraud. Additionally, in connection with our involvement with federal healthcare reimbursement programs, the government or those acting on its behalf may bring an action under the FCA, alleging that a healthcare provider has defrauded the government by submitting a claim for items or services not rendered as claimed, which may include coding errors, billing for services not provided, and submitting false or erroneous cost reports. The Fraud Enforcement and Recovery Act of 2009 (FERA) expanded the scope of the FCA by, among other things, creating liability for knowingly and improperly avoiding repayment of an overpayment received from the government and broadening protections for whistleblowers. The FCA clarifies that if an item or service is provided in violation of the Anti-Kickback Statute, the claim submitted for those items or services is a false claim that may be prosecuted under the FCA as a false claim. Civil monetary penalties under the FCA range from approximately \$11 thousand to \$23 thousand per violation and are adjusted annually for inflation. Under the qui tam or "whistleblower" provisions of the FCA, a private individual with knowledge of fraud may bring a claim on behalf of the federal government and receive a percentage of the federal government's recovery. Due to these whistleblower incentives, lawsuits have become more frequent. Many states also have a false claim prohibition that mirrors or tracks the federal FCA. Federal law also provides that OIG has the authority to exclude individuals and entities from federally funded health care programs on a number of grounds, including, but not limited t

In November 2019, the OIG released a report of its investigation into overpayments to hospitals that did not comply with Medicare's post-acute-care transfer policy. Hospitals violating this policy transferred patients to certain post-acute-care settings, such as skilled nursing facilities, but claimed the higher reimbursements associated with discharges to homes. A similar OIG audit report, released in February 2019, focused on improper payments for skilled nursing facility services when the Medicare three-day inpatient hospital stay requirement was not met. In 2021, the OIG released the result of an audit finding that Medicare overpaid millions of dollars of chronic care management (CCM) services. The OIG's 2021 report found that in calendar years 2017 and 2018, Medicare overpaid millions of dollars in CCM claims. These investigatory actions by OIG demonstrate its increased scrutiny into post-hospital skilled nursing facility care provided to beneficiaries and may encourage additional oversight or stricter compliance standards.

On numerous occasions, CMS has indicated its intent to vigilantly monitor overall payments to skilled nursing facilities, paying particular attention to facilities that have high reimbursements for ultra-high therapy, therapy resource utilization groups with higher activities of daily living scores, and long average lengths of stay. The OIG recognizes that there is a strong financial incentive for facilities to bill for higher levels of therapies, even when not needed by patients. We cannot predict the extent to which the OIG's recommendations to CMS will be implemented and, what effect, if any, such proposals would have on us. Our business model, like those of some other for-profit operators, is based in part on seeking out higher-acuity patients whom we believe are generally more profitable, and over time our overall patient mix has consistently shifted to higher-acuity in most facilities we operate. We also use specialized care-delivery software that assists our caregivers in more accurately capturing and recording services in order to, among other things, increase reimbursement to levels appropriate for the care actually delivered. These efforts may place us under greater scrutiny with the OIG, CMS, our fiscal intermediaries, recovery audit contractors and others.

#### Federal Healthcare Reform

In 2015, CMS released a final rule addressing, among other things, implementation of certain provisions of Medicare Access and CHIP Reauthorization Act of 2015, which changes the way physicians are paid who participate in Medicare through implementation of the Quality Payment Program, which created new paths for payment based on the Merit-based Incentive Payment System (MIPS) or the use of Alternative Payment Models (APM). A measure to ascertain provider quality is the Five-Star Quality Rating system, which includes a rating of one to five in various categories. In 2018 and 2019, these calculations changed to reflect new and additional data that affected rankings, including freezing information regarding health inspection

information, and including data to reflect the ranking of staffing (including emphasizing the level of registered nurse staffing), stay durations, spending, discharge outcomes and readmissions.

As of January 1, 2020, CMS assigned ratings to SNFs under its Five Star Quality reporting system and displayed those ratings on its consumer-based Nursing Home Compare website. CMS's assignment of ratings under its Five Star Quality for a SNF measure is based upon numerous quality measures, which as of January 1, 2020 included staffing levels (and staffing composition, focusing on the use of registered nurses), the use of antipsychotic medications, rate of hospitalization, emergency department use, community discharge, improvements in function, independently worsened and anxiety or hypnotic medication use, payroll based journals, and Medicare spending by beneficiary. Additionally, this data is segregated and rated separately for short-term and long-term stays in the SNF. These measures were subject to thresholds for stars assigned based no both staffing and quality components, with standards for score assignment that restricted the number of 4- and 5-star ratings that could be given. This resulted in a reduction in the number of 4- and 5-star facilities compared to their prior ranking, including certain of our own facilities. CMS also displays a consumer alert icon next to nursing homes that had been cited for incidents of abuse, neglect, or exploitation on the Nursing Home Compare website, which is updated monthly with CMS's refresh of survey inspection results on that website. In February 2020, CMS announced that part of its Enhancing Enforcement efforts would include improved oversight of state survey agencies (SSA) and revisions to the State Performance Standards System, which is the program used to access SSA performance.

In 2020, in response to the COVID-19 pandemic, a temporary freeze was placed on Skilled Nursing Facilities Quality Reporting Program data, Staffing data, and Health Inspection data on the Nursing Home Compare website to account for the suspended reporting and inspection obligations due to the COVID-19 pandemic. The information reported to CMS and used in these quality calculations changed over the period of 2020. Beginning in August of 2020, and in response to the COVID-19 pandemic, CMS announced a new, targeted inspection plan to focus on urgent patient asfety threats and infection control, therefore causing a shift in the number of nursing homes inspected and the manner in which the inspections are conducted. As this change would disrupt the inspections and data collection CMS and state surveyors conducted as part of the Nursing Home Five Star Quality Rating System, results of these inspections conducted on or after March 4, 2020 were not initially used to calculate a nursing home's health inspection star ratings. By December of 2020, CMS and state surveyors had resumed inspections of nursing homes to include inspection data, including surveys that occurred on March 4, 2020 and afterward, in its star rankings calculated for January 2021. CMS resumed calculating nursing homes' health inspection ratings on January 27, 2021. Similarly, although staff reporting requirements were waived for the first and second quarters of 2020, this waiver ended on June 25, 2020. Thereafter, nursing homes were required to report suffing data to CMS, which was incorporated into CMS's Five Star Quality rating for those nursing homes beginning in January 2021. The January 2021 calculation of Five Star Quality ratings for nursing homes reflected nursing home-provided quarterly updates of most quality measures for the period beginning June 2019 and ending June 2020 due to interruptions in data collection. The quality measures that are specific to SNFs but not included in CMS's Five Star Quality ratings for January 2021 were the measur

Another impact of the COVID-19 pandemic to the Nursing Home Five-Star Quality Rating System is CMS's decision to make submission of the minimum data set assessment data optional for the fourth quarter of 2019 and excepted for the first and second quarters of 2020. Due to the gap in reported data, CMS did not include the two quality measures that are reflected in the minimum data set assessment-based data in its quality measure ratings in January 2021.

On August 10, 2021, the Nursing Home Improvement and Accountability Act of 2021 (Nursing Home Improvement Act) was introduced in the U.S. Senate and is intended to update federal nursing home policy to improve quality of care and oversight. The proposed legislation reduces SNF payments by two percentage points beginning in fiscal year 2025 for inaccurate submission of certain data, provides federal funding of \$250 million to ensure accuracy of information on cost reports. The Nursing Home Improvement Act also proposes to establish nurse staffing requirements, including the requirement for the use of a 24-hour registered professional nurse and other provisions intended to increase transparency and accuracy of reported data regarding nursing activities, improve accountability and enhance quality of care. If passed in its current form, however, this bill would provide participating states with a temporary enhanced federal Medicaid match to fund improvements in nursing home workforce and care. This match would last six years and states would be responsible for showing CMS that Medicaid

reimbursement increases were used to increase worker wages and yield new training resources and opportunities for nursing home staff. As of December 31, 2021, no action has been taken on this bill since its introduction to the Senate on August 10, 2021 and referral to the Senate Finance Committee that same day.

#### Monitoring Compliance in Our Facilities

Governmental agencies and other authorities periodically inspect our independent operating facilities to assess compliance with various standards, rules and regulations. The robust regulatory and enforcement environment continues to impact healthcare providers, especially in connection with responses to any alleged noncompliance identified in periodic surveys and other inspections by governmental authorities. Unannounced surveys or inspections generally occur at least annually and may also follow a government agency's receipt of a complaint about a facility. Facilities must pass these inspections to maintain licensure under state law, to obtain or maintain certification under the Medicare and Medicaid programs, to continue participation in the Veterans Administration program at some facilities, and to comply with provider contracts with managed care clients at many facilities. From time to time, our independent operating subsidiaries, like others in the healthcare industry, may receive notices from federal and state regulatory agencies of an alleged failure to substantially comply with applicable standards, rules or regulations. These notices may require corrective action, may impose civil monetary penalties for noncompliance, and may threaten or impose other operating restrictions on skilled nursing facilities such as admission holds, provisional skilled nursing license, or increased staffing requirements. If our independent operating subsidiaries fail to comply with these directives or otherwise fail to comply substantially with licensure and certification laws, rules and regulations, the facility could lose its certification as a Medicare or Medicaid provider, or lose its license permitting operation in the State.

Facilities with otherwise acceptable regulatory histories generally are normally given an opportunity to correct deficiencies and continue their participation in the Medicare and Medicaid programs by a certain date, usually within nine months; however, although where denial of payment remedies are asserted, such interim remedies go into effect much sooner. Facilities with deficiencies that immediately jeopardize patient health and safety and those that are classified as poor performing facilities, however, may not be given an opportunity to correct their deficiencies prior to the imposition of remedies and other enforcement actions. Moreover, facilities with poor regulatory histories continue to be classified by CMS as poor performing facilities notwithstanding any intervening change in ownership, unless the new owner obtains a new Medicare provider agreement instead of assuming the facility's existing agreement. However, new owners nearly always assume the existing Medicare provider agreement due to the difficulty and time delays generally associated with obtaining new Medicare certifications, especially in previously certified locations with sub-par operating histories. Accordingly, facilities that have poor regulatory histories before acquisition by our independent operating subsidiaries and that develop new deficiencies after acquisition are more likely to have sanctions imposed upon them by CMS or state regulators.

In addition, CMS has increased its focus on facilities with a history of serious or sustained quality of care problems through the special focus facility (SFF) initiative. A facility's administrators and owners are notified when it is identified as a special focus facility. This information is also provided to the general public. The SFF designation is based in part on the facility's compliance history typically dating before our acquisition of the facility. Local state survey agencies recommend to CMS that facilities be placed on special focus status. SFFs receive heightened scrutiny and more frequent regulatory surveys. Failure to improve the quality of care can result in fines and termination from participation in Medicare and Medicaid. A facility "graduates" from the program once it demonstrates significant improvements in quality of care that are continued over a defined period of time.

Sanctions such as denial of payment for new admissions often are scheduled to go into effect before surveyors return to verify compliance. Generally, if the surveyors confirm that the facility is in compliance upon their return, the sanctions never take effect. However, if they determine that the facility is not in compliance, the denial of payment goes into effect retroactive to the date given in the original notice. This possibility sometimes leaves affected operators, including our independent subsidiaries, with the difficult task of deciding whether to continue accepting patients after the potential denial of payment date, thus risking the retroactive denial of revenue associated with those patients' care if the operators are later found to be out of compliance, or simply refusing admissions from the potential denial of payment date until the facility is actually found to be in compliance. In the past and from time to time, some of our independent operating subsidiaries have been or will be in denial of payment status due to findings of continued regulatory deficiencies, resulting in an actual loss of the revenue associated with the Medicare and Medicaid patients admitted after the denial of payment date. Additional sanctions could ensue and, if imposed, could include various remedies up to and including decertification.

CMS has undertaken several initiatives to increase or intensify Medicaid and Medicare survey and enforcement activities, including federal oversight of state actions. CMS is taking steps to focus more survey and enforcement efforts on facilities with findings of substandard care or repeat violations of Medicaid and Medicare standards, and to identify multi-facility providers with patterns of noncompliance. In addition, HHS has adopted a rule that requires CMS to charge user fees to healthcare

facilities cited during regular certification, recertification or substantiated complaint surveys for deficiencies, which require a revisit to assure that corrections have been made. CMS is also increasing its oversight of state survey agencies and requiring state agencies to use enforcement sanctions and remedies more promptly when substandard care or repeat violations are identified, to investigate complaints more promptly, and to survey facilities more consistently.

# Regulations Regarding Financial Arrangements

We are also subject to federal and state laws that regulate financial arrangement by and between healthcare providers, such as the federal and state anti-kickback laws, the Stark laws, and various state anti-referral laws.

The Anti-Kickback Statute, Section 1128B of the Social Security Act (Anti-Kickback Statute) prohibits the knowing and willful offer, payment, solicitation, or receipt of any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce the referral of an individual, in return for recommending, or to arrange for, the referral of an individual for any item or service payable under any federal healthcare program, including Medicare or Medicaid. The OIG has issued regulations that create "safe harbors" for certain conduct and business relationships that are deemed protected under the Anti-Kickback Statute. In order to receive safe harbor protection, all of the requirements of a safe harbor must be met. The fact that a given business arrangement does not fall within one of these safe harbors, however, does not render the arrangement per se illegal. Business arrangements of healthcare service providers that fail to satisfy the applicable safe harbor criteria, if investigated, will be evaluated based upon all facts and circumstances and risk increased scrutiny and possible sanctions by enforcement authorities.

Violations of the Anti-Kickback Statute can result in criminal penalties of up to \$100 thousand and ten years imprisonment. Violations of the Anti-Kickback Statute can also result in civil monetary penalties of up to \$100 thousand per violation and an assessment of up to three times the total amount of remuneration offered, paid, solicited, or received. Violation of the Anti-Kickback Statute may also result in an individual's or organization's exclusion from future participation in federal healthcare programs. State Medicaid programs are required to enact an anti-kickback statute. Many states in which our independent operating subsidiaries operate have adopted or are considering similar legislative proposals, some of which extend beyond the Medicaid program, to prohibit the payment or receipt of remuneration for the referral of patients regardless of the source of payment for the care. We believe that business practices of providers and financial relationships between providers have become subject to increased scrutiny as healthcare reform efforts continue on the federal and state levels.

Additionally, Section 1877 of the Social Security Act, commonly known as the "Stark Law," provides that a physician may not refer a Medicare or Medicaid patient for a "designated health service" to an entity with which the physician or an immediate family member has a financial relationship unless the financial arrangement meets an exception under the Stark Law or its regulations. Designated health services include inpatient and outpatient hospital services, PT, OT, SLP, durable medical equipment, prosthetics, orthotics and supplies, diagnostic imaging, enteral and parenteral feeding and supplies and home health services. Under the Stark Law, a "financial relationship" is defined as an ownership or investment interest or a compensation arrangement. If such a financial relationship exists and does not meet a Stark Law exception, the entity is prohibited from submitting or claiming payment under the Medicare or Medicaid programs or from collecting from the patient or other payor. Many of the compensation arrangements exceptions permit referrals if, among other things, the arrangement is set forth in a written agreement signed by the parties, the compensation to be paid is set in advance, is consistent with fair market value and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties. Exceptions may have other requirements. Any funds collected for an item or service resulting from a referral that violates the Stark Law are not eligible for payment by federal healthcare programs and must be repaid to Medicare or Medicaid, any other third-party payor, and the patient. Violations of the Stark Law may result in the imposition of civil monetary penalties, including, treble damages. Individuals and organizations may also be excluded from participation in federal healthcare programs for Stark Law violations. Many states have enacted healthcare provider referral laws that go beyond physician self-referrals or apply to a greater range of ser

# Regulations Regarding Patient Record Confidentiality

Health care providers are also subject to laws and regulations enacted to protect the confidentiality of patient health information. For example, HHS has issued rules pursuant to HIPAA, including the Health Information Technology for Economic and Clinical Health (HITECH) Act which governs our use and disclosure of protected health information of patients. We have established policies and procedures to comply with HIPAA privacy and security requirements at our independent operating subsidiaries. Our independent operating subsidiaries have adopted and implemented HIPAA compliance plans, which we believe comply with the HIPAA privacy and security regulations. The HIPAA privacy and security regulations have and will continue to impose significant costs on our independent operating subsidiaries in order to comply with these standards. There are numerous other laws and legislative and regulatory initiatives at the federal and state levels addressing privacy and security concerns. Our independent operating subsidiaries are also subject to any federal or state privacy-related laws that are more restrictive than the privacy regulations issued under HIPAA. These laws vary and could impose additional penalties for

privacy and security breaches. Healthcare entities are also required to afford patients with certain rights of access to their health information under HIPAA and the 21st Century Cures Act (Cures Act). Recently, the Office of Civil Rights, the agency responsible for HIPAA enforcement, has targeted investigative and enforcement efforts on violations of patients' rights of access, including denial of access to medical records, imposing significant fines for violations largely initiated from patient complaints. The Office of the National Coordinator for Health Information Technology can also investigate and impose separate penalties for information blocking violations under the Cures Act.

#### Antitrust Law

We are also subject to federal and state antitrust laws. Enforcement of the antitrust laws against healthcare providers is common, and antitrust liability may arise in a wide variety of circumstances, including third party contracting, physician relations, joint venture, merger, affiliation and acquisition activities. In some respects, the application of federal and state antitrust laws to healthcare is still evolving, and enforcement activity by federal and state agencies appears to be increasing. At various times, healthcare providers and insurance and managed care organizations may be subject to an investigation by a governmental agency charged with the enforcement of antitrust laws, or may be subject to administrative or judicial action by a federal or state agency or a private party. Violators of the antitrust laws could be subject to criminal and civil enforcement by federal and state agencies, as well as by private litigants.

#### Americans with Disabilities Act

Our independent operating subsidiaries must also comply with the ADA, and similar state and local laws to the extent that the facilities are "public accommodations" as defined in those laws. The obligation to comply with the ADA and other similar laws is an ongoing obligation, and the independent operating subsidiaries continue to assess their facilities relative to ADA compliance and make appropriate modifications as needed.

# REGULATIONS SPECIFIC TO SENIOR LIVING COMMUNITIES

As previously mentioned, senior living services revenue is primarily derived from private pay residents, with a small portion of senior living revenue (approximately 1.8% of total revenue) derived from Medicaid funds. Thus, some of the regulations discussed above applicable to Medicaid providers, also apply to senior living. However, the following provides a brief overview of the regulatory framework applicable specifically to senior living.

A majority of states provide, or are approved to provide, Medicaid payments for personal care and medical services to some residents in licensed senior living communities under waivers granted by or under Medicaid state plans approved by CMS. State Medicaid programs control costs for senior living and other home and community-based services by various means such as restrictive financial and functional eligibility standards, enrollment limits and waiting lists. Because rates paid to senior living community operators are generally lower than rates paid to skilled nursing facility operators, some states use Medicaid funding of senior living services as a means of lowering the cost of services for residents who may not need the higher level of health services provided in skilled nursing facilities. States that administer Medicaid programs for services in senior living communities are responsible for monitoring the services at, and physical conditions of, the participating communities. As a result of the growth of senior living in recent years, states have adopted licensing standards applicable to assisted living communities. Most state licensing standards apply to senior living communities regardless of whether they accept Medicaid funding.

Since 2003, CMS has commenced a series of actions to increase its oversight of state quality assurance programs for senior living communities, and has provided guidance and technical assistance to states to improve their ability to monitor and improve the quality of services paid through Medicaid waiver programs. CMS is encouraging state Medicaid programs to expand their use of home and community-based services as alternatives to facility-based services, pursuant to provisions of the ACA, and other authorities, through the use of several programs.

The types of laws and statutes affecting the regulatory landscape of the post-acute industry continue to expand. In addition to this changing regulatory environment, federal, state and local officials are increasingly focusing their efforts on the enforcement of these laws. In order to operate our businesses, we must comply with federal, state and local laws relating to licensure, delivery and adequacy of medical care, distribution of pharmaceuticals, equipment, personnel, operating policies, fire prevention, rate-setting, billing and reimbursement, building codes and environmental protection. Additionally, we must also adhere to anti-kickback statues, physician referral laws, the ADA, and safety and health standards set by the OSHA Administration. Changes in the law or new interpretations of existing laws may have an adverse impact on our methods and costs of doing business.

Our independent operating subsidiaries are also subject to various regulations and licensing requirements promulgated by state and local health and social service agencies and other regulatory authorities. Requirements vary from state to state and these requirements can affect, among other things, personnel education and training, patient and personnel records, services, staffing levels, monitoring of patient wellness, patient furnishings, housekeeping services, dietary requirements, emergency plans and procedures, certification and licensing of staff prior to beginning employment, and patient rights. These laws and regulations could limit our ability to expand into new markets and to expand the services provided by independent operating subsidiaries in existing markets.

# ENVIRONMENTAL MATTERS

We strive to reduce our environmental impact through initiatives to modernize our facilities, conserve water, optimize waste, work towards a paperless office and partner with green vendors. Our ongoing and planned facility modernization initiatives include solar projects, heating, ventilation and air condition (HVAC) upgrades, water systems updates, lighting retrofits and utility upgrades. For the year ended December 31, 2021, we spent \$69.6 million on purchases of property and equipment which included facility modernization initiatives.

Our business is subject to a variety of federal, state and local environmental laws and regulations. As a healthcare provider, we face regulatory requirements in areas of air and water quality control, medical and low-level radioactive waste management and disposal, asbestos management, response to mold and lead-based paint in our facilities and employee safety.

As an owner or operator of our facilities, we also may be required to investigate and remediate hazardous substances that are located on and/or under the property, including any such substances that may have migrated off, or may have been discharged or transported from the property. Part of our operations involves the handling, use, storage, transportation, disposal and discharge of medical, biological, infectious, toxic, flammable and other hazardous materials, wastes, pollutants or contaminants. In addition, we are sometimes unable to determine with certainty whether prior uses of our facilities and properties or surrounding properties may have produced continuing environmental contamination or noncompliance, particularly where the timing or cost of making such determinations is not deemed cost-effective. These activities, as well as the possible presence of such materials in, on and under our properties, may result in damage to individuals, property or the environment; may interrupt operations or increase costs; may result in legal liability, damages, injunctions or fines; may result in investigations, administrative proceedings, penalties or other governmental agency actions; and may not be covered by insurance.

We believe that we are in material compliance with applicable environmental and occupational health and safety requirements. However, we cannot assure you that we will not encounter liabilities with respect to these regulations in the future, and such liabilities may result in material adverse consequences to our operations or financial condition.

# AVAILABLE INFORMATION

We are subject to the reporting requirements under the Securities Exchange Act of 1934, as amended (the Exchange Act). Consequently, we are required to file reports and information with the Securities and Exchange Commission (SEC), including reports on the following forms: annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act. These reports, proxy and information statements and other information concerning our company may be accessed through the SEC's website at http://www.sec.gov.

You may also find on our website at http://www.ensigngroup.net, electronic copies of our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act. Such filings are placed on our website as soon as reasonably possible after they are filed with the SEC. All such filings are available free of charge. Information contained in our website is not deemed to be a part of this Annual Report on Form 10-K.

Item 14 RISK FACTORS

We are providing the following summary of the risk factors contained in our Form 10-K to enhance the readability and accessibility of our risk factor disclosures. We encourage our stockholders to carefully review the risk factors contained in this Form 10-K in their entirety for additional information regarding the risks and uncertainties that could cause our actual results to vary materially from recent results or from our anticipated future results.

# Risks Related to our Business and Industry

- We face numerous risks related to the COVID-19 public health emergency, which could individually or in the aggregate have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects
- Changes to reimbursement rates and rules and other aspects of Medicare and Medicaid could have a material, adverse effect on our revenues, financial condition and results of operations.
- · Our revenue could be impacted by a shift to value-based reimbursement models, such as PDPM.
- · Reforms to the U.S. healthcare system, including the ACA, continue to impose new requirements upon us and may lower our reimbursements, which could materially impact our business.
- The recent U.S. Presidential and Congressional elections and upcoming midterm elections in 2022, for which certain primary campaigns are already underway, may create significant changes to the regulatory framework, enforcements, and reimbursements.
- We are subject to various government reviews, audits and investigations that could adversely affect our business, including an obligation to refund amounts previously paid to us, potential criminal charges, the imposition of fines, and/or the loss of our right to participate in Medicare and Medicaid programs.
- Failure to comply with applicable laws and regulations, including state-specific mandates or proclamations regarding COVID-19, or if these laws and regulations change, could cause us to incur significant expenses and/or change our operations in order to bring our facilities and operations into compliance.
- Public and government calls for increased survey and enforcement efforts toward long-term care facilities could result in increased scrutiny by state and federal survey agencies. Potential sanctions and remedies based upon alleged regulatory deficiencies could negatively affect our financial condition and results of operations.
- · Future cost containment initiatives undertaken by third-party payors may limit our revenue and profitability.
- Changes in Medicare reimbursements for physician and non-physician services could impact reimbursement for medical professionals, which could have a negative effect on our business, financial condition or results of operations.
- We may be subject to increased investigation and enforcement activities related to HIPAA violations if we fail to adopt and maintain business procedures and systems designed to protect the privacy, security and integrity of patients' individual health information.
- · Security breaches and other cyber-security incidents could violate security laws and subject us to significant liability.
- · If we are not fully reimbursed for all services for which each facility bills through consolidated billing, our revenue, financial condition and results of operations could be adversely affected.
- Increased competition for, or a shortage of, nurses and other skilled personnel could increase our staffing and labor costs and subject us to monetary fines resulting from a failure to maintain minimum staffing requirements.
- · Annual caps and other cost-reductions for outpatient therapy services may reduce our future revenue and profitability or cause us to incur losses.
- Increased scrutiny of our billing practices by the Office of the Inspector General or other regulatory authorities may result in an increase in regulatory monitoring and oversight, decreased reimbursement rates, or otherwise adversely affect our business, financial condition and results of operations.
- State efforts to regulate or deregulate the healthcare services industry or the construction or expansion of healthcare facilities could impair our ability to expand our operations, or could result in increased competition.
- · Changes to federal and state employment-related laws and regulations could increase our cost of doing business.
- · Required regulatory approvals could delay or prohibit transfers of our healthcare operations, which could result in periods in which we are unable to receive reimbursement for such properties.
- · Compliance with federal and state fair housing, fire, safety and other regulations may require us to incur unexpected expenses, which could be costly to us.
- We depend largely upon reimbursement from third-party payors, and our revenue, financial condition and results of operations could be negatively impacted by any changes in the acuity mix of patients in our affiliated facilities as well as payor mix and payment methodologies.
- · We are subject to litigation that could result in significant legal costs and large settlement amounts or damage awards.
- If our regular internal investigations into the care delivery, recordkeeping and billing processes of our operating subsidiaries detect instances of noncompliance, efforts to correct such noncompliance could materially decrease our revenue.
- We may be unable to complete future facility or business acquisitions at attractive prices or at all, or may elect to dispose of underperforming or non-strategic operating subsidiaries, either of which could decrease our revenue.
- We may not be able to successfully integrate acquired facilities and businesses into our operations, or we may be exposed to costs, liabilities and regulatory issues that may adversely affect our operations.
- · If we do not achieve or maintain competitive quality of care ratings from CMS or private organizations engaged in similar monitoring activities, our business may be negatively affected.

- If we are unable to obtain insurance, or if insurance becomes more costly for us to obtain, our business may be adversely affected, and our self-insurance programs may expose us to significant and unexpected costs and losses.
- · The geographic concentration of our affiliated facilities could leave us vulnerable to economic downturn, regulatory changes or acts of nature in those areas.
- · The actions of a national labor union that has pursued a negative publicity campaign criticizing our business in the past may adversely affect our revenue and our profitability.
- · We lease the majority of our affiliated facilities, and risks associated with leased property, could adversely affect our business, financial position or results of operations.
- Failure to generate sufficient cash flow to cover required payments or meet operating covenants under our long-term debt, mortgages and long-term operating leases could result in defaults under such agreements and cross-defaults under other debt, mortgage or operating lease arrangements, which could harm our operating subsidiaries and cause us to lose facilities or experience foreclosures.
- Move-in and occupancy rates may remain unpredictable even after the COVID-19 pandemic is over.
- A housing downturn could decrease demand for senior living services.
- · As we continue to acquire and lease real estate assets, we may not be successful in identifying and consummating these transactions.
- · As we expand our presence in other relevant healthcare industries, we would become subject to risks in a market in which we have limited experience.
- · If our referral sources fail to view us as an attractive skilled nursing provider, or if our referral sources otherwise refer fewer patients, our patient base may decrease.
- We may need additional capital to fund our operating subsidiaries and finance our growth, and we may not be able to obtain it on terms acceptable to us, or at all, which may limit our ability to grow.
- The condition of the financial markets, could limit the availability of debt and equity financing sources to fund the capital and liquidity requirements of our business, as well as negatively impact or impair the value of our current portfolio of cash, cash equivalents and investments.
- · Delays in reimbursement may cause liquidity problems.
- Compliance with the regulations of the Department of Housing and Urban Development may require us to make unanticipated expenditures which could increase our costs.
- · Failure to safeguard our patient trust funds may subject us to citations, fines and penalties.
- We are a holding company with no operations and rely upon our multiple independent operating subsidiaries to provide us with the funds necessary to meet our financial obligations. Liabilities of any one or more of our subsidiaries could be imposed upon us or our other subsidiaries.
- · We may incur operational difficulties or be exposed to claims and liabilities as a result of the separation of Pennant, including if the Spin-Off is not tax-free for U.S. federal income tax purposes.
- · We may not achieve some or all of the anticipated benefits of the Spin-Off, which may adversely affect our business.
- · The Spin-Off and related transactions may expose us to potential liabilities arising out of state and federal fraudulent conveyance laws and legal distribution requirements.
- Certain directors who serve on our Board of Directors also serve as directors of Pennant, and ownership of shares of Pennant common stock by our directors and executive officers may create, or appear to create, conflicts of interest.
- Changes in the method of determining LIBOR, or the replacement of LIBOR with an alternative reference rate, may adversely affect interest rates on our current or future indebtedness and may otherwise adversely affect our financial condition and results of operations.

# Risks Related to Ownership of our Common Stock

- · We may not be able to pay or maintain dividends and the failure to do so would adversely affect our stock price.
- Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions that could discourage transactions resulting in a change in control, which may negatively affect the market price of our common stock.

You should carefully consider each of the following risk factors and all other information set forth in this Annual Report on Form 10-K. The risk factors generally have been separated into two categories: risks relating to our business and our industry and risks relating to our common stock. Based on the information currently known to us, we believe that the following information identifies the most significant risk factors affecting our company in each of these categories of risks. However, the risks and uncertainties we face are not limited to those set forth in the risk factors described below. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. In

addition, past financial performance may not be a reliable indicator of future performance and historical trends should not be used to anticipate results or trends in future periods.

If any of the following risks and uncertainties develops into actual events, these events could have a material adverse effect on our business, financial condition or results of operations. In such case, the trading price of our common stock could decline. You should carefully read the following risk factors, together with the financial statements, related notes and other information contained in this Annual Report on Form 10-K. This Annual Report on Form 10-K contains forward-looking statements that contain risks and uncertainties. Please refer to the section entitled "Cautionary Note Regarding Forward-Looking Statements" on page 1 of this Annual Report on Form 10-K in connection with your consideration of the risk factors and other important factors that may affect future results described below

# Risks Related to Our Business and Industry

We face numerous risks related to the COVID-19 public health emergency, which could have a material adverse effect on our business, financial condition, liquidity, results of operations and prospects.

The extent to which the COVID-19 public health emergency will continue impacting our operations will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak, federal vaccination program efforts, additional or modified government actions, new information which may emerge concerning the severity of the virus, variant outbreaks and efficacy of vaccinations, and the actions taken to contain the virus or treat its impact, among others. Some of the risks of COVID-19 are being mitigated as a result of the federal vaccination program, including vaccinations of nursing facility staff and residents, but there remains uncertainty as to when the pandemic will subside and eventually end.

As discussed in Item 1., under Government Regulation, federal, state and local regulators have implemented new regulations and waived existing regulations to promote care delivery during the COVID-19 public health emergency. While the majority of these changes are beneficial by reducing regulatory burdens, these accommodations may also have an adverse effect through increased legal and operational costs related to compliance and monitoring. Additionally, most of the accommodations are limited in duration and tied to the COVID-19 public health emergency declaration, thus there may be significant operational change requirements on short notice. Other proposed changes, could include requirements for employees to be vaccinated as a condition of Medicare participation or in order to avoid fines or penalties under other laws, may be prospective in nature and affect the ability to retain and attract a qualified workforce. Also, the reinstatement of waived state and federal regulations may not occur simultaneously, requiring heightened monitoring to ensure compliance.

Other factors from the continuation of the COVID-19 pandemic that could have an adverse effect on our business, financial condition, liquidity, results of operations and prospects, include:

- · potential for increased government regulations and restrictions to combat COVID-19;
- · increased strain on employees and resources caused by different waves of COVID-19 variants with different infection and effects;
- · significantly reduced occupancy as a result of government-imposed orders;
- · lower census due to general decline in all hospital procedures, including elective/non-urgent procedures;
- increased costs and staffing requirements related to additional CDC protocols, federal and state workforce protection and related isolation procedures, including obligations to test patients and staff for COVID-19:
- limitations on availability of staff due to COVID-19 related illness or exposure;
- disruptions to supply chains which could negatively impact consistent and reliable delivery of personal protective equipment, sanitizing supplies, food, pharmaceuticals, utilities and other goods to our affiliated facilities, resulting in our inability to obtain on reasonable terms, or at all, personal protective equipment, sanitizing supplies, food, pharmaceuticals, utilities and other goods;
- · incurrence of additional expenditures to comply with COVID-19 isolation procedures, including temporary construction or purchase of additional equipment;
- increased scrutiny by regulators of infection control and prevention measures, including increased reporting requirements related to suspected and confirmed COVID-19 diagnoses of residents and staff, which may result in fines or other sanctions related to non-compliance;
- new state requirements or pressure from state officials to accept post-discharge patients from hospitals facing overcrowding, which increases the potential spread of COVID-19 within our facilities;

- · increased risk of litigation and related liabilities arising in connection with patient or staff illness, hospitalization and/or death;
- · negative impacts on our patients' ability or willingness to pay for healthcare services and our third parties' ability or willingness to pay rents; and
- new regulations which will require that all of our workers be fully vaccinated against COVID-19 as a condition of participating in Medicare and Medicard programs.

The extent and duration of the impact of the COVID-19 pandemic on our stock price is uncertain, our stock price may be more volatile, and our ability to raise capital could be impaired.

### Our revenue could be impacted by federal and state changes to reimbursement and other aspects of Medicare.

We derived 27.8% and 30.5% of our service revenue from the Medicare programs for the years ended December 31, 2021 and 2020, respectively. In addition, many other payors may use published Medicare rates as a basis for reimbursements. Accordingly, if Medicare reimbursement rates are reduced or fail to increase as quickly as our costs, if there are changes in the rules governing the Medicare program that are disadvantageous to our business or industry, or if there are delays in Medicare payments, our business and results of operations will be adversely affected.

The Medicare program and its reimbursement rates and rules are subject to frequent change. These include statutory and regulatory changes, rate adjustments (including retroactive adjustments), annual caps that limit the amount that can be paid (including deductible and coinsurance amounts) administrative or executive orders and government funding restrictions, all of which may materially adversely affect the rates at which Medicare reimburses us for our services. Budget pressures often lead the federal government to reduce or place limits on reimbursement rates under Medicare. Implementation of these and other types of measures has in the past and could in the future result in substantial reductions in our revenue and operating margins. For example, see Item 1., under Government Regulation, Sequestration of Medicare Rates.

Additionally, Medicare payments can be delayed or declined due to determinations that certain costs are not reimbursable or reasonable because either adequate or additional documentation was not provided or because certain services were not covered or considered medically necessary. Additionally, revenue from these payors can be retroactively adjusted after a new examination during the claims settlement process or as a result of post-payment audits. New legislation and regulatory proposals could impose further limitations on government payments to healthcare providers.

In addition, CMS often changes the rules governing the Medicare program, including those governing reimbursement. Changes to the Medicare program that could adversely affect our business include:

- · administrative or legislative changes to base rates or the bases of payment;
- · limits on the services or types of providers for which Medicare will provide reimbursement;
- changes in methodology for patient assessment and/or determination of payment levels;
- changes in staff requirements (i.e. requiring all workers to be vaccinated against COVID-19) as a condition of payment or eligibility for Medicare reimbursement (See also, Item 1., under Government Regulation);
- the reduction or elimination of annual rate increases (See also, Item 1., under Government Regulation); or
- · an increase in co-payments or deductibles payable by beneficiaries.

Among the important statutory changes that are being implemented by CMS are provisions of the IMPACT Act. This law imposes a stringent timeline for implementing benchmark quality measures and data metrics across post-acute care providers (long stay hospitals, IRFs, skilled nursing facilities and home health agencies). The enactment also mandates specific actions to design a unified payment methodology for post-acute providers. CMS continues to promulgate regulations to implement provisions of this enactment. Depending on the final details, the costs of implementation could be significant. The failure to meet implementation requirements could expose providers to fines and payment reductions.

Reductions in reimbursement rates or the scope of services being reimbursed could have a material, adverse effect on our revenue, financial condition and results of operations or even result in reimbursement rates that are insufficient to cover our operating costs. Loss of Medicare reimbursement entirely would also have a material adverse effect on our revenue. Medicare may rescind our certification and terminate its payor agreements if not all of our employees are fully vaccinated consistent with CMS's IFR requiring vaccination of SNF employees, which the United States Supreme Court has allowed enforcement of as of January 13, 2022. As of January 20, 2022, CMS's IFR requiring vaccination of SNF employees is in effect in the State of Texas, with SNF staff required to be fully vaccinated or to have exemptions granted by March 21, 2022. Failure to comply

with the CMS IFR in all states by their applicable deadlines stated by CMS may result in fines and other sanctions imposed by CMS. In addition, within California, Washington, and Colorado, if our employees are not fully vaccinated as required by those states' vaccination mandates, we could incur a deficiency that could endanger our Medicaid certification and participation status for certain locations within those states where employees have not been vaccinated. Any penalty, suspension, termination, or other sanction under any state's Medicaid program could lead to reciprocal and commensurate penalties being imposed under the Medicare program, up to termination or rescission of our Medicare participation and payor agreements as noted above. Additionally, any delay or default by the government in making Medicare reimbursement payments could materially and adversely affect our business, financial condition and results of operations.

Reductions in Medicaid reimbursement rates or changes in the rules governing the Medicaid program could have a material, adverse effect on our revenue, financial condition and results of operations.

A significant portion of reimbursement for skilled nursing services comes from Medicaid. In fact, Medicaid is our largest source of revenue, accounting for 45.8% and 44.0% of our service revenue for the years ended December 31, 2021 and 2020, respectively. Medicaid is a state-administered program financed by both state funds and matching federal funds. Medicaid spending has increased rapidly in recent years, becoming a significant component of state budgets, which has led both the federal government and many states to institute measures aimed at controlling the growth of Medicaid spending, and in some instances reducing aggregate Medicaid spending. Since a significant portion of our revenue is generated from our skilled nursing operating subsidiaries in California, Texas and Arizona, any budget reductions or delays in these states could adversely affect our net patient service revenue and profitability. Despite present state budget surpluses in many of the states in which we operate, we can expect continuing cost containment pressures on Medicaid outlays for skilled nursing facilities, and any such decline could adversely affect our financial condition and results of operations.

The Medicaid program and its reimbursement rates and rules are subject to frequent change at both the federal and state level. These include statutory and regulatory changes, rate adjustments (including retroactive adjustments), administrative or executive orders and government funding restrictions, all of which may materially adversely affect the rates at which our services are reimbursed by state Medicaid plans. To generate funds to pay for the increasing costs of the Medicaid program, many states utilize financial arrangements commonly referred to as provider taxes. Under provider tax arrangements, states collect taxes from healthcare providers and then use the revenue to pay the providers as a Medicaid expenditure, which allows the states to then claim additional federal matching funds on the additional reimbursements. Current federal law provides for a cap on the maximum allowable provider tax as a percentage of the provider's total revenue. There can be no assurance that federal law will continue to provide matching federal funds on state Medicaid expenditures funded through provider taxes, or that the current caps on provider taxes will not be reduced. Any discontinuance or reduction in federal matching of provider tax-related Medicaid expenditures could have a significant and adverse effect on our business, financial condition or results of operations.

# Our revenue could be impacted by a shift to value-based reimbursement models, including PDPM.

As discussed in more detail in Item 1., under Government Regulation, CMS implemented a final rule in October 2019 to replace the existing case-mix classification system, Resource Utilization Groups, Version IV, with a new case-mix classification system, PDPM, that focuses more on the clinical condition of the patient and less on the volume of services provided. Payments under PDPM for fiscal year 2021 are estimated to remain largely unchanged from fiscal year 2020, but there remains risk that CMS may make future adjustments to reimbursement levels as it continues to monitor the impact of PDPM on patient outcomes and budget neutrality. With the increased focus on therapy utilization under RUGs IV, there is concern as to the accuracy of the parity adjustment and how closely it will reflect the data that will be captured under PDPM where the focus is on the clinical condition of the patient in lieu of resource utilization. In addition, the entire parity adjustment could be removed by CMS and this would cause a drastic reduction in payments.

# Reforms to the U.S. healthcare system continue to impose new requirements upon us and may lower our reimbursements.

The ACA included sweeping changes to how healthcare is paid for and furnished in the U.S. Applicable to our business, as discussed in greater detail in Item 1., under *Government Regulation*, the ACA has resulted in significant changes to our operations and reimbursement models for services we provide. CMS continues to issue rules to implement the ACA. Courts continue to interpret and apply the ACA's provisions.

The efficacy of the ACA is the subject of much debate among members of Congress and the public. Additionally, a number of lawsuits have been filed challenging various aspects of the ACA and related regulations with inconsistent outcomes - some expand the ACA while others limit the ACA. In the event that the ACA is repealed or materially amended as a result of future challenges, particularly any elements of the ACA that are beneficial to our business or that cause changes in the health insurance industry, including reimbursement and coverage by private, Medicare or Medicard payers, our business, operating results and financial condition could be harmed. Thus, the future impact of the ACA on our business is difficult to predict and its continued uncertain future may negatively impact our business. However, any material changes to the ACA or its implementing regulations may negatively impact our operations.

Similarly, the proposed Nursing Home Improvement Act may have an impact on our business due to the proposed two percent decrease in payments to skilled nursing facilities, as well as the staffing and reporting requirements contained within the bill. This bill primarily creates penalties such as reduced reimbursement and monetary penalties for submitting inaccurate cost reports or staffing data. If passed in its current form, however, this bill would provide participating states with a temporary enhanced federal Medicaid match to fund improvements in nursing home workforce and care. This match would last six years, and states would be responsible for showing CMS that Medicaid reimbursement increases were used to increase worker wages and yield new training resources and opportunities for nursing home staff. While it is difficult to determine whether the Nursing Home Improvement Act will be amended prior to adoption, or even passed into law, if passed, this bill may negatively impact our business and the scope and nature of its consequences are not yet known.

We cannot predict what effect future reforms to the U.S. healthcare system will have on our business, including the demand for our services or the amount of reimbursement available for those services. However, it is possible these new laws may lower reimbursement or increase the cost of doing business and adversely affect our business.

The results of recent U.S. Presidential and Congressional elections, and upcoming midterm elections in 2022, for which certain primary campaigns are already underway, may create significant changes to regulatory framework, enforcements and reimbursements.

The recent Presidential and Congressional elections in the United States and upcoming midterm elections in 2022, could result in significant changes in, and uncertainty with respect to, legislation, regulation, implementation or repeal of laws and rules related to government health programs, including Medicare and Medicaid. Democratic proposals for Medicare for All or significant expansion of Medicare, could significantly impact our business and the healthcare industry if implemented. Further, if proposed policies specific to nursing facilities are implemented, these may result in significant regulatory changes, increased survey frequency and scope, and increased penalties for non-compliance.

We continually monitor these developments in order to respond to the changing regulatory environment impacting our business. While it is not possible to predict whether and when any such changes will occur, specific proposals discussed during and after the election, including a repeal or material amendment of the ACA, could harm our business, operating results and financial condition. If we are slow or unable to adapt to any such changes, our business, operating results and financial condition could be adversely affected.

Our business may be materially impacted if certain aspects of the ACA are amended, repealed, or successfully challenged.

A number of lawsuits have been filed challenging various aspects of the ACA and related regulations. In addition, the efficacy of the ACA is the subject of much debate among members of Congress and the public. Cases challenging the ACA or related rules have had inconsistent outcomes - some expand the ACA while others limit the ACA. Thus, the future impact of the ACA on our business is difficult to predict. The uncertainty as to the future of the ACA may negatively impact our business, as will any material changes to the ACA.

Presidential and Congressional elections in the United States and the upcoming midterm elections of 2022 could result in significant changes to, and uncertainty with respect to, legislation, regulation, implementation or repeal of the ACA, and other federal health program policy that could significantly impact our business and the healthcare industry. In the event that legal challenges are successful or the ACA is repealed or materially amended, particularly any elements of the ACA that are beneficial to our business or that cause changes in the health insurance industry, including reimbursement and coverage by private, Medicare or Medicare or Medicare or we beneficial payers, our business, operating results and financial condition could be harmed. While it is not possible to predict whether and when any such changes will occur, specific proposals discussed during and after the election, including a repeal or material amendment of the ACA, could harm our business, operating results and financial condition. In addition, even if the ACA is not amended or repealed, the President and the executive branch of the federal government, as well as CMS and HHS have a significant impact on the implementation of the provisions of the ACA, and a new administration could make changes impacting the implementation and enforcement of the ACA, which could harm our business, operating

results and financial condition. If we are slow or unable to adapt to any such changes, our business, operating results and financial condition could be adversely affected.

We are subject to various government reviews, audits and investigations that could adversely affect our business, including an obligation to refund amounts previously paid to us, potential criminal charges, the imposition of fines, and/or the loss of our right to participate in Medicare and Medicaid programs.

As a result of our participation in the Medicaid and Medicare programs, we are subject to various governmental reviews, audits and investigations to verify our compliance with these programs and applicable laws and regulations. We are subject to regulatory reviews relating to Medicare services, billings and potential overpayments resulting from Recovery Audit Contractors, Zone Program Integrity Contractors, Program Safeguard Contractors, Unified Program Integrity Contractors, Supplemental Medical Review Contractors and Medicaid Integrity Contractors programs, (collectively referred to as Reviews), in which third party firms engaged by CMS conduct extensive reviews of claims data and medical and other records to identify potential improper payments under the Medicare programs. Private pay sources also reserve the right to conduct audits. We believe that billing and reimbursement errors and disagreements are common in our industry. We are regularly engaged in reviews, audits and appeals of our claims for reimbursement due to the subjectivities inherent in the process related to patient diagnosis and care, record keeping, claims processing and other aspects of the patient service and reimbursement processes, and the errors and disagreements those subjectivities can produce. An adverse review, audit or investigation could result in:

- an obligation to refund amounts previously paid to us pursuant to the Medicare or Medicaid programs or from private payors, in amounts that could be material to our business;
- state or federal agencies imposing fines, penalties and other sanctions on us;
- · temporary or permanent loss of our right to participate in the Medicare or Medicaid programs or one or more private payor networks;
- · an increase in private litigation against us; and
- · damage to our reputation in various markets.

In 2004, our Medicare administrative contractors began to conduct selected reviews of claims previously submitted by and paid to some of our affiliated facilities. While we have always been subject to post-payment audits and reviews, more intensive "probe reviews" appear to be a permanent procedure with our fiscal intermediaries. All findings of overpayment from CMS contractors are eligible for appeal through the CMS defined continuum. With the exception of rare findings of overpayment related to objective errors in Medicare payment methodology or claims processing, we utilize all defenses reasonably available to us to demonstrate that the services provided meet all clinical and regulatory requirements for reimbursement.

In cases where claim and documentation review by any CMS contractor results in repeated poor performance, an operation can be subjected to protracted oversight. This oversight may include repeat education and re-probe, extended pre-payment review, referral to recovery audit or integrity contractors, or extrapolation of an error rate to other reimbursement outside of specifically reviewed claims. Sustained failure to demonstrate improvement towards meeting all claim filing and documentation requirements could ultimately lead to Medicare decertification. As of December 31, 2021 and subsequently, thirteen of our independent operating subsidiaries had Reviews scheduled, on appeal, or in a dispute resolution process, either pre- or post-payment. We anticipate that these Reviews could increase in frequency in the future.

Additionally, both federal and state government agencies have heightened and coordinated civil and criminal enforcement efforts as part of numerous ongoing investigations of healthcare companies and, in particular, skilled nursing facilities. The focus of these investigations includes, among other things:

- · cost reporting and billing practices;
- · quality of care;
- · financial relationships with referral sources; and
- · medical necessity of services provided.

On May 31, 2018, we received a Civil Investigative Demand (CID) from the DOJ stating that it is investigating our company to determine whether we have violated the FCA or the Anti-Kickback Statute with respect to the relationships between certain of our skilled nursing facilities and persons who served as medical directors, advisory board participants or other referral sources. The CID covered the period from October 3, 2013 through 2018 and was limited in scope to ten of our Southern California skilled nursing facilities. In October 2018, the Department of Justice made an additional request for information covering the period of January 1, 2011 through 2018, relating to the same topic. As a general matter, our operating entities maintain policies and procedures to promote compliance with the FCA, the Anti-Kickback Statute, and other applicable

regulatory requirements. We are fully cooperating with the U.S. Department of Justice to promptly respond to the requests for information. However, we cannot predict when the investigation will be resolved, the outcome of the investigation or its potential impact on our company.

If we should agree to a settlement of, claims or obligations under federal Medicare statutes, the federal FCA, or similar state and federal statutes and related regulations, our business, financial condition and results of operations and cash flows could be materially and adversely affected, and our stock price could be adversely impacted. Among other things, any settlement or litigation could involve the payment of substantial sums to settle any alleged civil violations and may also include our assumption of specific procedural and financial obligations going forward under a corporate integrity agreement or other arrangement with the government.

If the government or court were to conclude that errors and deficiencies constitute criminal violations, concluded that such errors and deficiencies resulted in the submission of false claims to federal healthcare programs, or if it were to discover other problems in addition to the ones identified by the probe reviews that rose to actionable levels, we and certain of our officers might face potential criminal charges and civil claims, administrative sanctions and penalties for amounts that could be material to our business, results of operations and financial condition. In addition, we or some of the key personnel of our operating subsidiaries could be temporarily or permanently excluded from future participation in state and federal healthcare reimbursement programs such as Medicaid and Medicare.

If any of our affiliated facilities is decertified or loses its licenses, our revenue, financial condition or results of operations would be adversely affected. In addition, the report of such issues at any of our affiliated facilities could harm our reputation for quality care and lead to a reduction in the patient referrals of our operating subsidiaries and ultimately a reduction in occupancy at these facilities. Also, responding to auditing and enforcement efforts diverts material time, resources and attention from our management team and our staff, and could have a materially detrimental impact on our results of operations during and after any such investigation or proceedings, regardless of whether we prevail on the underlying claim.

We are subject to extensive and complex laws and government regulations. If we are not operating in compliance with these laws and regulations or if these laws and regulations change, we could be required to make significant expenditures or change our operations in order to bring our facilities and operations into compliance.

We, along with other companies in the healthcare industry, are required to comply with extensive and complex laws and regulations at the federal, state and local government levels relating to, among other things:

- · licensure and certification:
- · adequacy and quality of healthcare services;
- · qualifications and vaccination of healthcare and support personnel;
- · quality of medical equipment;
- · confidentiality, maintenance and security issues associated with medical records and claims processing;
- · relationships with physicians and other referral sources and recipients;
- · constraints on protective contractual provisions with patients and third-party payors;
- · operating policies and procedures;
- · addition of facilities and services; and
- · billing for services.

The laws and regulations governing our operations, along with the terms of participation in various government programs, regulate how we do business, the services we offer, and our interactions with patients and other healthcare providers. These laws and regulations are subject to frequent change. We believe that such regulations may increase in the future and we cannot predict the ultimate content, timing or impact on us of any healthcare reform legislation. Changes in existing laws or regulations, or the enactment of new laws or regulations, could negatively impact our business. If we fail to comply with these applicable laws and regulations, we could suffer civil or criminal penalties and other detrimental consequences, including denial of reimbursement, imposition of fines, temporary suspension of admission of new patients, suspension or decertification from the Medicaid and Medicare programs, restrictions on our ability to acquire new facilities or expand or operate existing facilities, the loss of our licenses to operate and the loss of our ability to participate in federal and state reimbursement programs. Additionally, in the future, different interpretations or enforcement of these laws and regulations could subject our current or past practices to allegations of impropriety or illegality or could require us to make changes in our facilities, equipment, personnel, services, capital expenditure programs and operating expenses.

As discussed in greater detail in Item 1., under Government Regulation, we are subject to federal and state laws intended to prevent healthcare fraud and abuse, including the federal FCA, state false claims acts, the illegal remuneration provisions of the Social Security Act, the Anti-Kickback Statute, state anti-kickback laws, the Civil Monetary Penalties Law and the federal "Stark" Law. Among other things, these laws prohibit kickbacks, bribes and rebates, as well as other direct and indirect payments or fee-splitting arrangements that are designed to induce the referral of patients to a particular provider for medical products or services payable by any federal healthcare program and prohibit presenting a false or misleading claim for payment under a federal or state program. They also prohibit some physician self-referrals. Possible sanctions for violation of any of these restrictions or prohibitions include loss of eligibility to participate in federal and state reimbursement programs and civil and criminal penalties. If we fail to comply, even inadvertently, with any of these requirements, we could be required to alter our operations, refund payments to the government, enter into a corporate integrity agreement, deferred prosecution or similar agreements with state or federal government agencies, and become subject to significant civil and criminal penalties.

These anti-fraud and abuse laws and regulations are complex, and we do not always have the benefit of significant regulatory or judicial interpretation of these laws and regulations. While we do not believe we are in violation of these prohibitions, we cannot assure you that governmental officials charged with the responsibility for enforcing these prohibitions will not assert that we are violating the provisions of such laws and regulations. Our company is currently aware of another investigation by the DOJ related to allegations some of our California facilities may have violated the FCA or the Anti-Kickback Statute with respect to the relationships between certain of our skilled nursing facilities and persons who served as medical directors, advisory board participants or other referral sources. While our operating entities maintain policies and procedures to promote compliance with the FCA, the Anti-Kickback Statute, and other applicable regulatory requirements, we cannot predict when the investigation will be resolved, the outcome of the investigation or its potential impact on our company.

We are unable to predict the future course of federal, state and local regulation or legislation, including Medicare and Medicaid statutes and regulations related to fraud and abuse, the intensity of federal and state enforcement actions or the extent and size of any potential sanctions, fines or penalties. Changes in the regulatory framework, our failure to obtain or renew required regulatory approvals or licenses or to comply with applicable regulatory requirements, the suspension or revocation of our licenses or our disqualification from participation in federal and state reimbursement programs, or the imposition of other enforcement sanctions, fines or penalties could have a material adverse effect upon our business, financial condition or results of operations. Furthermore, should we lose licenses or certifications for a number of our facilities or other businesses as a result of regulatory action or legal proceedings, we could be deemed to be in default under some of our agreements, including agreements governing outstanding indebtedness.

Public and government calls for increased survey and enforcement efforts toward long-term care facilities could result in increased scrutiny by state and federal survey agencies. In addition, potential sanctions and remedies based upon alleged regulatory deficiencies could negatively affect our financial condition and results of operations.

As CMS turns its attention to enhancing enforcement of long-term care facilities, as discussed in Item 1., under Government Regulation, state survey agencies will have more accountability for their survey and enforcement efforts. As discussed in Item 1., under Government Regulation, from time to time in the ordinary course of business, we receive deficiency reports from state and federal regulatory bodies resulting from such inspections or surveys. The focus of these deficiency reports tends to vary from year to year and state to state. Although most inspection deficiencies are resolved through an agreed-upon plan of corrective action, the reviewing agency typically has the authority to take further action against a licensed or certified facility, which could result in the imposition of fines, imposition of a license to a conditional or provisional status, suspension or revocation of a license, suspension or denial of payment for new admissions, loss of certification as a provider under state or federal healthcare programs, or imposition of other sanctions, including criminal penalties. In the past, we have experienced inspection deficiencies that have resulted in the imposition of a provisional license and could experience these results in the future.

Furthermore, in some states, citations in one company facility could negatively impact other company facilities in the same state. Revocation of a license at a given facility could therefore impair our ability to obtain new licenses or to renew existing licenses at other facilities, which may also trigger defaults or cross-defaults under our leases and our credit arrangements, or adversely affect our ability to operate or obtain financing in the future. If state or federal regulators were to determine, formally or otherwise, that one facility's regulatory history ought to impact another of our existing or prospective facilities, this could also increase costs, result in increased scrutiny by state and federal survey agencies, and even impact our expansion plans. Therefore, our failure to comply with applicable legal and regulatory requirements in any single facility could negatively impact our financial condition and overall of operations results.

From time to time, we have opted to voluntarily stop accepting new patients pending completion of a new state survey, in order to avoid possible denial of payment for new admissions during the deficiency cure period, or simply to avoid straining staff and other resources while retraining staff, upgrading operating systems or making other operational improvements. If we elect to voluntary close any operations in the future or to opt to stop accepting new patients pending completion of a state or federal survey, it could negatively impact our financial condition and results of operation.

We have received notices of potential sanctions and remedies based upon alleged regulatory deficiencies from time to time, and such sanctions have been imposed on some of our affiliated facilities. We have had affiliated facilities placed on special focus facility status in the past, continue to have some facilities on this status currently and other operating subsidiaries may be identified for such status in the future. We currently have one facility placed on special focus facility status.

Future cost containment initiatives undertaken by private third-party payors may limit our revenue and profitability.

Our non-Medicaire and non-Medicaid revenue and profitability are affected by continuing efforts of third-party payors to maintain or reduce costs of healthcare by lowering payment rates, narrowing the scope of covered services, increasing case management review of services and negotiating pricing. In addition, sustained unfavorable economic conditions may affect the number of patients enrolled in managed care programs and the profitability of managed care companies, which could result in reduced payment rates. There can be no assurance that third party payors will make timely payments for our services, or that we will continue to maintain our current payor or revenue mix. We are continuing our efforts to develop our non-Medicaire and non-Medicaid sources of revenue and any changes in payment levels from current or future third-party payors could have a material adverse effect on our business and consolidated financial condition, results of operations and cash flows.

Changes in Medicare reimbursements for physician and non-physician services could impact reimbursement for medical professionals.

As discussed in greater detail in Item 1., under Government Regulation, MACRA revised the payment system for physician and non-physician services. Section 1 of that law, the sustainable growth rate repeal and Medicare Provider Payment Modernization will impact payment provisions for medical professional services. That enactment also extended for two years provisions that permit an exceptions process from therapy caps imposed on Medicare Part B outpatient therapy. There was a combined cap for PT and SLP and a separate cap for OT services that apply subject to certain exceptions. On February 9, 2018, the BBA was signed into law, which provides for the repeal of all therapy caps retroactively to January 1, 2018. The law also reduced the monetary threshold that triggers a manual medical review (MMR), in certain instances (from \$3,700 to \$3,000). The reduction in the MMR threshold will likely result in increased number of reviews, which could in turn have a negative effect on our business, financial condition or results of operations.

We may be subject to increased investigation and enforcement activities related to HIPAA violations.

We are required to comply with numerous legislative and regulatory requirements at the federal and state levels addressing patient privacy and security of health information, as discussed in greater detail in Item 1., under Government Regulation. HIPAA, as amended by the HITECH Act, requires us to adopt and maintain business procedures and systems designed to protect the privacy, security and integrity of patients' individual health information. States also have laws that apply to the privacy of healthcare information. We must comply with these state privacy laws to the extent that they are more protective of healthcare information or provide additional protections not afforded by HIPAA. If we fail to comply with these state and federal laws, we could be subject to criminal penalties, civil sanctions, litigation, and be forced to modify our policies and procedures. Additionally, if a breach under HIPAA or other privacy laws were to occur, remediation efforts could be costly and damage to our reputation could occur.

In addition to breaches of protected patient information, under HIPAA and the 21st Century Cures Act (Cures Act), healthcare entities are also required to afford patients with certain rights of access to their health information. Recently, the Office of Civil Rights, the agency responsible for HIPAA enforcement, has targeted investigative and enforcement efforts on violations of patients' rights of access, imposing significant fines for violations largely initiated from patient complaints. If we fail to comply with our obligations under HIPAA, we could face significant fines. Likewise, if we fail to comply with our obligations under the Cures Act, we could face fines from the Office of the National Coordinator for Health Information Technology, the agency responsible for Cures Act enforcement.

Security breaches and other cyber-security incidents could violate security laws and subject us to significant liability.

Healthcare businesses are increasingly the target of cyberattacks whereby hackers disrupt business operations or obtain protected health information, often demanding large ransoms. Our business is dependent on the proper functioning and availability of our computer systems and networks. While we have taken steps to protect the safety and security of our information systems and the patient health information and other data maintained within those systems, we cannot assure you that our safety and security measures and disaster recovery plan will prevent damage, interruption or breach of our information systems and operations. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and may be difficult to detect, we may be unable to anticipate these techniques or implement adequate preventive measures. In addition, hardware, software or applications we develop or procure from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise the security of our information systems. Unauthorized parties may attempt to gain access to our systems or facilities, or those of third parties with whom we do business, through fraud or other forms of deceiving our employees or contractors.

On occasion, we have acquired additional information systems through our business acquisitions, and these acquired systems may expose us to risk. We also license certain third-party software to support our operations and information systems. Our inability, or the inability of third-party software providers, to continue to maintain and upgrade our information systems and software could disrupt or reduce the efficiency of our operations. In addition, costs and potential problems and interruptions associated with the implementation of new or upgraded systems and technology or with maintenance or adequate support of existing systems also could disrupt or reduce the efficiency of our operations.

A cyber-attack or other incident that bypasses our information systems security could cause a security breach which may lead to a material disruption to our information systems infrastructure or business and may involve a significant loss of business or patient health information. If a cyber-attack or other unauthorized attempt to access our systems or facilities were to be successful, it could result in the theft, destructions, loss, misappropriation or release of confidential information or intellectual property, and could cause operational or business delays that may materially impact our ability to provide various healthcare services. Any successful cyber-attack or other unauthorized attempt to access our systems or facilities also could result in negative publicity which could damage our reputation or brand with our patients, referral sources, payors or other third parties and could subject us to a number of adverse consequences, the vast majority of which are not insurable, including but not limited to disruptions in our operations, regulatory and other civil and criminal penalties, fines, investigations and enforcement actions (including, but not limited to, those arising from the SEC, Federal Trade Commission, Office of Civil Rights, the OIG or state attorneys general), fines, private litigation with those affected by the data breach, loss of customers, disputes with payors and increased operating expense, which either individually or in the aggregate could have a material adverse effect on our business, financial position, results of operations and liquidity.

We may not be fully reimbursed for all services for which each facility bills through consolidated billing, which could adversely affect our revenue, financial condition and results of operations.

Skilled nursing facilities are required to perform consolidated billing for certain items and services furnished to patients and residents. The consolidated billing requirement essentially confers on the skilled nursing facility itself the Medicare billing responsibility for the entire package of care that its patients receive in these situations. The BBA also affected skilled nursing facility payments by requiring that post-hospitalization skilled nursing services be "bundled" into the hospital's diagnostic related group (DRG) payment in certain circumstances. Where this rule applies, the hospital and the skilled nursing facility must, in effect, divide the payment which otherwise would have been paid to the hospital alone for the patient's treatment, and no additional funds are paid by Medicare for skilled nursing care of the patient. Although this provision applies to a limited number of DRGs, it has a negative effect on skilled nursing facility utilization and payments, either because hospitals are reluctant to discharge the patients to skilled nursing facilities and lose part of their payment. This bundling requirement could be extended to more DRGs in the future, which would accentuate the negative impact on skilled nursing facility utilization and payments. We may not be fully reimbursed for all services for which each facility bills through consolidated billing, which could adversely affect our revenue, financial condition and results of operations.

Increased competition for, or a shortage of, nurses and other skilled personnel could increase our staffing and labor costs and subject us to monetary fines.

Our success depends upon our ability to retain and attract nurses and other skilled personnel, such as Certified Nurse Assistants, social workers and speech, physical and occupational therapists. Our success also depends upon our ability to retain and attract skilled management personnel who are responsible for the day-to-day operations of each of our affiliated facilities.

Each facility has a facility leader responsible for the overall day-to-day operations of the facility, including quality of care, social services and financial performance. Depending upon the size of the facility, each facility leader is supported by facility staff that is directly responsible for day-to-day care of the patients and marketing and community outreach programs. Other key positions supporting each facility may include individuals responsible for physical, occupational and speech therapy, food service and maintenance. We compete with various healthcare service providers, including other skilled nursing providers, in retaining and attracting qualified and skilled personnel.

We operate one or more affiliated skilled nursing facilities in the states of Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin. With the exception of Utah, which follows federal regulations, each of these states has established minimum staffing requirements for facilities operating in that state. Failure to comply with these requirements can, among other things, jeopardize a facility's compliance with the conditions of participation under relevant state and federal healthcare programs. In addition, if a facility is determined to be out of compliance with these requirements, it may be subject to a notice of deficiency, a citation, or a significant fine or litigation risk. Deficiencies (depending on the level) may also result in the suspension of patient admissions and the termination of Medicaid participation, or the suspension, revocation or non-renewal of the skilled nursing facility's license. If the federal or state governments were to issue regulations which materially change the way compliance with the minimum staffing standard is calculated or enforced, our labor costs could increase and the current shortage of healthcare workers could impact us more significantly, including the increased scrutiny on staffing at the state and federal levels as a result of the COVID-19 virus. The broader labor market where we compete is in a unique state of disequilibrium where the needs of businesses such as ours outstrip the supply of available and willing workers. There is additional upward pressure on wages from different industries, some of which compete with us for labor and others that do not, which makes it difficult to make significant hourly wage and salary increases due to the fixed nature of our reimbursement under insurance contracts as well as Medicare and Medicaid, in addition to our increasing variable costs. Due to the limited supply of qualified applicants who seek or are willing to accept employment, these broader concerns, as wel

Federal laws and regulations may increase our costs of maintaining qualified nursing and skilled personnel, or make it more difficult for us to attract or retain qualified nurses and skilled staff members. The proposed Nursing Home Improvement Act, if passed into law in substantially the same form as the proposed bill, may increase our responsibility to provide nursing coverage and the costs associated with that increased coverage. We are monitoring our facilities for potential effects from CMS's IFR requiring employees of Medicare and Medicaid-participating medical facilities to be vaccinated, which may cause disruption to our affiliated facilities' nursing staff and may additionally disrupt our operations if affected personnel decline to be vaccinated and replacement staffing cannot be located. On November 5, 2021, CMS issued the IFR discussed under Item 2, Government Regulations, requiring all eligible staff to receive their first dose of a two-dose primary vaccination series by December 5, 2021 and the second dose of a two-dose primary vaccination series by January 4, 2022. CMS's enforcement of this IFR was temporarily blocked in certain states pending appeal to the United States Supreme Court. On January 13, 2022, the United States Supreme Court entered an order allowing CMS's enforcement of the IFR and its vaccination requirements by March 15, 2022 for our operating subsidiaries in Arizona, Idaho, Iowa, Kansas, Nebraska, South Carolina and Utah and by February 28, 2022 for all of our other operating subsidiaries except those in Texas.

Similar state-level requirements in the states where our affiliated skilled nursing facilities operate, whether such requirements are passed by statute, regulation, or executive order, may result in a shortage or inability to obtain nurses and skilled staff. As noted above, California, Washington, and Colorado have all mandated vaccinations for workers in health care facilities that include nursing homes. These administrative mandates precede, may be more restrictive than and are not likely to be preempted by CMS's IFR. On October 11, 2021, Texas issued an executive order banning the practice of mandating vaccination, including by private employers. On January 20, 2022, the United States District Court for the Northern District of Texas dismissed the State of Texas's lawsuit CMS's enforcement of the IFR's vaccine mandate upon the request of the State of Texas. The District Court's dismissal of the Texas's lawsuit ended the court's injunction against CMS's enforcement of the IFR's vaccine mandate in Texas. On January 20, 2022, CMS became empowered to enforce the IFR in Texas and set a deadline of March 21, 2022 for full compliance with its vaccination requirements.

Increased competition for, or a shortage of, nurses or other trained personnel, or general inflationary pressures may require that we enhance our pay and benefits packages to compete effectively for such personnel. We may not be able to offset such added costs by increasing the rates we charge to the patients of our operating subsidiaries. Turnover rates and the magnitude of the shortage of nurses or other trained personnel vary substantially from facility to facility. An increase in costs associated with, or a shortage of, skilled nurses, could negatively impact our business. In addition, if we fail to attract and retain qualified and skilled personnel, our ability to conduct our business operations effectively could be harmed.

Annual caps and other cost-reductions for outpatient therapy services may reduce our future revenue and profitability or cause us to incur losses.

As discussed in detail in Item 1., under *Government Regulation*, sub-heading *Part B Rehabilitation Requirements*, several government actions have been taken in recent years to try and contain the costs of rehabilitation therapy services provided under Medicare Part B, including the MPPR, institution of annual caps, mandatory medical reviews for annual claims beyond a certain monetary threshold, and a reduction in reimbursement rates for therapy assistant claim modifiers. Of specific concern is CMS's decision to lower Medicare Part B reimbursement rates for outpatient therapy services by 9%, beginning in January 1, 2021. Such cost-containment measures and ongoing payment changes could have an adverse effect on our revenue.

The Office of the Inspector General or other regulatory authorities may choose to more closely scrutinize billing practices in areas where we operate or propose to expand, which could result in an increase in regulatory monitoring and oversight, decreased reimbursement rates, or otherwise adversely affect our business, financial condition and results of operations.

As discussed in greater detail in Item 1., under Government Regulation, Civil and Criminal Fraud and Abuse Laws and Enforcement, the OIG regularly conducts investigations regarding certain payment or compliance issues within various healthcare sectors. Following, the OIG publishes these reports, in part, to educate involved stakeholders and signal future enforcement focus. Reports published in 2019 and 2020 demonstrate the OIG's increased scrutiny on post-hospital skilled nursing facility care and billing. This may impact the skilled nursing facility industry by motivating additional reviews and stricter compliance in the areas outlined in the recent reports, expending material time and resources.

Additionally, OIG reports published in 2010 and 2015 show the OIG's concerns related to the billing practices of skilled nursing facilities based on Medicare Part A claims and financial incentives for facilities to bill for higher levels of therapies, even when not needed by patients. In its fiscal year 2014 work plan, and again in 2017, OIG specifically stated that it will continue to study and report on questionable Part A and Part B billing practices amongst skilled nursing facilities. Recently, in its 2021 work plan, OIG stated it will evaluate whether payments to SNFs under PDPM complied with Medicare requirements.

Our business model, like those of some other for-profit operators, is based in part on seeking out higher-acuity patients whom we believe are generally more profitable, and over time our overall patient mix has consistently shifted to higher-acuity and higher-resource utilization patients in most facilities we operate. We also use specialized care-delivery software that assists our caregivers in more accurately capturing and recording activities of daily living services, among other things. These efforts may place us under greater scrutiny with the OIG, CMS, our fiscal intermediaries, recovery audit contractors and others.

State efforts to regulate or deregulate the healthcare services industry or the construction or expansion of healthcare facilities could impair our ability to expand our operations, or could result in increased competition.

Some states require healthcare providers, including skilled nursing facilities, to obtain prior approval, known as a certificate of need, for: (i) the purchase, construction or expansion of healthcare facilities; (ii) capital expenditures exceeding a prescribed amount; or (iii) changes in services or bed capacity.

In addition, other states that do not require certificates of need have effectively barred the expansion of existing facilities and the establishment of new ones by placing partial or complete moratoria on the number of new Medicaid beds they will certify in certain areas or in the entire state. Other states have established such stringent development standards and approval procedures for constructing new healthcare facilities that the construction of new facilities, or the expansion or renovation of existing facilities, may become cost-prohibitive or extremely time-consuming. In addition, some states require the approval of the state Attorney General for acquisition of a facility being operated by a non-profit organization.

Our ability to acquire or construct new facilities or expand or provide new services at existing facilities would be adversely affected if we are unable to obtain the necessary approvals, if there are changes in the standards applicable to those approvals, or if we experience delays and increased expenses associated with obtaining those approvals. We may not be able to obtain licensure, certificate of need approval, Medicaid certification, state Attorney General approval or other necessary approvals for future expansion projects. Conversely, the elimination or reduction of state regulations that limit the construction, expansion or renovation of new or existing facilities could result in increased competition to us or result in overbuilding of facilities in some of our markets. If overbuilding in the skilled nursing industry in the markets in which we operate were to occur, it could reduce the occupancy rates of existing facilities and, in some cases, might reduce the private rates that we charge for our services.

### Changes to federal and state employment-related laws and regulations could increase our cost of doing business.

Our operating subsidiaries are subject to a variety of federal and state employment-related laws and regulations, including, but not limited to, the U.S. Fair Labor Standards Act which governs such matters as minimum wages, overtime and other working conditions, the ADA and similar state laws that provide civil rights protections to individuals with disabilities in the context of employment, public accommodations and other areas, the National Labor Relations Act, regulations of the EEOC, regulations of the Office of Civil Rights, regulations of state Attorneys General, family leave mandates and a variety of similar laws enacted by the federal and state governments that govern these and other employment law matters. On November 5, 2021, OSHA issued an ETS requiring employers with more than 100 employees to have employees who were not fully vaccinated to complete weekly testing to prove they were not infected with COVID-19 to remain in the workforce, which the United States Supreme Court blocked enforcement of on January 13, 2022 after nationwide litigation over the ETS. The uncertain environment regarding these mandates and potential attempts to enforce similar mandates in 2022 is one we are monitoring, as it represents a risk of uncertainty to the Company that may result in limitations on staff availability, disruption caused by staff departure, potential claims under the ADA and other laws and potential government sanctions which could cause disruptions to the operations of our subsidiaries, limit our ability to grow and otherwise adversely affect our business and financial results. Rising operating costs due to labor shortages, greater compensation and incentives required to attract and retain qualified personnel and higher-than-usual inflation on items including energy, utilities, food and other goods used in our facilities and the costs for transporting these items could increase our cost and decrease our profits.

The compliance costs associated with these laws and evolving regulations could be substantial. For example, all of our affiliated facilities are required to comply with the ADA. The ADA has separate compliance requirements for "public accommodations" and "commercial properties," but generally requires that buildings be made accessible to people with disabilities. Compliance with ADA requirements could require removal of access barriers and non-compliance could result in imposition of government fines or an award of damages to private litigants. Further legislation may impose additional burdens or restrictions with respect to access by disabled persons. In addition, federal proposals to introduce a system of mandated health insurance and flexible work time and other similar initiatives could, if implemented, adversely affect our operations. We also may be subject to employee-related claims such as wrongful discharge, discrimination or violation of equal employment law. While we are insured for these types of claims, we could be subject to damages that are not covered by our insurance policies or that exceed our insurance limits, and we may be required to pay such damages directly, which would negatively impact our cash flow from operations.

# Required regulatory approvals could delay or prohibit transfers of our healthcare operations, which could result in periods in which we are unable to receive reimbursement for such properties.

The operations of our operating subsidiaries must be licensed under applicable state law and, depending upon the type of operation, certified or approved as providers under the Medicare and/or Medicaid programs. In the process of acquiring or transferring operating assets, our operations must receive change of ownership approvals from state licensing agencies, Medicare and Medicaid as well as third party payors. If there are any delays in receiving regulatory approvals from the applicable federal, state or local government agencies, or the inability to receive such approvals, such delays could result in delayed or lost reimbursement related to periods of service prior to the receipt of such approvals, which could negatively impact our cash position.

# Compliance with federal and state fair housing, fire, safety and other regulations may require us to make unanticipated expenditures, which could be costly to us.

We must comply with the federal Fair Housing Act and similar state laws, which prohibit us from discriminating against individuals if it would cause such individuals to face barriers in gaining residency in any of our affiliated facilities. Additionally, the Fair Housing Act and other similar state laws require that we advertise our services in such a way that we promote diversity and not limit it. We may be required, among other things, to change our marketing techniques to comply with these requirements.

In addition, we are required to operate our affiliated facilities in compliance with applicable fire and safety regulations, building codes and other land use regulations and food licensing or certification requirements as they may be adopted by governmental agencies and bodies from time to time. Like other healthcare facilities, our affiliated skilled nursing facilities are subject to periodic surveys or inspections by governmental authorities to assess and assure compliance with regulatory requirements. Surveys occur on a regular (often annual or biannual) schedule, and special surveys may result from a specific complaint filed by a patient, a family member or one of our competitors. We may be required to make substantial capital expenditures to comply with these requirements.

We depend largely upon reimbursement from third-party payors, and our revenue, financial condition and results of operations could be negatively impacted by any changes in the acuity mix of patients in our affiliated facilities as well as payor mix and payment methodologies.

Our revenue is affected by the percentage of the patients of our operating subsidiaries who require a high level of skilled nursing and rehabilitative care, whom we refer to as high acuity patients, and by our mix of payment sources. Changes in the acuity level of patients we attract, as well as our payor mix among Medicaid, Medicare, private payors and managed care companies, significantly affect our profitability because we generally receive higher reimbursement rates for high acuity patients and because the payors reimburse us at different rates. For the years ended December 31, 2021 and 2020, 73.6% and 74.5% of our service revenue was provided by government payors that reimburse us at predetermined rates. If our labor or other operating costs increase, we will be unable to recover such increased costs from government payors. Accordingly, if we fail to maintain our proportion of high acuity patients or if there is any significant increase in the percentage of the patients of our operating subsidiaries for whom we receive Medicaid reimbursement, our results of operations may be adversely affected.

Initiatives undertaken by major insurers and managed care companies to contain healthcare costs may adversely affect our business. Among other initiatives, these payors attempt to control healthcare costs by contracting with healthcare providers to obtain services on a discounted basis. We believe that this trend will continue and may limit reimbursements for healthcare services. If insurers or managed care companies from whom we receive substantial payments were to reduce the amounts they pay for services, we may lose patients if we choose not to renew our contracts with these insurers at lower rates

On November 5, 2021, CMS issued the IFR discussed under Item 1, *Government Regulations*, subheading Coronavirus requiring all eligible staff to be fully vaccinated against COVID-19. CMS's enforcement of this IFR was temporarily blocked in certain states pending appeal to the United States Supreme Court. On January 13, 2022, the United States Supreme Court entered an order allowing CMS's enforcement of the IFR and its vaccination requirements by March 15, 2022 for our operating subsidiaries in Arizona, Idaho, Iowa, Kansas, Nebraska, South Carolina and Utah and by February 28, 2022 for all of our other operating subsidiaries except those in Texas. On January 20, 2022, CMS became empowered to enforce the IFR in Texas and set a deadline of March 21, 2022 for compliance with its vaccination requirements.

The IFR and its enforcement by CMS may cause disruption to our affiliated facilities' nursing staff and may further disrupt our operations if affected personnel decline to be vaccinated and replacement staff cannot be located. In the event we or our affiliated facilities do not comply with this requirement, our Medicare and Medicaid agreements could be terminated and the termination of those agreements may lead to other payors terminating their agreements with us or our affiliated facilities and operating subsidiaries. CMS terminating Medicare or Medicaid participation agreements and the loss of the payment agreements with private payors as a result of CMS terminating Medicare or Medicaid participation agreements with our affiliated facilities and operating subsidiaries would materially and adversely affect our business, financial condition and results of operations.

We are subject to litigation that could result in significant legal costs and large settlement amounts or damage awards.

The skilled nursing business involves a significant risk of liability given the age and health of the patients and residents of our operating subsidiaries and the services we provide. The industry has experienced an increased trend in the number and severity of litigation claims, due in part to the number of large verdicts, including large punitive damage awards. These claims are filed based upon a wide variety of claims and theories, including deficiencies under conditions of participation under certain state and federal healthcare programs. Plaintiffs' attorneys have become increasingly more aggressive in their pursuit of claims against healthcare providers, including skilled nursing providers, employing a wide variety of advertising and solicitation activities to generate more claims. The defense of lawsuits has in the past, and may in the future, result in significant legal costs, regardless of the outcome. Additionally, increases to the frequency and/or severity of losses from such claims and suits may result in increased liability insurance premiums or a decline in available insurance coverage levels, which could materially and adversely affect our business, financial condition and results of operations.

We have in the past been subject to class action litigation involving claims of violations of various regulatory requirements. While we have been able to settle these claims without an ongoing material adverse effect on our business, future claims could be brought that may materially affect our business, financial condition and results of operations. Other claims and suits, including class actions, continue to be filed against us and other companies in our industry. For example, there has been a general increase in the number of wage and hour class action claims filed in several of the jurisdictions where we are present. Allegations typically include claimed failures to permit or properly compensate for meal and rest periods, or failure to pay for time worked. If there were a significant increase in the number of these claims against us or an increase in amounts owing

should plaintiffs be successful in their prosecution of these claims, this could have a material adverse effect to our business, financial condition, results of operations and cash flows.

In addition, we contract with a variety of landlords, lenders, vendors, suppliers, consultants and other individuals and businesses. These contracts typically contain covenants and default provisions. If the other party to one or more of our contracts were to allege that we have violated the contract terms, we could be subject to civil liabilities which could have a material adverse effect on our financial condition and results of operations.

If litigation is instituted against one or more of our subsidiaries, a successful plaintiff might attempt to hold us or another subsidiary liable for the alleged wrongdoing of the subsidiary principally targeted by the litigation. If a court in such litigation decided to disregard the corporate form, the resulting judgment could increase our liability and adversely affect our financial condition and results of operations.

Congress has repeatedly considered, without passage, a bill that would require, among other things, that agreements to arbitrate nursing home disputes be made after the dispute has arisen rather than before prospective patients move in, to prevent nursing home operators and prospective patients from mutually entering into a pre-admission pre-dispute arbitration agreement. This bill, known as the Fairness in Nursing Home Arbitration Act, was introduced in the House of Representatives as a H.R. 5326 in 2019 and H.R. 2812 in 2021; neither bill made it out of the committees to which it was referred for discussion to be voted on by the entire House of Representatives. We use arbitration agreements, which have generally been favored by the courts, to streamline the dispute resolution process and reduce our exposure to legal fees and excessive jury awards. If we are not able to secure pre-admission arbitration agreements, our litigation exposure and costs of defense in patient liability actions could increase, our liability insurance premiums could increase, and our business may be adversely affected.

We conduct regular internal investigations into the care delivery, recordkeeping and billing processes of our operating subsidiaries. These reviews sometimes detect instances of noncompliance which we attempt to correct, which can decrease our revenue.

As an operator of healthcare facilities, we have a program to help us comply with various requirements of federal and private healthcare programs. Our compliance program includes, among other things, (i) policies and procedures modeled after applicable laws, regulations, government manuals and industry practices and customs that govern the clinical, reimbursement and operational aspects of our subsidiaries; (ii) training about our compliance process for all of the employees of our operating subsidiaries, our directors and officers, and training about Medicare and Medicaid laws, fraud and abuse prevention, clinical standards and practices, and claim submission and reimbursement policies and procedures for appropriate employees; and (iii) internal controls that monitor, for example, the accuracy of claims, reimbursement submissions, cost reports and source documents, provision of patient care, services, and supplies as required by applicable standards and laws, accuracy of clinical assessment and treatment documentation, and implementation of judicial and regulatory requirements (i.e., background checks, licensing and training).

From time to time our systems and controls highlight potential compliance issues, which we investigate as they arise. Historically, we have, and would continue to do so in the future, initiated internal inquiries into possible recordkeeping and related irregularities at our affiliated skilled nursing facilities, which were detected by our internal compliance team in the course of its ongoing reviews.

Through these internal inquiries, we have identified potential deficiencies in the assessment of and recordkeeping for small subsets of patients. We have also identified and, at the conclusion of such investigations, assisted in implementing, targeted improvements in the assessment and recordkeeping practices to make them consistent with the existing standards and policies applicable to our affiliated skilled nursing facilities in these areas. We continue to monitor the measures implemented for effectiveness and perform follow-up reviews to ensure compliance. Consistent with healthcare industry accounting practices, we record any charge for refunded payments against revenue in the period in which the claim adjustment becomes known.

If additional reviews result in identification and quantification of additional amounts to be refunded, we will accrue additional liabilities for claim costs and interest, and repay any amounts due in normal course. Furthermore, failure to refund overpayments within required time frames (as described in greater detail above) could result in FCA liability. If future investigations ultimately result in findings of significant billing and reimbursement noncompliance which could require us to record significant additional provisions or remit payments, our business, financial condition and results of operations could be materially and adversely affected and our stock price could decline.

We may be unable to complete future facility or business acquisitions at attractive prices or at all, which may adversely affect our revenue; we may also elect to dispose of underperforming or non-strategic operating subsidiaries, which would also decrease our revenue.

To date, our revenue growth has been significantly impacted by our acquisition of new facilities and businesses. Subject to general market conditions and the availability of essential resources and leadership within our company, we continue to seek both single-and multi-facility acquisition and business acquisition opportunities that are consistent with our geographic, financial and operating objectives.

We face competition for the acquisition of facilities and businesses and expect this competition to increase. Based upon factors such as our ability to identify suitable acquisition candidates, the purchase price of the facilities, prevailing market conditions, the availability of leadership to manage new facilities and our own willingness to take on new operations, the rate at which we have historically acquired facilities has fluctuated significantly. In the future, we anticipate the rate at which we may acquire facilities will continue to fluctuate, which may affect our revenue.

We have also historically acquired a few facilities, which were or have proven to be non-strategic or less desirable, and we may consider disposing of such facilities or exchanging them for facilities which are more desirable, either because they were included in larger, indivisible groups of facilities or under other circumstances. To the extent we dispose of such a facility without simultaneously acquiring a facility in exchange, our revenue may decrease.

We may not be able to successfully integrate acquired facilities and businesses into our operations, and we may not achieve the benefits we expect from any of our facility acquisitions.

We may not be able to successfully or efficiently integrate new acquisitions of facilities and businesses with our existing operating subsidiaries, culture and systems. The process of integrating acquisitions into our existing operations may result in unforeseen operating difficulties, divert management's attention from existing operations, or require an unexpected commitment of staff and financial resources, and may ultimately be unsuccessful. Existing operations available for acquisition frequently serve or target different markets than those that we currently serve. We also may determine that renovations of acquired facilities and changes in staff and operating management personnel are necessary to successfully integrate those acquisitions into our existing operations. We may not be able to recover the costs incurred to reposition or renovate newly operating subsidiaries. The financial benefits we expect to realize from many of our acquisitions are largely dependent upon our ability to improve clinical performance, overcome regulatory deficiencies, rehabilitate or improve the reputation of the operations in the community, increase and maintain occupancy, control costs, and in some cases change the patient acuity mix. If we are unable to accomplish any of these objectives at the operating subsidiaries we acquire, we will not realize the anticipated benefits and we may experience lower than anticipated profits, or even losses.

During the year ended December 31, 2021, we expanded our operations through long-term leases and real estate purchases, with the addition of 17 stand-alone skilled nursing operations. This growth has placed and will continue to place significant demands on our current management resources. Our ability to manage our growth effectively and to successfully integrate new acquisitions into our existing business will require us to continue to expand our operational, financial and management information systems and to continue to retain, attract, train, motivate and manage key employees, including facility-level leaders and our local directors of nursing. We may not be successful in attracting qualified individuals necessary for future acquisitions to be successful, and our management team may expend significant time and energy working to attract qualified personnel to manage facilities we may acquire in the future. Also, the newly acquired facilities may require us to spend significant time improving services that have historically been substandard, and if we are unable to improve such facilities quickly enough, we may be subject to litigation and/or loss of licensure or certification. If we are not able to successfully overcome these and other integration challenges, we may not achieve the benefits we expect from any of our acquisitions, and our business may suffer.

In undertaking acquisitions, we may be adversely impacted by costs, liabilities and regulatory issues that may adversely affect our operations.

In undertaking acquisitions, we also may be adversely impacted by unforeseen liabilities attributable to the prior providers who operated those facilities, against whom we may have little or no recourse. Many facilities we have historically acquired were underperforming financially and had clinical and regulatory issues prior to and at the time of acquisition. Even where we have improved operating subsidiaries and patient care at affiliated facilities that we have acquired, we still may face post-acquisition regulatory issues related to pre-acquisition events. These may include, without limitation, payment recoupment related to our predecessors' prior noncompliance, the imposition of fines, penalties, operational restrictions or special regulatory status. Further, we may incur post-acquisition compliance risk due to the difficulty or impossibility of immediately or quickly

bringing non-compliant facilities into full compliance. Diligence materials pertaining to acquisition targets, especially the underperforming facilities that often represent the greatest opportunity for return, are often inadequate, inaccurate or impossible to obtain, sometimes requiring us to make acquisition decisions with incomplete information. Despite our due diligence procedures, facilities that we have acquired or may acquire in the future may generate unexpectedly low returns, may cause us to incur substantial losses, may require unexpected levels of management time, expenditures or other resources, or may otherwise not meet a risk profile that our investors find acceptable.

In addition, we might encounter unanticipated difficulties and expenditures relating to any of the acquired facilities, including contingent liabilities. For example, when we acquire a facility, we generally assume the facility's existing Medicare provider number for purposes of billing Medicare for services. If CMS later determines that the prior owner of the facility had received overpayments from Medicare for the period of time during which it operated the facility, or had incurred fines in connection with the operation of the facility, CMS could hold us liable for repayment of the overpayments or fines. We may be unable to improve every facility that we acquire. In addition, operation of these facilities may divert management time and attention from other operations and priorities, negatively impact cash flows, result in adverse or unanticipated accounting charges, or otherwise damage other areas of our company if they are not timely and adequately improved.

We also incur regulatory risk in acquiring certain facilities due to the licensing, certification and other regulatory requirements affecting our right to operate the acquired facilities. For example, in order to acquire facilities on a predictable schedule, or to acquire declining operations quickly to prevent further pre-acquisition declines, we frequently acquire such facilities prior to receiving license approval or provider certification. We operate such facilities as the interim manager for the outgoing licensee, assuming financial responsibility, among other obligations for the facility. To the extent that we may be unable or delayed in obtaining a license, we may need to operate the facility under a management agreement from the prior operator. Any inability in obtaining consent from the prior operator of a target acquisition to utilizing its license in this manner could impact our ability to acquire additional facilities. If we were subsequently denied licensure or certification for any reason, we might not realize the expected benefits of the acquisition and would likely incur unanticipated costs and other challenges which could cause our business to suffer.

If we do not achieve or maintain competitive quality of care ratings from CMS or private organizations engaged in similar monitoring activities, our business may be negatively affected.

CMS, as well as certain private organizations engaged in similar monitoring activities, provides comparative public data, rating every skilled nursing facility operating in each state based upon quality-of-care indicators. CMS's system is the Five-Star Quality Rating System, introduced in 2008, to help consumers, their families and caregivers compare nursing homes more easily. The Five-Star Quality Rating System gives each nursing home a rating of between one and five stars in various categories, and the ratings are available on a consumer-facing website, Nursing Home Compare. In cases of acquisitions, the previous operator's clinical ratings are included in our overall Five-Star Quality Rating. Over the years, the Five-Star Quality Rating System has been modified, with the most recent changes being implemented in 2018 and 2019. Additionally, as a result of the COVID-19 pandemic and CMS's suspension or modification of certain inspection and reporting requirements, the data used to calculate the star ratings of facilities was interrupted. CMS temporarily froze certain data on the Nursing Home Compare website through January 2021, and recalculated its Five Star Quality ratings with modified data used to calculate the nursing home's rating. Other data related to quality reporting measures, including new or worsened pressure-related injuries and discharges to home, are not presently factored into CMS's star calculations. This data is reflected on the Nursing Home Compare website based on the recalculation in January of 2022. The temporary adjustments due to COVID-19 could impact facilities that might have less favorable Five-Star Ratings from being able to demonstrate improvements on the public-facing website through mid-2022. For more information on these changes, see Item 1., under Government Regulation.

CMS continues to increase quality measure thresholds, making it more difficult to achieve upward ratings. CMS acknowledges that some facilities may see a decline in their overall five-star rating absent any new inspection information. This change could further affect star ratings across the industry. Additionally, on the Nursing Home Compare website, CMS recently began displaying a consumer alert icon next to nursing homes that have been cited on inspection reports for incidents of abuse, neglect, or exploitation. See Item 1., under Government Regulation.

Providing quality patient care is the cornerstone of our business. We believe that hospitals, physicians and other referral sources refer patients to us in large part because of our reputation for delivering quality care. If we should fail to achieve our internal rating goals or fail to exceed the national average rating on the Five-Star Quality Rating System, or have facilities displaying a consumer alert icon for incidents of abuse, neglect, or exploitation, it may affect our ability to generate referrals, which could have a material adverse effect upon our business and consolidated financial condition, results of operations and cash flows.

If we are unable to obtain insurance, or if insurance becomes more costly for us to obtain, our business may be adversely affected.

It may become more difficult and costly for us to obtain coverage for resident care liabilities and other risks, including property and casualty insurance. For example, the following circumstances may adversely affect our ability to obtain insurance at favorable rates:

- · we experience higher-than-expected professional liability, property and casualty, or other types of claims or losses;
- · we receive survey deficiencies or citations of higher-than-normal scope or severity;
- we acquire especially troubled operations or facilities that present unattractive risks to current or prospective insurers;
- · insurers tighten underwriting standards applicable to us or our industry; or
- · insurers or reinsurers are unable or unwilling to insure us or the industry at historical premiums and coverage levels.

If any of these potential circumstances were to occur, our insurance carriers may require us to significantly increase our self-insured retention levels or pay substantially higher premiums for the same or reduced coverage for insurance, including workers compensation, property and casualty, automobile, employment practices liability, directors and officers liability, employee healthcare and general and professional liability coverages.

In some states, the law prohibits or limits insurance coverage for the risk of punitive damages arising from professional liability and general liability claims or litigation. Coverage for punitive damages is also excluded under some insurance policies. As a result, we may be liable for punitive damage awards in these states that either are not covered or are in excess of our insurance policy limits. Claims against us, regardless of their merit or eventual outcome, also could inhibit our ability to attract patients or expand our business and could require our management to devote time to matters unrelated to the day-to-day operation of our business.

With few exceptions, workers' compensation and employee health insurance costs have also increased markedly in recent years. To partially offset these increases, we have increased the amounts of our self-insured retention and deductibles in connection with general and professional liability claims. We also have implemented a self-insurance program for workers compensation in all states, except Washington, and elected non-subscriber status for workers' compensation in Texas. In Washington, the insurance coverage is financed through premiums paid by the employers and employees. Due to the nature of our business and the residents we serve, including the risk of claims from residents as well as potential governmental action, it may be difficult to complete the underwriting process and obtain insurance at commercially reasonable rates. If we are unable to obtain insurance, or if insurance becomes more costly for us to obtain, or if the coverage levels we can economically obtain decline, our business may be adversely affected.

Our self-insurance programs may expose us to significant and unexpected costs and losses.

We have maintained general and professional liability insurance since 2002 and workers' compensation insurance since 2005 through a wholly owned subsidiary insurance company, Standardbearer Insurance Company, Ltd., to insure our self-insurance reimbursements and deductibles as part of a continually evolving overall risk management strategy. We establish the insurance loss reserves based on an estimation process that uses information obtained from both company-specific and industry data. The estimation process requires us to continuously monitor and evaluate the life cycle of the claims. Using data obtained from this monitoring and our assumptions about emerging trends, we, along with an independent actuary, develop information about the size of ultimate claims based on our historical experience and other available industry information. The most significant assumptions used in the estimation process include determining the trend in costs, the expected cost of claims incurred but not reported and the expected costs to settle or pay damages with respect to unpaid claims. It is possible, however, that the actual liabilities may exceed our estimates of loss. We may also experience an unexpectedly large number of successful claims or claims that result in costs or liability significantly in excess of our projections. For these and other reasons, our self-insurance reserves could prove to be inadequate, resulting in liabilities in excess of our available insurance and self-insurance. If a successful claim is made against us and it is not covered by our insurance or exceeds the insurance policy limits, our business may be negatively and materially impacted.

Further, because our self-insurance reimbursements under our general and professional liability and workers compensation programs applies on a per claim basis, there is no limit to the maximum number of claims or the total amount for which we could incur liability in any policy period.

We also self-insure our employee health benefits. With respect to our health benefits self-insurance, our reserves and premiums are computed based on a mix of company specific and general industry data that is not specific to our own company. Even with a combination of limited company-specific loss data and general industry data, our loss reserves are based on

actuarial estimates that may not correlate to actual loss experience in the future. Therefore, our reserves may prove to be insufficient and we may be exposed to significant and unexpected losses.

The frequency and magnitude of claims and legal costs may increase due to the COVID-19 pandemic or our related response efforts.

## The geographic concentration of our affiliated facilities could leave us vulnerable to an economic downturn, regulatory changes or acts of nature in those areas.

Our affiliated facilities located in Arizona, California, and Texas account for the majority of our total revenue. As a result of this concentration, the conditions of local economies, changes in governmental rules, regulations and reimbursement rates or criteria, changes in demographics, state funding, acts of nature and other factors that may result in a decrease in demand and/or reimbursement for skilled nursing services in these states could have a disproportionately adverse effect on our revenue, costs and results of operations. Moreover, since over 21% of our affiliated facilities are located in California, we are particularly susceptible to revenue loss, cost increase or damage caused by natural disasters such as fires, earthquakes or mudslides.

In addition, our affiliated facilities in Iowa, Nebraska, Kansas, South Carolina, Washington and Texas are more susceptible to revenue loss, cost increases or damage caused by natural disasters including hurricanes, tornadoes and flooding. These acts of nature may cause disruption to us, the employees of our operating subsidiaries and our affiliated facilities, which could have an adverse impact on the patients of our operating subsidiaries and our business. In order to provide care for the patients of our operating subsidiaries, we are dependent on consistent and reliable delivery of food, pharmaceuticals, utilities and other goods to our affiliated facilities, and the availability of employees to provide services at our affiliated facilities. If the delivery of goods or the ability of employees to reach our affiliated facilities were interrupted in any material respect due to a natural disaster or other reasons, it would have a significant impact on our affiliated facilities and our business. Furthermore, the impact, or impending threat, of a natural disaster may require that we evacuate one or more facilities, which would be costly and would involve risks, including potentially fatal risks, for the patients. The impact of disasters and similar events is inherently uncertain. Such events could harm the patients and employees of our operating subsidiaries, severely damage or destroy one or more of our affiliated facilities, harm our business, reputation and financial performance, or otherwise cause our business to suffer in ways that we currently cannot predict.

### The actions of a national labor union that has pursued a negative publicity campaign criticizing our business in the past may adversely affect our revenue and our profitability.

We continue to maintain our right to inform the employees of our operating subsidiaries about our views of the potential impact of unionization upon the workplace generally and upon individual employees. With one exception, to our knowledge the staff at our affiliated facilities that have been approached to unionize have uniformly rejected union organizing efforts. If employees decide to unionize, our cost of doing business could increase, and we could experience contract delays, difficulty in adapting to a changing regulatory and economic environment, cultural conflicts between unionized and non-unionized employees, strikes and work stoppages, and we may conclude that affected facilities or operations would be uneconomical to continue operating.

Because we lease the majority of our affiliated facilities, we are subject to risks associated with leased real property, including risks relating to lease termination, lease extensions and special charges, any of which could adversely affect our business, financial position or results of operations.

As of December 31, 2021, we leased 176 of our 245 affiliated facilities. Most of our leases are triple-net leases, which means that, in addition to rent, we are required to pay for the costs related to the property (including property taxes, insurance, and maintenance and repair costs). We are responsible for paying these costs notwithstanding the fact that some of the benefits associated with paying these costs accrue to the landlords as owners of the associated facilities.

Each lease provides that the landlord may terminate the lease for a variety of reasons, including the default in any payment of rent, taxes or other payment obligations or the breach of any other covenant or agreement in the lease. Termination of a lease could result in a default under our debt agreements and could adversely affect our business, financial position or results of operations. There can be no assurance that we will be able to comply with all of our obligations under the leases in the future.

Failure to generate sufficient cash flow to cover required payments or meet operating covenants under our long-term debt, mortgages and long-term operating leases could result in defaults under such agreements and cross-defaults under other debt, mortgage or operating lease arrangements, which could harm our operating subsidiaries and cause us to lose facilities or experience foreclosures.

We maintain a revolving credit facility under the Third Amended and Restated Credit Agreement, dated as of October 1, 2019, between our company and a lending consortium arranged by Truist Financial Corporation (Truist) (formerly known as SunTrust Bank, Inc.) with a revolving line of credit of up to \$350.0 million in aggregate principal amount (the Credit Facility). As of December 31, 2021, we have no outstanding debt under our Credit Facility. Twenty-three of our subsidiaries have mortgage loans insured with Department of Housing and Urban Development (HUD) for an aggregate amount of \$156.6 million, which subjects these subsidiaries to HUD oversight and periodic inspections. The terms of the mortgage loans range from 25- to 35-years.

We also have two outstanding promissory notes with an aggregate principal amount of approximately \$3.3 million as of December 31, 2021. The terms of the notes are 10 months and 12 years. Because these mortgage loans are insured with HUD, our borrower subsidiaries under these loans are subject to HUD oversight and periodic inspections.

In addition, we had \$1.8 billion of future operating lease obligations as of December 31, 2021. We intend to continue financing our operating subsidiaries through mortgage financing, long-term operating leases and other types of financing, including borrowings under our lines of credit and future credit facilities we may obtain.

We may not generate sufficient cash flow from operations to cover required interest, principal and lease payments. In addition, our outstanding Credit Facility and mortgage loans contain restrictive covenants and require us to maintain or satisfy specified coverage tests on a consolidated basis and on a facility or facilities basis. These restrictions and operating covenants include, among other things, requirements with respect to occupancy, debt service coverage, project yield, net leverage ratios, minimum interest coverage ratios and minimum asset coverage ratios. These restrictions may interfere with our ability to obtain additional advances under our existing Credit Facility or to obtain new financing or to engage in other business activities, which may inhibit our ability to grow our business and increase revenue.

From time to time, the financial performance of one or more of our mortgaged facilities may not comply with the required operating covenants under the terms of the mortgage. Any non-payment, noncompliance or other default under our financing arrangements could, subject to cure provisions, cause the lender to foreclose upon the facility or facilities securing such indebtedness or, in the case of a lease, cause the lessor to terminate the lease, each with a consequent loss of revenue and asset value to us or a loss of property. Furthermore, in many cases, indebtedness is secured by both a mortgage on one or more facilities, and a guaranty by us. In the event of a default under one of these scenarios, the lender could avoid judicial procedures required to foreclose on real property by declaring all amounts outstanding under the guaranty immediately due and payable, and requiring us to fulfill our obligations to make such payments. If any of these scenarios were to occur, our financial condition would be adversely affected. For tax purposes, a foreclosure on any of our properties would be treated as a sale of the property for a price equal to the outstanding balance of the debt secured by the mortgage. If the outstanding balance of the debt secured by the mortgage exceeds our tax basis in the property, we would recognize taxable income on foreclosure, but would not receive any cash proceeds, which would negatively impact our earnings and cash position. Further, because our mortgages and operating leases generally contain cross-default and cross-collateralization provisions, a default by us related to one facility could affect a significant number of other facilities and their corresponding financing arrangements and operating leases.

Because our term loans, promissory notes, bonds, mortgages and lease obligations are fixed expenses and secured by specific assets, and because our revolving loan obligations are secured by virtually all of our assets, if reimbursement rates, patient acuity mix or occupancy levels decline, or if for any reason we are unable to meet our loan or lease obligations, we may not be able to cover our costs and some or all of our assets may become at risk. Our ability to make payments of principal and interest on our indebtedness and to make lease payments on our operating leases depends upon our future performance, which will be subject to general economic conditions, industry cycles and financial, business and other factors affecting our operating subsidiaries, many of which are beyond our control. If we are unable to generate sufficient cash flow from operations in the future to service our debt or to make lease payments on our operating leases, we may be required, among other things, to seek additional financing in the debt or equity markets, refinance or restructure all or a portion of our indebtedness, sell selected assets, reduce or delay planned capital expenditures or delay or abandon desirable acquisitions. Such measures might not be sufficient to enable us to service our debt or to make lease payments on our operating leases. The failure to make required payments on our debt or operating leases or the delay or abandonment of our planned growth strategy could result in an adverse effect on our future ability to generate revenue and sustain profitability. In addition, any such financing, refinancing or sale of assets might not be available on terms that are economically favorable to us, or at all.

### Move-in and occupancy rates may remain unpredictable even after the COVID-19 pandemic is over.

Occupancy levels at skilled nursing facilities are likely to remain vulnerable to the effects of COVID-19 even after the pandemic is over. Facilities experiencing decreases in move-in rates in 2021 cite resident or family member concerns as the basis for such decreases. These and other similar concerns may continue to impact our ability to attract new residents and our ability to retain existing residents.

### A housing downturn could decrease demand for senior living services.

Seniors often use the proceeds of home sales to fund their admission to senior living facilities. A downturn in the housing markets could adversely affect seniors' ability to afford our resident fees and entrance fees. If national or local housing markets enter a persistent decline, our occupancy rates, revenues, results of operations and cash flow could be negatively impacted.

## As we continue to acquire and lease real estate assets, we may not be successful in identifying and consummating these transactions.

As part of, and subsequent to, the Spin-Off, we lease 32 of our properties to Pennant's senior living operations. In the future, we might expand our leasing property portfolio to additional Pennant operations or other unaffiliated tenants. We have very limited control over the success or failure of our tenants' and operators' businesses and, at any time, a tenant or operator may experience a downturn in its business that weakens its financial condition. If that happens, the tenant or operator may fail to make its payments to us when due. Although our lease agreements give us the right to exercise certain remedies in the event of default on the obligations owing to us, we may determine not to do so if we believe that enforcement of our rights would be more detrimental to our business than seeking alternative approaches.

An important part of our business strategy is to continue to expand and diversify our real estate portfolio through accretive acquisition and investment opportunities in healthcare properties. Our execution of this strategy by successfully identifying, securing and consummating beneficial transactions is made more challenging by increased competition and can be affected by many factors, including our relationships with current and prospective tenants, our ability to obtain debt and equity capital at costs comparable to or better than our competitors and our ability to negotiate favorable terms with property owners seeking to sell and other contractual counterparties. Our competitors for these opportunities include healthcare REITs, real estate partnerships, healthcare providers, healthcare lenders and other investors, including developers, banks, insurance companies, pension funds, government-sponsored entities and private equity firms, some of whom may have greater financial resources and lower costs of capital than we do. If we are unsuccessful at identifying and capitalizing on investment or acquisition opportunities, our growth and profitability in our real estate investment portfolio may be adversely affected.

Investments in and acquisitions of healthcare properties entail risks associated with real estate investments generally, including risks that the investment will not achieve expected returns, that the cost estimates for necessary property improvements will prove inaccurate or that the tenant or operator will fail to meet performance expectations. Income from properties and yields from investments in our properties may be affected by many factors, including changes in governmental regulation (such as licensing and government payment), general or local economic conditions (such as fluctuations in interest rates, senior savings, and employment conditions), the available local supply of and demand for improved real estate, a reduction in rental income as the result of an inability to maintain occupancy levels, natural disasters (such as hurricanes, earthquakes and floods) or similar factors. Furthermore, healthcare properties are often highly customized, and the development or redevelopment of such properties may require costly tenant-specific improvements. As a result, we cannot assure you that we will achieve the economic benefit we expect from acquisition or investment opportunities.

## As we expand our presence in other relevant healthcare industries, we would become subject to risks in a market in which we have limited experience.

The majority of our affiliated facilities have historically been skilled nursing facilities. As we expand our presence in other relevant healthcare industries, our existing overall business model will continue to change and expose our company to risks in markets in which we have limited experience. We expect that we will have to adjust certain elements of our existing business model, which could have an adverse effect on our business.

## If our referral sources fail to view us as an attractive skilled nursing provider, or if our referral sources otherwise refer fewer patients, our patient base may decrease.

We rely significantly on appropriate referrals from physicians, hospitals and other healthcare providers in the communities in which we deliver our services to attract appropriate residents and patients to our affiliated facilities. Our referral

sources are not obligated to refer business to us and may refer business to other healthcare providers. We believe many of our referral sources refer business to us as a result of the quality of our patient care and our efforts to establish and build a relationship with our referral sources. If we lose, or fail to maintain, existing relationships with our referral resources, fail to develop new relationships, or if we are perceived by our referral sources as not providing high quality patient care, our occupancy rate and the quality of our patient mix could suffer. In addition, if any of our referral sources have a reduction in patients whom they can refer due to a decrease in their business, our occupancy rate and the quality of our patient mix could suffer.

We may need additional capital to fund our operating subsidiaries and finance our growth, and we may not be able to obtain it on terms acceptable to us, or at all, which may limit our ability to grow.

Our ability to maintain and enhance our operating subsidiaries and equipment in a suitable condition to meet regulatory standards, operate efficiently and remain competitive in our markets requires us to commit substantial resources to continued investment in our affiliated facilities and equipment. We are sometimes more aggressive than our competitors in capital spending to address issues that arise in connection with aging and obsolete facilities and equipment. In addition, continued expansion of our business through the acquisition of existing facilities, expansion of our existing facilities and construction of new facilities may require additional capital, particularly if we were to accelerate our acquisition and expansion plans. Financing may not be available to us or may be available to us only on terms that are not favorable. In addition, some of our outstanding indebtedness and long-term leases restrict, among other things, our ability to incur additional debt. If we are unable to raise additional funds or obtain additional funds on terms acceptable to us, we may have to delay or abandon some or all of our growth strategies. Further, if additional funds are raised through the issuance of additional equity securities, the percentage ownership of our stockholders would be diluted. Any newly issued equity securities may have rights, preferences or privileges senior to those of our common stock.

The condition of the financial markets, including volatility and deterioration in the capital and credit markets, could limit the availability of debt and equity financing sources to fund the capital and liquidity requirements of our business, as well as negatively impact or impair the value of our current portfolio of cash, cash equivalents and investments, including U.S. Treasury securities and U.S.-backed investments.

Our cash, cash equivalents and investments are held in a variety of interest-bearing instruments, including U.S. treasury securities. As a result of the uncertain domestic and global political, credit and financial market conditions, including an increase in the Consumer Price Index of seven percent in 2021, investments in these types of financial instruments pose risks arising from liquidity and credit concerns. Given that future deterioration in the U.S. and global credit and financial markets is a possibility, no assurance can be made that losses or significant deterioration in the fair value of our cash, cash equivalents, or investments will not occur. Uncertainty surrounding the trading market for U.S. government securities or impairment of the U.S. government's ability to satisfy its obligations under such treasury securities could impact the liquidity or valuation of our current portfolio of cash, cash equivalents, and investments, a substantial portion of which were invested in U.S. treasury securities. Further, unless and until the current U.S. and global political, credit and financial market crisis has been sufficiently resolved, it may be difficult for us to liquidate our investments prior to their maturity without incurring a loss, which would have a material adverse effect on our consolidated financial position, results of operations or cash flows.

We may need additional capital if a substantial acquisition or other growth opportunity becomes available or if unexpected events occur or opportunities arise. U.S. capital markets can be volatile. We cannot assure you that additional capital will be available or available or terms acceptable to us. If capital is not available, we may not be able to fund internal or external business expansion or respond to competitive pressures or other market conditions.

### Delays in reimbursement may cause liquidity problems.

If we experience problems with our billing information systems or if issues arise with Medicare, Medicaid or other payors, we may encounter delays in our payment cycle. From time to time, we have experienced such delays as a result of government payors instituting planned reimbursement delays for budget balancing purposes or as a result of prepayment reviews.

Some states in which we operate are operating with budget deficits or could have budget deficit in the future, which may delay reimbursement in a manner that would adversely affect our liquidity. In addition, from time to time, procedural issues require us to resubmit claims before payment is remitted, which contributes to our aged receivables. Unanticipated delays in receiving reimbursement from state programs due to changes in their policies or billing or audit procedures may adversely impact our liquidity and working capital.

Compliance with the regulations of the Department of Housing and Urban Development may require us to make unanticipated expenditures which could increase our costs.

Twenty-three of our affiliated facilities are currently subject to regulatory agreements with HUD that give the Commissioner of HUD broad authority to require us to be replaced as the operator of those facilities in the event that the Commissioner determines there are operational deficiencies at such facilities under HUD regulations. Compliance with HUD's requirements can often be difficult because these requirements are not always consistent with the requirements of other federal and state agencies. Appealing a failed inspection can be costly and time-consuming and, if we do not successfully remediate the failed inspection, we could be precluded from obtaining HUD financing in the future or we may encounter limitations or prohibitions on our operation of HUD-insured facilities

If we fail to safeguard the monies held in our patient trust funds, we will be required to reimburse such monies, and we may be subject to citations, fines and penalties.

Each of our affiliated facilities is required by federal law to maintain a patient trust fund to safeguard certain assets of their residents and patients. If any money held in a patient trust fund is misappropriated, we are required to reimburse the patient trust fund for the amount of money that was misappropriated. If any monies held in our patient trust funds are misappropriated in the future and are unrecoverable, we will be required to reimburse such monies, and we may be subject to citations, fines and penalties pursuant to federal and state laws.

We are a holding company with no operations and rely upon our multiple independent operating subsidiaries to provide us with the funds necessary to meet our financial obligations. Liabilities of any one or more of our subsidiaries could be imposed upon us or our other subsidiaries.

We are a holding company with no direct operating assets, employees or revenue. Each of our affiliated facilities is operated through a separate, wholly owned, independent subsidiary, which has its own management, employees and assets. Our principal assets are the equity interests we directly or indirectly hold in our multiple operating and real estate holding subsidiaries. As a result, we are dependent upon distributions from our subsidiaries to generate the funds necessary to meet our financial obligations and pay dividends. Our subsidiaries are legally distinct from us and have no obligation to make funds available to us. The ability of our subsidiaries to make distributions to us will depend substantially on their respective operating results and will be subject to restrictions under, among other things, the laws of their jurisdiction of organization, which may limit the amount of funds available for distribution to investors or stockholders, agreements of those subsidiaries, the terms of our financing arrangements and the terms of any future financing arrangements of our subsidiaries.

## We may incur operational difficulties or be exposed to claims and liabilities as a result of the separation of Pennant.

On October 1, 2019, we distributed all of the outstanding shares of The Pennant Group, Inc. or Pennant, common stock to stockholders in connection with the separation of our home health and hospice business and substantially all of our senior living operations into a separate publicly traded company, or the Spin-Off. In connection with the Spin-Off, we entered into a separation agreement and various other agreements, including a tax matters agreement, an employee matters agreement and transition services agreements. These agreements govern the separation and distribution and the relationship between us and Pennant going forward, including with respect to potential tax-related losses associated with the separation and distribution. They also provide for the performance of services by each company for the benefit of the other for a period of time.

The separation agreement provides for indemnification obligations designed to make Pennant financially responsible for many liabilities that may exist relating to its business activities, whether incurred prior to or after the distribution, including any pending or future litigation, but we cannot guarantee that Pennant will be able to satisfy its indemnification obligations. It is also possible that a court would disregard the allocation agreed to between us and Pennant and require us to assume responsibility for obligations allocated to Pennant. Third parties could also seek to hold us responsible for any of these liabilities or obligations, and the indemnity rights we have under the separation agreement may not be sufficient to fully cover all of these liabilities and obligations. Even if we are successful in obtaining indemnification, we may have to bear costs temporarily. In addition, our indemnity obligations to Pennant, including those related to assets or liabilities allocated to us, may be significant. In addition, certain landlords required, in exchange for their consent to the Spin-Off, that our lease guarantees remain in place for a certain period of time following the Spin-Off. These guarantees could result in significant additional liabilities and obligations for us if Pennant were to default on their obligations under their leases with respect to these properties. These risks could negatively affect our business, financial condition or results of operations.

The separation of Pennant continues to involve a number of additional risks, including, among other things, the potential that management's and our employees' attention will be significantly diverted by the provision of skilled services or that we

may incur other operational challenges or difficulties as a result of the separation. Certain of the agreements described above provide for the performance of services by each company for the benefit of the other for a period of time. If Pennant is unable to satisfy its obligations under these agreements, we could incur losses and may not have sufficient resources available for such services. These arrangements could also lead to disputes over rights to certain shared property and over the allocation of costs and revenues for products and operations. Our inability to effectively manage the transition activities and related events could adversely affect our business, financial condition or results of operations.

If our Spin-Off fails to qualify as generally tax-free for U.S. federal income tax purposes, we and our stockholders could be subject to significant tax liabilities.

The Spin-Off is intended to qualify for tax-free treatment to us and our stockholders for U.S. federal income tax purposes. Accordingly, completion of the transaction was conditioned upon, among other things, our receipt of opinions from outside tax advisors that the distributions would qualify as a transaction that is intended to be tax-free to both us and our stockholders for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code. The opinions were based on and relied on, among other things, certain facts and assumptions, as well as certain representations, statements and undertakings, including those relating to the past and future conduct. If any of these facts, assumptions, representations, statements or undertakings is, or becomes, inaccurate or incomplete, or if any of the parties breach any of their respective covenants relating to the transactions, the tax opinions may be invalid. Moreover, the opinions are not binding on the IRS or any courts. Accordingly, notwithstanding receipt of the opinion, the IRS could determine that the distribution and certain related transactions should be treated as taxable transactions for U.S. federal income tax purposes.

If the Spin-Off fails to qualify as a transaction that is generally tax-free under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code, in general, for U.S. federal income tax purposes, we would recognize taxable gain with respect to the distributed securities and our stockholders who received securities in such distribution would be subject to tax as if they had received a taxable distribution equal to the fair market value of such shares.

We also have obligations to provide indemnification to a number of parties as a result of the transaction. Any indemnity obligations for tax issues or other liabilities related to the Spin-Off, could be significant and could adversely impact our business.

Certain directors who serve on our Board of Directors also serve as directors of Pennant, and ownership of shares of Pennant common stock by our directors and executive officers may create, or appear to create, conflicts of interest.

Certain of our directors who serve on our Board of Directors also serve on the board of directors of Pennant. This may create, or appear to create, conflicts of interest when our, or Pennant's management and directors face decisions that could have different implications for us and Pennant, including the resolution of any dispute regarding the terms of the agreements governing the Spin-Off and the relationship between us and Pennant after the Spin-Off or any other commercial agreements entered into in the future between us and the spun-off business and the allocation of such directors' time between us and Pennant.

All of our executive officers and some of our non-employee directors own shares of the common stock of Pennant. The continued ownership of such common stock by our directors and executive officers following the Spin-Off creates, or may create, the appearance of a conflict of interest when these directors and executive officers are faced with decisions that could have different implications for us and Pennant.

Changes in the method of determining LIBOR, or the replacement of LIBOR with an alternative reference rate, may adversely affect interest rates on our current or future indebtedness and may otherwise adversely affect our financial condition and results of operations.

Certain of our indebtedness is made at variable interest rates that use the London Interbank Offered Rate, or LIBOR (or metrics derived from or related to LIBOR), as a benchmark for establishing the interest rate. On July 27, 2017, the United Kingdom's Financial Conduct Authority announced that it intends to stop persuading or compelling banks to submit LIBOR rates after 2021. These reforms may cause LIBOR to cease to exist, new methods of calculating LIBOR to be established, or alternative reference rates to be established. The potential consequences cannot be fully predicted and could have an adverse impact on the market value for or value of LIBOR-linked securities, loans, and other financial obligations or extensions of credit held by or due to us. Changes in market interest rates may influence our financing costs, returns on financial investments and the valuation of derivative contracts and could reduce our earnings and cash flows. In addition, any transition process may involve, among other things, increased volatility or illiquidity in markets for instruments that rely on LIBOR, reductions in the value of certain instruments or the effectiveness of related transactions such as hedges, increased borrowing costs, uncertainty

under applicable documentation, or difficult and costly consent processes. This could materially and adversely affect our results of operations, cash flows, and liquidity. We cannot predict the effect of the potential changes to LIBOR or the establishment and use of alternative rates or benchmarks.

### Risks Related to Ownership of our Common Stock

We may not be able to pay or maintain dividends and the failure to do so would adversely affect our stock price.

Our ability to pay and maintain cash dividends is based on many factors, including our ability to make and finance acquisitions, our ability to negotiate favorable lease and other contractual terms, anticipated operating cost levels, the level of demand for our beds, the rates we charge and actual results that may vary substantially from estimates. Some of the factors are beyond our control and a change in any such factor could affect our ability to pay or maintain dividends. The Credit Facility restricts our ability to pay dividends to stockholders if we receive notice that we are in default under this agreement. The failure to pay or maintain dividends could adversely affect our stock price.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions that could discourage transactions resulting in a change in control, which may negatively affect the market price of our common stock.

Our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that may enable our Board of Directors to resist a change in control. These provisions may discourage, delay or prevent a change in the ownership of our company or a change in our management, even if doing so might be beneficial to our stockholders. In addition, these provisions could limit the price that investors would be willing to pay in the future for shares of our common stock. Such provisions set forth in our amended and restated certificate of incorporation or our amended and restated bylaws include:

- our Board of Directors is authorized, without prior stockholder approval, to create and issue preferred stock, commonly referred to as "blank check" preferred stock, with rights senior to those of common stock:
- · advance notice requirements for stockholders to nominate individuals to serve on our Board of Directors or to submit proposals that can be acted upon at stockholder meetings;
- our Board of Directors is classified so not all members of our board are elected at one time, which may make it more difficult for a person who acquires control of a majority of our outstanding voting stock to replace our directors;
- · stockholder action by written consent is limited;
- special meetings of the stockholders are permitted to be called only by the chairman of our Board of Directors, our chief executive officer or by a majority of our Board of Directors;
- stockholders are not permitted to cumulate their votes for the election of directors;
- newly created directorships resulting from an increase in the authorized number of directors or vacancies on our Board of Directors are filled only by majority vote of the remaining directors;
- · our Board of Directors is expressly authorized to make, alter or repeal our bylaws; and
- · stockholders are permitted to amend our bylaws only upon receiving the affirmative vote of at least a majority of our outstanding common stock.

We are also subject to the anti-takeover provisions of Section 203 of the General Corporation Law of the State of Delaware. Under these provisions, if anyone becomes an "interested stockholder," we may not enter into a "business combination" with that person for three years without special approval, which could discourage a third party from making a takeover offer and could delay or prevent a change of control. For purposes of Section 203, "interested stockholder" means, generally, someone owning more than 15% or more of our outstanding voting stock or an affiliate of ours that owned 15% or more of our outstanding voting stock during the past three years, subject to certain exceptions as described in Section 203.

These and other provisions in our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law could discourage acquisition proposals and make it more difficult or expensive for stockholders or potential acquirers to obtain control of our Board of Directors or initiate actions that are opposed by our then-current Board of Directors, including delaying or impeding a merger, tender offer or proxy contest involving us. Any delay or prevention of a change of control transaction or changes in our Board of Directors could cause the market price of our common stock to decline

## Item 1B. UNRESOLVED STAFF COMMENTS

None.

## Item 2. PROPERTIES

Service Center: Our Service Center is located in San Juan Capistrano, California. In June 2018, we acquired an office space for a purchase price of \$31.0 million to accommodate our growing Service Center team. The property consists of approximately 108,058 square feet of usable office space. In addition, we lease a substantial portion of the space within the campus to third-party tenants.

Operating Facilities. We operate 245 affiliated facilities in Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin, with the operational capacity to serve approximately 27,000 patients as of December 31, 2021. Of the 245 facilities, we operate 176 facilities under long-term lease arrangements and have options to purchase 11 of those 176 facilities. The results of our operating facilities are reflected in our skilled services segment for our skilled nursing operations and in "All Other" category for our senior living operations.

The following table provides summary information regarding the location of our facilities, operational beds and units by property type as of December 31, 2021:

				Operated	Facilities				
	Leased without	Leased without a Purchase Option		Purchase Option	Ov	vned	Total		
	Facilities	Beds/Units	Facilities	Beds/Units	Facilities	Beds/Units	Facilities	Beds/Units	
California	44	4,394	_	_	7	749	51	5,143	
Texas	46	5,690	5	714	18	2,377	69	8,781	
Arizona	21	2,760	_	_	11	1,758	32	4,518	
Wisconsin	_	_	_	_	2	100	2	100	
Utah	12	1,311	2	159	7	684	21	2,154	
Colorado	12	1,096	1	125	7	701	20	1,922	
Washington	11	1,023	_	_	2	204	13	1,227	
Idaho	7	551	_	_	5	454	12	1,005	
Nebraska	5	336	_	_	2	350	7	686	
Kansas	_	_	3	325	4	493	7	818	
Iowa	6	399	_	_	_	_	6	399	
South Carolina	_	_	_	_	4	424	4	424	
Nevada	1	92	_	_	_	_	1	92	
	165	17,652	11	1,323	69	8,294	245	27,269	

The following table sets forth the location of our facilities and the number of operational beds and units located at our skilled nursing, senior living and campus facilities as of December 31, 2021:

	Facility Counts					Bed / Unit Counts	
	Skilled Nursing Operations	Senior Living Communities	Campus Operations	Total	Skilled Nursing Beds	Senior Living Units	Total Beds / Units
California	50	_	1	51	5,078	65	5,143
Texas	64	1	4	69	8,276	505	8,781
Arizona	29	_	3	32	4,203	315	4,518
Wisconsin	2	_	_	2	100	_	100
Utah	18	2	1	21	1,991	163	2,154
Colorado	14	5	1	20	1,303	619	1,922
Washington	13	_	_	13	1,227	_	1,227
Idaho	11	_	1	12	984	21	1,005
Nebraska	4	1	2	7	385	301	686
Kansas	_	_	7	7	601	217	818
Iowa	4	_	2	6	368	31	399
South Carolina	4	_	_	4	424	_	424
Nevada	1	_	_	1	92	_	92
	214	9	22	245	25,032	2,237	27,269

Real Estate Properties. As of December 31, 2021, we owned 100 real estate properties in Arizona, California, Colorado, Idaho, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin, which include 69 of the 245 facilities that we operate and manage. Of our 100 real estate properties, 32 senior living operations are leased to and operated by Pennant as part of the Spin-Off. Two of the senior living operations leased by Pennant are located on the same real estate properties as skilled nursing facilities that we own and operate. We further own the real estate property of our Service Center location and continue to lease a portion of the office space to third-party tenants. Our real estate segment reflects the results of operations for our owned real estate properties.

The following table provides summary information regarding the location of our owned real estate properties as of December 31, 2021:

	Owned and Operated by Ensign(1)	Owned and Leased to Pennant(1)	Service Center	Total Properties(1)
California <sup>(1)</sup>	7	3	1	10
Texas <sup>(1)</sup>	18	6	_	23
Arizona	11	1	_	12
Wisconsin	2	19	_	21
Utah	7	_	<del></del>	7
Colorado	7	_	_	7
Washington	2	_	_	2
Idaho	5	2	_	7
Nebraska	2	_	_	2
Kansas	4	_	_	4
South Carolina	4	_	<del></del>	4
Nevada	<del>_</del>	1	_	1
	69	32	1	100

<sup>(1)</sup> In connection with the Spin-off, one senior living operation in California and one senior living operation in Texas, which are owned by Ensign and leased to Pennant are located on the same real estate property as a skilled nursing facility which we own and operate. In each of these situations, the senior living operation is included in the total under "Owned and Departed by Ensign", however, the amount reflected under "Total Properties" only recognizes these operations as a single property.

### Item 3. LEGAL PROCEEDINGS

Regulatory Matters — Laws and regulations governing Medicare and Medicaid programs are complex and subject to review and interpretation. Compliance with such laws and regulations is evaluated regularly, the results of which can be subject to future governmental review and interpretation, and can include significant regulatory action with fines, penalties, and exclusion from certain governmental programs. Included in these laws and regulations are rules requiring vaccination of employees and HIPAA, the terms of which require healthcare providers (among other things) to safeguard the privacy and security of certain patient protected health information.

Cost-Containment Measures — Both government and private pay sources have instituted cost-containment measures designed to limit payments made to providers of healthcare services, and there can be no assurance that future measures designed to limit payments made to providers will not adversely affect us.

Indemnities — From time to time, we enter into certain types of contracts that contingently require us to indemnify parties against third-party claims. These contracts primarily include (i) certain real estate leases, under which we may be required to indemnify property owners or prior facility operators for post-transfer environmental or other liabilities and other claims arising from our use of the applicable premises, (ii) operations transfer agreements, in which we agree to indemnify past operators of facilities we acquire against certain liabilities arising from the transfer of the operation and/or the operation thereof after the transfer to the Company's independent operating subsidiary, (iii) certain lending agreements, under which we may be required to indemnify the lender against various claims and liabilities, and (iv) certain agreements with our officers, directors and others, under which we may be required to indemnify such persons for liabilities arising out of the nature of their relationship to the Company. The terms of such obligations vary by contract and, in most instances, do not expressly state or include a specific or maximum dollar amount. Generally, amounts under these contracts cannot be reasonably estimated until a specific claim is asserted. Consequently, because no claims have been asserted, no liabilities have been recorded for these obligations on our balance sheets for any of the periods presented.

In connection with the spin-off transaction, certain landlords required, in exchange for their consent to the transaction, that our lease guarantees remain in place for a certain period of time following the spin-off. These guarantees could result in significant additional liabilities and obligations for us if Pennant were to default on their obligations under their leases with respect to these properties.

U.S. Department of Justice Civil Investigative Demand — On May 31, 2018, we received a CID from the U.S. Department of Justice stating that it was investigating whether there had been a violation of the False Claims Act and/or the Anti-Kickback Statute with respect to the relationships between certain of our independently operated skilled nursing facilities and persons who serve or have served as medical directors, advisory board participants or other potential referral sources. The CID covered the period from October 3, 2013 through 2018, and was limited in scope to ten of our Southern California independent operating entities. In October 2018, the Department of Justice made an additional request for information covering the period of January 1, 2011 through 2018, relating to the same topic. As a general matter, our independent operating entities have established and maintain policies and procedures to promote compliance with the False Claims Act, the Anti-Kickback Statute, and other applicable regulatory requirements. We have fully cooperated with the U.S. Department of Justice and promptly responded to its requests for information; in April 2020, we were advised that the U.S. Department of Justice declined to intervene in any subsequent action filed by a relator in connection with the subject matter of this investigation.

Litigation — We and our independent operating entities are party to various legal actions and administrative proceedings, and are subject to various claims arising in the ordinary course of business, including claims that services provided to patients by our independent operating entities have resulted in injury or death, and claims related to employment and commercial matters. Although we intend to vigorously defend against these claims, there can be no assurance that the outcomes of these matters will not have a material adverse effect on operational results and financial condition. In certain states in which we have or have had independent operating entities, insurance coverage for the risk of punitive damages arising from general and professional liability litigation may not be available due to state law and/or public policy prohibitions. There can be no assurance that our independent operating entities will not be liable for punitive damages awarded in litigation arising in states for which punitive damage insurance coverage is not available.

The skilled nursing and post-acute care industry is heavily regulated. As such, we and our independent operating subsidiaries are continuously subject to state and federal regulatory scrutiny, supervision and control in the ordinary course of business. Such regulatory scrutiny often includes inquiries, investigations, examinations, audits, site visits and surveys, some of which are non-routine. In addition to being subject to direct regulatory oversight from state and federal agencies, the skilled nursing and post-acute care industry is also subject to regulatory requirements which could result in civil, administrative or criminal fines, penalties or restitutionary relief, and reimbursement; authorities could also seek the suspension or exclusion of the provider or individual from participation in their programs. We believe that there has been, and will continue to be, an increase in governmental investigations of long-term care providers, particularly in the area of Medicare/Medicaid false claims, as well as an increase in enforcement actions resulting from these investigations. Adverse determinations in legal proceedings or governmental investigations, whether currently asserted or arising in the future, could have a material adverse effect on our financial position, results of operations, and cash flows.

Additionally, and in 2020, the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis launched a nation-wide investigation into the COVID-19 pandemic, which included the impact of the coronavirus on residents and employees in nursing homes. In June 2020, the Company received a document and information request from the House Select Subcommittee. The Company is cooperating in responding to this inquiry. However, it is not possible to predict the ultimate outcome of any such investigation, or whether and what other investigations or regulatory responses may result from the investigation, which could have a material adverse effect on our reputation, business, financial condition and results of operations.

In addition to the potential lawsuits and claims described above, we and our independent operating subsidiaries are also subject to potential lawsuits under the Federal False Claims Act and comparable state laws alleging submission of fraudulent claims for services to any healthcare program (such as Medicare or Medicaid) or other payor. A violation may provide the basis for exclusion from Federally funded healthcare programs. Such exclusions could have a correlative negative impact on our financial performance. Under the qui tam or "whistleblower" provisions of the False Claims Act, a private individual with knowledge of fraud or potential fraud may bring a claim on behalf of the Federal Government and receive a percentage of the Federal Government's recovery. Due to these whistleblower incentives, qui tam lawsuits have become more frequent. For example, and despite the decision of the U.S. Department of Justice to decline to participate in litigation based on the subject matter of its previously issued Civil Investigative Demand, the involved qui tam relator is continuing on with the lawsuit and pursuing claims that one or more of the Company's independent operating entities have allegedly violated the False Claims Act and/or the Anti-Kickback Statute.

In addition to the Federal False Claims Act, some states, including California, Arizona and Texas, have enacted similar whistleblower and false claims laws and regulations. Further, the Deficit Reduction Act of 2005 created incentives for states to enact anti-fraud legislation modeled on the Federal False Claims Act. As such, we and our independent operating subsidiaries could face increased scrutiny, potential liability, and legal expenses and costs based on claims under state false claims acts in markets where our independent operating subsidiaries do business.

In May 2009, Congress passed the FERA which made significant changes to the Federal False Claims Act (FCA) and expanded the types of activities subject to prosecution and whistleblower liability. Following changes by FERA, health care providers face significant penalties for the knowing retention of government overpayments, even if no false claim was involved. Health care providers can now be liable for knowingly and improperly avoiding or decreasing an obligation to pay money or property to the government. This includes the retention of any government overpayment. The government can argue, therefore, that an FCA violation can occur without any affirmative fraudulent action or statement, as long as the action or statement is knowingly improper. In addition, FERA extended protections against retaliation for whistleblowers, including protections not only for employees, but also contractors and agents. Thus, an employment relationship is generally not required in order to qualify for protection against retaliation for whistleblowing.

Healthcare litigation (including class action litigation) is common and is filed based upon a wide variety of claims and theories, and our independent operating entities are routinely subjected to varying types of claims, including class action "staffing" suits where the allegation is understaffing at the facility level. These class-action "staffing" suits have the potential to result in large jury verdicts and settlements. We expect the plaintiffs' bar to continue to be aggressive in their pursuit of these staffing and similar claims.

We and our independent operating subsidiaries have been, and continue to be, subject to claims and legal actions that arise in the ordinary course of business, including potential claims related to patient care and treatment (professional negligence claims) as well as employment related claims. In addition, we and our independent operating subsidiaries, and others in the industry, are subject to claims and lawsuits in connection with COVID-19 and facility preparation for and/or response to the COVID-19 pandemic. While we have been able to settle or otherwise resolve these types of claims without an ongoing material adverse effect on our business, a significant increase in the number of these claims, or an increase in the amounts owing should plaintiffs be successful in their prosecution of future claims, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

Claims and suits, including class actions, continue to be filed against our independent operating subsidiaries and other companies in the post-acute care industry. We and our independent operating entities have been subjected to, and/or are currently involved in, class action litigation alleging violations (alone or in combination) of state and federal wage and hour law as related to the alleged failure to pay wages, to timely provide and authorize meal and rest breaks, and other such similar causes of action. We do not believe that the ultimate resolution of these actions will have a material adverse effect on our business, cash flows, financial condition or results of operations.

Medicare Revenue Recoupments — We and our independent operating subsidiaries are subject to regulatory reviews relating to the provision of Medicare services, billings and potential overpayments resulting from reviews conducted via RAC, Program Safeguard Contractors, and Medicaid Integrity Contractors (collectively referred to as Reviews). For several months during the COVID-19 pandemic, CMS suspended its Targeted Probe and Educate Program. Beginning in August 2020, CMS resumed Targeted Probe and Educate Program activity. If an operation fails a Review and/or subsequent Reviews, the operation could then be subject to extended review or an extrapolation of the identified error rate to billings in the same time period. We anticipate that these Reviews could increase in frequency in the future. As of December 31, 2021 and subsequently, thirteen of our independent operating subsidiaries had Reviews scheduled, on appeal, or in a dispute resolution process.

### Item 4. MINE SAFETY DISCLOSURES

None.

PART II.

### Item 5, MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Market Information

Our common stock has been traded under the symbol "ENSG" on the NASDAQ Global Select Market since our initial public offering on November 8, 2007. Prior to that time, there was no public market for our common stock. As of February 4, 2022, there were approximately 287 holders of record of our common stock.

Notwithstanding anything to the contrary set forth in any of our filings under the Securities Act or the Exchange Act that might incorporate future filings, including the Annual Report on Form 10-K, in whole or in part, the Stock Performance Graph and supporting data which follows shall not be deemed to be incorporated by reference into any such filings except to the extent that we specifically incorporate any such information into any such future filings.

The graph below shows the cumulative total stockholder return of investment of \$100 (and the reinvestment of any dividends thereafter) on December 31, 2016 in (i) our common stock, (ii) the Skilled Nursing Facilities Peer Group 1 and (iii) the NASDAQ Market Index. Our stock price performance shown in the graph below is not indicative of future stock price performance.

On October 1, 2019, Ensign completed the Spin-Off of The Pennant Group, Inc. (Pennant) with the pro rata distribution of 1.18 shares of Pennant's common stock for every share of Ensign's common stock to our stockholders, pursuant to which Pennant became an independent company. Pennant's stock traded at \$6.15 at opening price on the first day of trading and closed at \$15.09. Ensign's stock price was reduced by the same value on the same day. For the purpose of this graph, the effect of the final separation of Pennant is reflected in the cumulative total return of Ensign Common Stock as a reinvested dividend.

### COMPARISON OF 60 MONTH CUMULATIVE TOTAL RETURN\*

Among Ensign Group, the NASDAQ Composite Index and Our Peer Group December 2021



\*Assumes \$100 invested on December 31, 2016 in stock in index, including reinvestment of dividends.

	December 31,									
		2016		2017		2018		2019	2020	2021
The Ensign Group, Inc. (2)	\$	100.00	\$	100.76	\$	177.00	\$	226.33	\$ 361.19	\$ 421.64
NASDAQ Market Index	\$	100.00	\$	129.64	\$	125.96	\$	172.18	\$ 249.51	\$ 304.85
Peer Group <sup>(1)</sup>	\$	100.00	\$	103.72	\$	125.95	\$	156.19	\$ 154.17	\$ 161.42

<sup>(1)</sup> The current composition of our Peer Group is as follows: Amedysis, Inc., CareTrust REIT Inc., Encompass Healthcare Corp., LTC Properties, Inc., National Healthcare Corporation, National Health Investors, Inc., Omega Healthcare Investors, Inc., Select Medical Holdings Corp. and Welltower Inc.

(2) The value displayed only incorporates the value of The Ensign Group, Inc. stock and does not incorporate the value shareholders received in connection with our spin-offs of CareTrust REIT Inc. and The Pennant Group, Inc.

### Dividend Policy

We do not have a formal dividend policy, but we currently intend to continue to pay regular quarterly dividends to the holders of our common stock. We have been a dividend-paying company since 2002 and have increased our dividend every year for the last 19 years.

# Issuer Repurchases of Equity Securities

Stock Repurchase Programs. As approved by the Board of Directors on October 21, 2021, we entered into a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months that started on October 29, 2021. Under this program, we are authorized to repurchase our issued and outstanding common shares from time to time in open-market and privately negotiated transactions and block trades in accordance with federal securities laws. During the year ended December 31, 2021, we repurchased 0.1 million shares of our common stock for \$10.1 million. Subsequent to December 31, 2021, we repurchased 0.1 million shares of our common stock for \$9.9 million. On February 9, 2022, the Board of Directors approved a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months that starts on February 10, 2022.

As approved by the Board of Directors on March 4, 2020 and March 13, 2020, we entered into two stock repurchase programs pursuant to which we are authorized to repurchase up to \$20.0 million and \$5.0 million, respectively, of our common stock under the programs for a period of approximately 12 months. Under these programs, we are authorized to repurchase our issued and outstanding common shares from time to time in open-market and privately negotiated transactions and block trades in accordance with federal securities laws. During the first quarter of 2020, we repurchased 0.5 million and 0.2 million shares of our common stock for \$20.0 million and \$5.0 million, respectively. These repurchase programs expired upon the repurchase of the full authorized amount under the two plans.

As approved by the Board of Directors on August 26, 2019, we entered into a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months. Under this program, we are authorized to repurchase our issued and outstanding common shares from time to time in open-market and privately negotiated transactions and block trades in accordance with federal securities laws. We repurchased 0.1 million shares of our common stock for a total of \$6.4 million in fiscal year 2019 before the stock repurchase program was cancelled in the first quarter of 2020.

A summary of the repurchase activity for the year ended December 31, 2021 and subsequently is as follows (dollars in millions, except per share amounts):

Period	Total Number of Shares Repurchased	 Average Price Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Va Ma	pproximate Dollar alue of Shares that y Yet Be Purchased ander the Plans or Programs
January 1 - December 31, 2021 <sup>(1)</sup>	132,268	\$ 76.47	132,268	\$	9.9
January 1 to January 31, 2022 <sup>(1)</sup>	133,328	\$ 74.09	133,328	\$	_

(1) These purchases were effectuated through a Rule 10b5-1 trading plan adopted by the Company on October 21, 2021.

### Item 6. [RESERVED]

### Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the consolidated financial statements and accompanying notes, which appear elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Annual Report on Form 10-K. See Part I. Item 1A. Risk Factors and Cautionary Note Regarding Forward-Looking Statements.

For discussion of 2019 items and year-over-year comparisons between 2020 and 2019 that are not included in this 2021 Form 10-K, refer to "Item 7. – Management's Discussion and Analysis of Financial Condition and Results of Operations" found in our Form 10-K for the year ended December 31, 2020, that was filed with the Securities and Exchange Commission on February 3, 2021.

#### Overview

We are a provider of health care services across the post-acute care continuum, engaged in the ownership, acquisition, development and leasing of skilled nursing, senior living and other healthcare related properties and other ancillary businesses located in Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin. Our operating subsidiaries, each of which strives to be the operation of choice in the community it serves, provide a broad spectrum of skilled nursing, senior living and other ancillary services. As of December 31, 2021, we offered skilled nursing, senior living and rehabilitative care services through 245 skilled nursing and senior living facilities. Of the 245 facilities, we operated 176 facilities under long-term lease arrangements and have options to purchase 11 of those 176 facilities. Our real estate portfolio includes 100 owned real estate properties, which included 69 facilities operated and managed by us, 32 senior living operations leased to and operated by The Pennant Group, Inc., or Pennant, as part of the spin-off transaction that occurred in October 2019 (Spin-Off), and the Service Center location. Of the 32 real estate operations leased to Pennant, two senior living operations are located on the same real estate properties as skilled nursing facilities that we own and operate.

Ensign is a holding company with no direct operating assets, employees or revenues. Our operating subsidiaries are operated by separate, independent entities, each of which has its own management, employees and assets. In addition, certain of our wholly owned subsidiaries, referred to collectively as the Service Center, provide centralized accounting, payroll, human resources, information technology, legal, risk management and other centralized services to the other operating subsidiaries through contractual relationships with such subsidiaries. We also have a wholly owned captive insurance subsidiary (or the Captive Insurance) that provides some claims-made coverage to our operating subsidiaries for general and professional liability, as well as coverage for certain workers' compensation insurance liabilities and our captive real estate trust owns and operates our real estate portfolio. Our captive real estate investment trust (Standard Bearer REIT) owns and manages our real estate business. References herein to the consolidated "Company" and "its" assets and activities, as well as the use of the terms "we," "us," "our" and similar terms in this Annual Report, are not meant to imply, nor should they be construed as meaning, that The Ensign Group, Inc. has direct operating assets, employees or revenue, or that any of the subsidiaries are operated by The Ensign Group.

### Recent Activities

Captive Real Estate Investment Trust — On January 1, 2022, we completed our plan to form Standard Bearer REIT. Standard Bearer REIT is a holding company with subsidiaries that own most of our real estate portfolio. We expect the REIT structure will allow us to better demonstrate the growing value of our owned real estate and provides us with an efficient vehicle for future acquisitions of properties that could be operated by Ensign affiliates or other third parties. We believe this structure will give us new pathways to growth with transactions we would not have considered in the past. Standard Bearer REIT intends to qualify and elects to be taxed as a REIT, for U.S. federal income tax purposes, commencing with its taxable year ending December 31, 2022.

The real estate portfolio in Standard Bearer REIT consists of selected 93 of our 100 owned real estate properties. Of the 93 owned real estate properties in Standard Bearer REIT, 65 facilities are operated by Ensign operating subsidiaries and 30 are leased to and operated by Pennant. Of the 30 real estate operations leased to Pennant, two senior living operations are located on the same real estate properties as skilled nursing facilities that we own and operate.

The fair value of Standard Bearer REIT's real estate portfolio is approximately \$1.0 billion. The fair value was determined by a third party independent valuation specialist and incorporated each property's rental income, capitalization rate, rental yield rate and discount rate as appropriate.

On January 1, 2022, as part of the formation of Standard Bearer REIT, certain of our operating subsidiaries and the 65 Standard Bearer REIT subsidiaries entered into five "triple-net" master lease agreements (collectively, the Standard Bearer REIT Master Leases). The lease period ranges from 15 to 19 years with three five-year renewal option beyond the initial term, on the same terms and conditions. The rent structure under the Standard Bearer REIT Master Leases includes a fixed component, subject to annual escalation equal to the lesser of (1) the percentage change in the Consumer Price Index (but not less than zero) or (2) 2.5%. In addition to rent, the operating subsidiaries are required to pay the following: (1) all impositions and taxes levied on or with respect to the leased properties (other than taxes on the income of the lessor); (2) all utilities and other services necessary or appropriate for the leased properties and the business conducted on the leased properties; (4) all facility maintenance and repair costs; and (5) all fees in connection with leased properties and the business conducted on the leased properties. Total annual rental income under the Standard Bearer REIT Master Lease is approximately \$54.0 million. In addition, as we expand our real estate portfolio through our acquisition strategy, we anticipate that the acquired real estate will be included in Standard Bearer REIT.

Standard Bearer REIT has no employees. Personnel and service provided to Standard Bearer REIT by the Service Center are pursuant to the management agreement between Standard Bearer REIT and the Service Center. The management agreement provides for a base management fee and an incentive management fee, payable in cash, among other terms. The base management fee for each applicable period is equal to 5% of the total revenue of Standard Bearer REIT. The incentive management fee is equal to 5% of funds from operations (FFO) and is capped at 1% of total revenue. In addition, operating expenses incurred by the Service Center on Standard Bearer REIT's behalf, which includes the cost of legal, tax, consulting, accounting and other similar services rendered by the Service Center, its advisers or other third parties, are reimbursed by Standard Bearer REIT.

Standard Bearer REIT will obtain its funding through various sources including operating cash flows, access to debt arrangements and intercompany loans. The intercompany debt arrangements include mortgage loans and a credit revolver between the Ensign Group, Inc., the real estate properties and Standard Bearer REIT and will fund acquisitions and working capital needs. The interest rate under the credit revolver is a base rate plus a margin ranging from 0.50% to 1.50% per annum or LIBOR plus a margin range from 1.50% to 2.50% per annum. The intercompany mortgage loan amount is \$93.0 million. There

is currently no outstanding debt under the intercompany credit revolver. In addition, as the Department of Housing and Urban Development (HUD) mortgage loans and promissory notes are entered into by our real estate properties, these debts in the aggregate amount of \$160.0 million are included in Standard Bearer REIT.

Coronavirus Update — We are continuing to closely monitor the impact of the global COVID-19 pandemic on our business and are taking proactive steps designed to protect the health and safety of our residents and employees and to maintain business continuity. As the vaccines became accessible in all 50 states, we began to see a significant decline in COVID-19 cases in our affiliated operations as we worked diligently to vaccinate all of our willing residents and staff. While we saw declining COVID-19 cases during the summer of 2021 as a result of vaccination efforts, introductions of variants have caused spikes in the number of COVID cases. Our primary focus throughout the COVID-19 pandemic has remained ensuring the health and safety of our patients, residents, employees, and their respective families. We continue to implement measures necessary to provide the safest possible environment within our sites of service, taking into consideration the vulnerable nature of our patients and the unique exposure risks of our staff.

During the year, combined Same Facilities and Transitioning Facilities occupancy declined by 0.4% and skilled mix increased by 0.6% compared to 2020. In 2020, our occupancy, which was at its highest point prior to the pandemic, started to decline in mid-February and continued to decrease to its lowest point in December 2020. As the vaccine distribution commenced and infection rates began to decline, our occupancy rates started to recover in the first quarter of 2021 and continued throughout 2021. The improvements in occupancy were due to our operations developing innovative approaches to confront the occupancy declines, including strategic partnerships with upstream and downstream continuum partners and increasing clinical competencies to treat high-acuity patients, including those that are COVID-19 positive. Additionally, we have seen increases in hospital volumes for surgeries. Some operations added COVID-19 wings, while others became COVID-19 demands waning, the partnerships developed during the pandemic will continue to benefit us into the future

More specifically as a result of our local, one operation at a time approach, our Same Facilities and Transitioning Facilities occupancy rebounded by 3.1% and 4.8%, respectively, during the second quarter of 2021 compared to the fourth quarter of 2020. As the Delta variant and the recent Omicron variant become the dominant form of COVID-19 in the U.S. and elsewhere, many states and areas in which our communities are located are experiencing new COVID-19 caseloads. The rise of COVID-19 cases in the third quarter of 2021 and continuing through early 2022 has slowed down our census recoveries. Our monthly occupancy for Same Facilities and Transitioning Facilities grew 85 basis points from July 2021 to December 2021 after growth had accelerated sequentially by 337 basis points from December 2020 to June 2021. Occupancy at the end of 2021 has recovered 53.8% from the lowest point in 2020. We expect sequential monthly occupancy to again grow starting in the first quarter of 2022, but at a slightly more moderated rate. By strengthening existing partnerships, creating new partnerships and most importantly, demonstrating clinical capabilities and favorable outcomes, our census has continued to stabilize. We believe our operations are primed to rebuild occupancies and continue to gain additional market share as a result of relationships with acute care providers and other health care partners.

During the year ended December 31, 2021, we received approximately \$11.6 million in provider relief fund distributions (Provider Relief Fund) from the Coronavirus Aid, Relief and Economic Security Act of 2020 (the CARES Act) from the federal government. To date, we have returned all Provider Relief Funds that we received. Further, in March 2021, we repaid the remaining \$102.0 million of Medicare Accelerated and Advance Payment Program funds. On September 10, 2021, HHS made an additional round of \$17.0 billion in Provider Relief Fund available to support healthcare-related expenses or lost revenue attributable to COVID-19. We have not received any funding related to the additional round of Provider Relief Fund distributions.

During the year ended December 31, 2021 and 2020, we received state relief funding of \$70.5 million and \$51.9 million and recognized \$75.2 million and \$45.4 million, respectively, as revenue. Our unapplied state funding as of December 31, 2021 and 2020 was \$1.8 million and \$6.5 million, respectively. See Note 3, COVID-19 Update in the Notes to the Consolidated Financial Statements.

The CARES Act also provides for deferred payment of the employer portion of social security taxes through the end of 2020, with 50% of the deferred amount due by December 31, 2021 and the remaining 50% due by December 31, 2022. We recorded \$48.3 million of deferred payments of social security taxes as a liability in 2020, of which \$24.2 million was paid out in the fourth quarter of 2021 and the remaining liabilities will be paid in the fourth quarter of 2022.

Until the COVID-19 pandemic has been resolved as a public health crisis, it has the potential to cause further and more severe disruption of the global and national economies. Despite these challenges, we believe we are well-positioned to operate effectively in the current environment. Our forecasted metrics may be modified as the pace of the recovery in our volumes and costs of services and supplies become clearer over the coming months.

We continue to focus on navigating the challenges presented by COVID-19 through utilizing the infrastructure of our local operational approach. Each location is partnering with its local leaders and community outreach to ensure the operations are well equipped to deliver quality care. Consistent with previous hurdles, our local leaders are adjusting their operation to meet the clinical and financial challenges, including utilizing the expertise of our Service Center resources to implement best practices.

**HUD Mortgage Loans** — During the year ended December 31, 2021, four of our subsidiaries entered into HUD mortgage loans in the aggregate amount of approximately \$45.0 million. The mortgage loans are insured with HUD, which subjects these subsidiaries to HUD oversight and periodic inspections. Loan proceeds were used to fund acquisitions, to renovate and upgrade existing and future facilities, to cover working capital needs and for other business purposes.

Common Stock Repurchase Program — On October 21, 2021, the Board of Directors approved a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months that starts on October 29, 2021. During the year ended December 31, 2021, we repurchased approximately 0.1 million shares of our common stock for \$10.1 million. Subsequent to December 31, 2021, we repurchased approximately 0.1 million shares of our common stock for \$9.9 million. This repurchase program expired upon the repurchase of the full authorized amount under the plan. On February 9, 2022, the Board of Directors approved a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months that starts on February 10, 2022.

## **Key Performance Indicators**

We manage the fiscal aspects of our business by monitoring key performance indicators that affect our financial performance. Revenue associated with these metrics is generated based on contractually agreed-upon amounts or rate, excluding the estimates of variable consideration under the revenue recognition standard, ASC 606. These indicators and their definitions include the following:

### Skilled Services

- Routine revenue Routine revenue is generated by the contracted daily rate charged for all contractually inclusive skilled nursing services. The inclusion of therapy and other ancillary treatments varies by payor source and by contract. Services provided outside of the routine contractual agreement are recorded separately as ancillary revenue, including Medicare Part B therapy services, and are not included in the routine revenue definition.
- Skilled revenue The amount of routine revenue generated from patients in the skilled nursing facilities who are receiving higher levels of care under Medicare, managed care, Medicaid, or other skilled reimbursement programs. The other skilled patients who are included in this population represent very high acuity patients who are receiving high levels of nursing and ancillary services which are reimbursed by payors other than Medicare or managed care. Skilled revenue excludes any revenue generated from our senior living services.
- Skilled mix The amount of our skilled revenue as a percentage of our total skilled nursing routine revenue. Skilled mix (in days) represents the number of days our Medicare, managed care, or other skilled patients are receiving skilled nursing services at the skilled nursing facilities divided by the total number of days patients from all payor sources are receiving skilled nursing services at the skilled nursing facilities for any given period.
- Average daily rates The routine revenue by payor source for a period at the skilled nursing facilities divided by actual patient days for that revenue source for that given period. These rates exclude additional state relief funding, which includes payments we recognized as part of The Family First Coronavirus Response Act.
- Occupancy percentage (operational beds) The total number of patients occupying a bed in a skilled nursing facility as a percentage of the beds in a facility which are available for occupancy during the measurement period.
- Number of facilities and operational beds The total number of skilled nursing facilities that we own or operate and the total number of operational beds associated with these facilities.

Skilled Mix — Like most skilled nursing providers, we measure both patient days and revenue by payor. Medicare, managed care and other skilled patients, whom we refer to as high acuity patients, typically require a higher level of skilled nursing and rehabilitative care. Accordingly, Medicare and managed care reimbursement rates are typically higher than from other payors. In most states, Medicaid reimbursement rates are generally the lowest of all payor types. Changes in the payor mix can significantly affect our revenue and profitability.

The following table summarizes our overall skilled mix from our skilled nursing services for the periods indicated as a percentage of our total skilled nursing routine revenue and as a percentage of total skilled nursing patient days:

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Year Ended December 31.

	Year Ended	Year Ended December 31,					
Skilled Mix:	2021	2020					
Days	31.7 %	31.7 %					
Revenue	52.3 %	53.1 %					

Occupancy — We define occupancy derived from our skilled services as the ratio of actual patient days (one patient day equals one patient occupying one bed for one day) during any measurement period to the number of beds in facilities which are available for occupancy during the measurement period. The number of licensed beds in a skilled nursing facility that are actually operational and available for occupancy may be less than the total official licensed bed capacity. This sometimes occurs due to the permanent dedication of bed space to alternative purposes, such as enhanced therapy treatment space or other desirable uses calculated to improve service offerings and/or operational efficiencies in a facility. In some cases, three- and four-bed wards have been reduced to two-bed rooms for resident comfort, and larger wards have been reduced to conform to changes in Medicare requirements. These beds are seldom expected to be placed back into service. We believe that reporting occupancy based on operational beds is consistent with industry practices and provides a more useful measure of actual occupancy performance from period to period.

The following table summarizes our overall occupancy statistics for skilled nursing operations for the periods indicated:

Occupancy for skilled services:	2021	2020
Operational beds at end of period	25,032	23,172
Available patient days	8,895,949	8,392,147
Actual patient days	6,478,810	6,171,198
Occupancy percentage (based on operational beds)	72.8 %	73.5 %

### Segments

We have two reportable segments: (1) skilled services, which includes the operation of skilled nursing facilities and rehabilitation therapy services and (2) real estate, which is comprised of properties owned by us and leased to skilled nursing and assisted living operations, including our own operating subsidiaries and third party operators, and are subject to triple-net long-term leases.

We also reported an "all other" category that includes operating results from our senior living operations, mobile diagnostics, transportation and other ancillary operations. Our senior living, mobile diagnostics, transportation and other ancillary operations businesses are neither significant individually, nor in aggregate and therefore do not constitute a reportable segment. Our Chief Executive Officer, who is our chief operating decision maker, or CODM, reviews financial information at the operating segment level.

### Revenue Sources

### Skilled Services

Within our skilled nursing operations, we generate revenue from Medicaid, private pay, managed care and Medicare payors. We believe that our skilled mix, which we define as the number of days Medicare, managed care and other skilled patients are receiving services at our skilled nursing operations divided by the total number of days patients are receiving services at our skilled nursing operations, from all payor sources (less days from senior living services) for any given period, is an important indicator of our success in attracting high-acuity patients because it represents the percentage of our patients who are reimbursed by Medicare, managed care and other skilled payors, for whom we receive higher reimbursement rates.

We are participating in supplemental payment programs in various states that provide supplemental Medicaid payments for skilled nursing facilities that are licensed to non-state government-owned entities such as city and county hospital districts. Several of our operating subsidiaries entered into transactions with several such hospital districts providing for the transfer of

the licenses for those skilled nursing facilities to the hospital districts. Each affected operating subsidiary agreement between the hospital district and our subsidiary is terminable by either party to fully restore the prior license status.

### Real Estate

We generate rental revenue primarily by leasing post-acute care properties we acquired to healthcare operators under triple-net lease arrangements, whereby the tenant is solely responsible for the costs related to the property, including property taxes, insurance, and maintenance and repair costs, subject to certain exceptions. As of December 31, 2021, our real estate portfolio comprised of 100 real estate properties. Of these properties, 69 are leased to affiliated skilled nursing facilities wholly owned and managed by us, 32 are leased to senior living operations wholly owned and managed by Pennant and our Service Center property, which is leased to our Service Center and numerous third parties for commercial office space. Of the 32 real estate operations leased to Pennant, two senior living operations are located on the same real estate properties as skilled nursing facilities that the Company owns and operates. During the year ended December 31, 2021, we generated rental revenues of \$65.5 million, of which \$49.6 million was derived from affiliated wholly owned healthcare operators, and therefore eliminated in consolidation.

### Other

Within our senior living operations, we generate revenue primarily from private pay sources, with a portion earned from Medicaid payors or through other state-specific programs. In addition, we hold majority membership interests in our other ancillary operations. Payment for these services varies and is based upon the service provided. The payment is adjusted for an inability to obtain appropriate billing documentation or authorizations acceptable to the payor and other reasons unrelated to credit risk.

### Primary Components of Expense

Cost of Services (exclusive of rent and depreciation and amortization shown separately). Our cost of services represents the costs of operating our operating subsidiaries, which primarily consists of payroll and related benefits, supplies, purchased services, and ancillary expenses such as the cost of pharmacy and therapy services provided to patients. Cost of services also includes the cost of general and professional liability insurance, rent expenses related to leasing our operational facilities that are not included in facility rent - cost of services, and other general cost of services with respect to our operations.

Facility Rent - Cost of Services. Rent - cost of services consists solely of base minimum rent amounts payable under lease agreements to third-party real estate owners. Our operating subsidiaries lease and operate but do not own the underlying real estate and these amounts do not include taxes, insurance, impounds, capital reserves or other charges payable under the applicable lease agreements. Expenses related to leasing our operations other than rent are included in cost of services.

General and Administrative Expense. General and administrative expense consists primarily of payroll and related benefits and travel expenses for our Service Center personnel, including training and other operational support. General and administrative expense also includes professional fees (including accounting and legal fees), costs relating to our information systems and stock-based compensation related to our Service Center employees.

Depreciation and Amortization. Property and equipment are recorded at their original historical cost. Depreciation is computed using the straight-line method over the estimated useful lives of the depreciable assets. The following is a summary of the depreciable lives of our depreciable assets:

Buildings and improvements Leasehold improvements Furniture and equipment Minimum of three years to a maximum of 57 years, generally 45 years Shorter of the lease term or estimated useful life, generally 5 to 15 years 3 to 10 years

## Critical Accounting Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP). The preparation of these financial statements and related disclosures requires us to make judgments, estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. We believe that the application of the following accounting policies, which are important to our financial position and results of operations, require significant

judgments and estimates on the part of management. For a summary of our significant accounting policies, including the accounting policies discussed below, see Note 2, "Summary of Significant Accounting Policies" of the Notes to Consolidated Financial Statements.

Variable consideration within revenue recognition — Revenue recognized from healthcare services are adjusted for estimates of variable consideration to arrive at the transaction price. We determine the transaction price based on contractually agreed-upon amounts or rates, adjusted for estimates of variable consideration. We use the expected value method in determining the variable component that should be used to arrive at the transaction price, using contractual agreements and historical reimbursement experience within each payor type. The amount of variable consideration which is included in the transaction price may be constrained, and is included in the net revenue only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. If actual amounts of consideration ultimately received differ from our estimates, we adjust these estimates, which would affect net service revenue in the period such variances become known.

Self-insurance for general and professional liability — The self-insured retention and deductible limits for general and professional liability for all states are self-insured through our wholly owned captive insurance subsidiary (the Captive Insurance), the related assets and liabilities of which are included in the accompanying consolidated balance sheets. Our general and professional liability as of December 31, 2021 and 2020 was \$69.7 million and \$60.9 million, respectively.

Our policy is to accrue amounts equal to the actuarially estimated costs to settle open claims of insureds, as well as an estimate of the cost of insured claims that have been incurred but not reported. We develop information about the size of the ultimate claims based on historical experience, current industry information and actuarial analysis, and evaluate the estimates for claim loss exposure on a quarterly basis. We use actuarial valuations to estimate the liability based on historical experience and industry information.

### **Results of Operations**

We believe we exist to dignify and transform post-acute care. We set out a strategy to achieve our goal of ensuring our patients are receiving the best possible care through our ability to acquire, integrate and improve our operations. Our results serve as a strong indicator that our strategy is working and our transformation is underway. As vaccines became available in the communities we serve, we began to see a recovery in our census during the first quarter of 2021, which has improved throughout 2021. Despite the emergence of COVID-19 variants in late 2021, which has led to spikes in COVID-19 caseloads and slowed down our census recoveries starting in the beginning of the third quarter of 2021, we continue to experience healthy growth in both revenue and operational earnings.

Our net revenue for the year ended December 31, 2021 continued to be impacted by COVID-19. The Emergency Waivers issued by CMS, including a waiver of the requirement to have a three-day stay in a hospital to get Medicare coverage of a skilled nursing stay as well as the authorization of renewed skilled nursing facility coverage without having to start a new benefit period for certain beneficiaries who recently exhausted their skilled nursing facility benefits, continued into 2021 and remain in effect at the beginning of 2022. In addition, we continued to receive state relief funding in selected states, which has been designed to enhance reimbursement to provide additional funding to cover COVID-19 related expenses. For the year ended December 31, 2021, we recorded state relief revenue of \$75.2 million, respectively, which directly offset against COVID-19 related expenses we incurred in those states. See *Recent Activities* for further information.

Since 2016, our total revenue increased \$1.2 billion, or 82.8%, representing a 12.8% compound annual growth rate (CAGR) while our diluted GAAP earning per share (EPS) from continued operations grew by \$2.86 from 2016 to \$3.42, representing a 35.2% CAGR. Over the past year, we have continued to make progress on targeted initiatives, including our foundational structure of local operations that are the centers of excellence in the communities they serve. As part of this focus, we have been able to expand our relationships with doctors, hospitals and managed care plans. Revenue from our skilled services collectively increased by 10.3%. We have also strengthened our collection process and identified non-clinical areas where we can manage spending. These operational fundamentals coupled with the reduction of interest expense due to the deferral of payroll tax payments and cash generated from strong fiscal year performance.

The following table sets forth details of operating results for our revenue, expenses and earnings, and their respective components, as a percentage of total revenue for the periods indicated:

	Year Ended December 31,		
	2021	2020	
Revenue:			
Service revenue	99.4 %	99.4 %	
Rental revenue	0.6	0.6	
Total revenue	100.0 %	100.0 %	
Expense:			
Cost of services	76.9	77.6	
Rent—cost of services	5.3	5.4	
General and administrative expense	5.8	5.4	
Depreciation and amortization	2.1	2.3	
Total expenses	90.1	90.7	
Income from operations	9.9	9.3	
Other income (expense):			
Interest expense	(0.3)	(0.4)	
Other income	0.2	0.2	
Other expense, net	(0.1)	(0.2)	
Income before provision for income taxes	9.8	9.1	
Provision for income taxes	2.3	2.0	
Net income	7.5	7.1	
Less: net income attributable to noncontrolling interests	0.1		
Net income attributable to The Ensign Group, Inc.	7.4 %	7.1 %	

	Yea	Year Ended December 31,				
	2021		2020			
Segment Income <sup>(1)</sup>	(In thousands)					
Skilled services	\$	373,603 \$	327,812			
Real estate <sup>(2)</sup>	\$	35,986 \$	31,323			
Non-GAAP Financial Measures:						
Performance Metrics						
EBITDA	\$	313,377 \$	276,840			
Adjusted EBITDA	\$	336,572 \$	292,751			
FFO for real estate segment	\$	55,712 \$	49,541			
Valuation Metric						
Adjusted EBITDAR	S	175,905				

<sup>(1)</sup> Segment income represents operating results of the reportable segments excluding gain and loss on sale of assets, impairment charges and provision for income taxes. Segment income is reconciled to the Consolidated Statement of Income in Note 7, Business Segments in Notes to Consolidated Financial Statements of this Annual Report on Form 10-K.

(2) Real estate segment income includes rental revenue from Ensign affiliated tenants and related expenses.

The following discussion includes references to EBITDA, Adjusted EBITDA, Adjusted EBITDAR and Funds from Operations (FFO) which are non-GAAP financial measures (collectively, the Non-GAAP Financial Measures). Regulation G, Conditions for Use of Non-GAAP Financial Measures, and other provisions of the Securities Exchange Act of 1934, as amended (the Exchange Act), define and prescribe the conditions for use of certain non-GAAP financial information. These Non-GAAP Financial Measures are used in addition to and in conjunction with results presented in accordance with GAAP. These Non-GAAP Financial Measures should not be relied upon to the exclusion of GAAP financial measures. These Non-GAAP Financial Measures reflect an additional way of viewing aspects of our operations that, when viewed with our GAAP results and the accompanying reconciliations to corresponding GAAP financial measures, provide a more complete understanding of factors and trends affecting our business.

We believe the presentation of certain Non-GAAP Financial Measures are useful to investors and other external users of our financial statements regarding our results of operations because:

- they are widely used by investors and analysts in our industry as a supplemental measure to evaluate the overall performance of companies in our industry without regard to items such as
  interest expense, net and depreciation and amortization, which can vary substantially from company to company depending on the book value of assets, capital structure and the method by
  which assets were acquired; and
- · they help investors evaluate and compare the results of our operations from period to period by removing the impact of our capital structure and asset base from our operating results.

#### We use the Non-GAAP Financial Measures:

- · as measurements of our operating performance to assist us in comparing our operating performance on a consistent basis;
- to allocate resources to enhance the financial performance of our business;
- · to assess the value of a potential acquisition;
- · to assess the value of a transformed operation's performance;
- · to evaluate the effectiveness of our operational strategies; and
- · to compare our operating performance to that of our competitors.

We use certain Non-GAAP Financial Measures to compare the operating performance of each operation. These measures are useful in this regard because they do not include such costs as net interest expense, income taxes, depreciation and amortization expense, which may vary from period-to-period depending upon various factors, including the method used to finance operations, the amount of debt that we have incurred, whether an operation is owned or leased, the date of acquisition of a facility or business, and the tax law of the state in which a business unit operates.

We also establish compensation programs and bonuses for our leaders that are partially based upon the achievement of Adjusted EBITDAR targets.

Despite the importance of these measures in analyzing our underlying business, designing incentive compensation and for our goal setting, the Non-GAAP Financial Measures have no standardized meaning defined by GAAP. Therefore, certain of our Non-GAAP Financial Measures have limitations as analytical tools, and they should not be considered in isolation, or as a substitute for analysis of our results as reported in accordance with GAAP. Some of these limitations are:

- · they do not reflect our current or future cash requirements for capital expenditures or contractual commitments;
- · they do not reflect changes in, or cash requirements for, our working capital needs;
- · they do not reflect the net interest expense, or the cash requirements necessary to service interest or principal payments, on our debt;
- · they do not reflect rent expenses, which are necessary to operate our leased operations, in the case of Adjusted EBITDAR;
- · they do not reflect any income tax payments we may be required to make;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and do not reflect any cash requirements for such replacements; and
- · other companies in our industry may calculate these measures differently than we do, which may limit their usefulness as comparative measures.

We compensate for these limitations by using them only to supplement net income on a basis prepared in accordance with GAAP in order to provide a more complete understanding of the factors and trends affecting our business.

Management strongly encourages investors to review our consolidated financial statements in their entirety and to not rely on any single financial measure. Because these Non-GAAP Financial Measures are not standardized, it may not be possible to compare these financial measures with other companies' Non-GAAP financial measures having the same or similar names. These Non-GAAP Financial Measures should not be considered a substitute for, nor superior to, financial results and measures determined or calculated in accordance with GAAP. We strongly urge you to review the reconciliation of income from operations to the Non-GAAP Financial Measures in the table below, along with our consolidated financial statements and related notes included elsewhere in this document

We use the following Non-GAAP financial measures that we believe are useful to investors as key valuation and operating performance measures:

#### PERFORMANCE MEASURES:

#### ERITDA

We believe EBITDA is useful to investors in evaluating our operating performance because it helps investors evaluate and compare the results of our operations from period to period by removing the impact of our asset base (depreciation and amortization expense) from our operating results.

We calculate EBITDA as net income, adjusted for net losses attributable to noncontrolling interest, before (a) interest expense, net, (b) provision for income taxes, and (c) depreciation and amortization

#### Adjusted EBITDA

We adjust EBITDA when evaluating our performance because we believe that the exclusion of certain additional items described below provides useful supplemental information to investors regarding our ongoing operating performance, in the case of Adjusted EBITDA. We believe that the presentation of Adjusted EBITDA, when combined with EBITDA and GAAP net income attributable to The Ensign Group, Inc., is beneficial to an investor's complete understanding of our operating performance.

Adjusted EBITDA is EBITDA adjusted for non-core business items, which for the reported periods includes, to the extent applicable:

- · stock-based compensation expense;
- · costs incurred related to real estate due diligence;
- · business interruption gain;
- · results related to operations not at full capacity;
- · gain on sale of assets:
- acquisition related costs; and
- · costs incurred related to new systems implementation.

#### Funds from Operations (FFO)

We consider FFO to be a useful supplemental measure of the operating performance of our real estate segment. Historical cost accounting for real estate assets in accordance with U.S. GAAP implicitly assumes that the value of real estate assets diminishes predictably over time as evidenced by the provision for depreciation. However, since real estate values have historically risen or fallen with market conditions, many real estate investors and analysts have considered presentations of operating results for real estate companies that use historical cost accounting to be insufficient. In response, the National Association of Real Estate Investment Trusts (NAREIT) created FFO as a supplemental measure of operating performance for REITs, which excludes historical cost depreciation from net income. We define (in accordance with the definition used by NAREIT) FFO to consist of real estate segment income, excluding depreciation and amortization related to real estate, gains or losses from sales of real estate, insurance recoveries related to real estate and impairment of depreciable real estate assets.

#### **VALUATION MEASURE:**

#### Adjusted EBITDAR

We use Adjusted EBITDAR as one measure in determining the value of prospective acquisitions. It is also a commonly used measure by our management, research analysts and investors, to compare the enterprise value of different companies in the healthcare industry, without regard to differences in capital structures and leasing arrangements. Adjusted EBITDAR is a financial valuation measure that is not specified in GAAP. This measure is not displayed as a performance measure as it excludes rent expense, which is a normal and recurring operating expense.

The adjustments made and previously described in the computation of Adjusted EBITDA are also made when computing Adjusted EBITDAR. We calculate Adjusted EBITDAR by excluding rent-cost of services from Adjusted EBITDA.

We believe the use of Adjusted EBITDAR allows the investor to compare operational results of companies who have operating and capital leases. A significant portion of capital lease expenditures are recorded in interest, whereas operating lease expenditures are recorded in rent expense.

The table below reconciles net income to EBITDA, Adjusted EBITDA and Adjusted EBITDAR for the periods presented:

	Year	inded Dec	cember 31,
	2021		2020
Consolidated statements of income data:  Net income  Less: net income attributable to noncontrolling interests  Add: Interest expense, net Provision for income taxes Depreciation and amortization  EBITDA  Stock-based compensation Legal, transactional and other costs(a) Business interruptions gain and gain on sale of assets Results related to operations not at full capacity Acquisition related costs(b) Costs incurred related to new systems implementation Rent related to items above  Adjusted EBITDA  Rent—cost of services Less: rent related to items above  Adjusted rent		(In thousa	ands)
Net income	\$ 19	7,725 \$	171,364
Less: net income attributable to noncontrolling interests		3,073	886
Add: Interest expense, net		2,461	5,549
Provision for income taxes		0,279	46,242
Depreciation and amortization	5	5,985	54,571
EBITDA	<u>\$ 31</u>	3,377 \$	276,840
Stock-based compensation	1	8,678	14,524
Legal, transactional and other costs(a)		5,689	_
Business interruptions gain and gain on sale of assets	(	2,365)	_
Results related to operations not at full capacity		585	1,183
Acquisition related costs(b)		384	104
Costs incurred related to new systems implementation		186	_
Rent related to items above		38	100
Adjusted EBITDA	\$ 33	6,572 \$	292,751
Rent—cost of services	13	9,371	129,926
Less: rent related to items above		(38)	(100)
Adjusted rent	13	9,333	129,826
Adjusted EBITDAR	\$ 47	5,905	

<sup>(</sup>a) Legal, transactional and other costs incurred related to the formation of Standard Bearer REIT and other real estate related activities.

#### Year Ended December 31, 2021 Compared to the Year Ended December 31, 2020

The following table sets forth details of operating results for our revenue and earnings, and their respective components, by our reportable segment for the periods indicated:

			Yes	ar E	nded December 31,	202	1	
	Skil	led services	Real estate		All Other(1)		Eliminations	Consolidated
	\$	2,523,234	\$ 65,536	\$	88,242	\$	(49,551)	\$ 2,627,461
se, net		2,149,631	29,550		240,267		(49,551)	2,369,897
		373,603	35,986		(152,025)		_	257,564
								440
								\$ 258,004

<sup>(1)</sup> General and administrative expense is included in the "all other" category.
(2) Gain from sale of real estate includes gains or losses from the sale of real estate, insurance recoveries related to real estate properties and impairment charges from operations.

	Year Ended December 31, 2020									
	Ski	Skilled services		Real estate	All Other(1)		Eliminations			Consolidated
Total revenue	\$	2,288,182	\$	61,275	\$	99,257	\$	(46,118)	\$	2,402,596
Total expenses, including other expense, net		1,960,370		29,952		238,033		(46,118)		2,182,237
Segment income (loss)		327,812		31,323		(138,776)		_		220,359
Loss from sale of real estate and impairment charges <sup>(2)</sup>										(2,753)
Income before provision for income taxes									\$	217,606

Our total revenue increased \$224.9 million, or 9.4%, compared to the year ended December 31, 2020. The increase in revenue from same facility and transitioning operations was primarily driven by the increase in skilled service revenue per patient day, along with the impact of acquisitions. Total revenue from operations acquired on or subsequent to January 1, 2020 increased our consolidated revenue by \$126.1 million during the year ended December 31, 2021, when compared to the same period in 2020. In addition, we recorded \$75.2 million of state relief revenue during the year ended in 2021 compared to \$45.4 million in 2020, which correlated directly to the additional COVID-19 related expenses incurred. All state relief revenue is included in Medicaid revenue.

#### Skilled Services Segment

#### Revenue

The following table presents the skilled services revenue and key performance metrics by category during the years ended December 31, 2021 and 2020:

		Year Ended	Decemb	er 31,			
		2021		2020	Change		% Change
Total Facility Results:		(Dollars in	n thousan	nds)			_
Skilled services revenue	\$	2,523,234		2,288,182		235,052	10.3 %
Number of facilities at period end		214	214			17	8.6 %
Number of campuses at period end*		22		22		_	%
Actual patient days		6,478,810		6,171,198		307,612	5.0 %
Occupancy percentage — Operational beds		72.8 %	•	73.5 %			(0.7)%
Skilled mix by nursing days		31.7 %	•	31.7 %			%
Skilled mix by nursing revenue		52.3 %	)	53.1 %			(0.8)%
		Year Ended					
		2021		2020		Change	% Change
Same Facility Results(1):		(Dollars i	n thousan	nds)			_
Skilled services revenue	\$	2,006,609	\$	1,926,574	\$	80,035	4.2 %
Number of facilities at period end		165		165		_	%
Number of campuses at period end*		15		15		_	%
Actual patient days		5,064,374		5,111,446		(47,072)	(0.9)%
Occupancy percentage — Operational beds		73.9 %		74.4 %			(0.5)%
Skilled mix by nursing days		33.3 %	)	33.1 %			0.2 %
Skilled mix by nursing revenue		54.2 %	)	54.6 %			(0.4)%
	72						

<sup>(1)</sup> General and administrative expense is included in the "all other" category.
(2) Gain from sale of real estate includes gains or losses from the sale of real estate, insurance recoveries related to real estate properties and impairment charges from operations.

	 rear Ended	Decemb	ei 31,			
	 2021		2020		Change	% Change
Transitioning Facility Results(2):	(Dollars in	thousar	ids)			
Skilled services revenue	\$ 368,849	\$	338,138	\$	30,711	9.1 %
Number of facilities at period end	27		27		_	%
Number of campuses at period end*	6		6		_	%
Actual patient days	992,762		986,798		5,964	0.6 %
Occupancy percentage — Operational beds	69.5 %		69.2 %			0.3 %
Skilled mix by nursing days	27.8 %		25.4 %			2.4 %
Skilled mix by nursing revenue	47.6 %		45.9 %			1.7 %
	 Year Ended	ber 31,	_			
	 2021		2020		Change	% Change
Recently Acquired Facility Results(3):	(Dollars in	n thousa	inds)			
Skilled services revenue	\$ 147,776	\$	23,470	\$	124,306	NM
Number of facilities at period end	22		5		17	NM
Number of campuses at period end*	1		1		_	NM
Actual patient days	421,674		72,954		348,720	NM
Occupancy percentage — Operational beds	69.1 %	)	75.5 %	)		NM
Skilled mix by nursing days	20.9 %	)	18.6 %	)		NM
Skilled mix by nursing revenue	39.0 %	)	32.1 %			NM

Vear Ended December 31

- Campus represents a facility that offers both skilled nursing and senior living services. Revenue and expenses related to skilled nursing and senior living services have been allocated and recorded in the respective operating segment. In the first half of 2021, we converted two campuses into two skilled nursing facilities.
- Same Facility results represent all facilities purchased prior to January 1, 2018.

  Transitioning Facility results represent all facilities purchased from January 1, 2018 to December 31, 2019.
- Recently Acquired Facility (Acquisitions) results represent all facilities purchased on or subsequent to January 1, 2020.

Skilled services revenue increased \$235.1 million, or 10.3%, compared to the year ended December 31, 2020. The primary changes were from increases in managed care revenue of \$89.6 million or 24.4%, Medicaid custodial revenue of \$120.1 million or 13.5%, other skilled revenue of \$22.9 million or 15.3%, and private and other payors revenue increased by \$2.7 million, or 1.7%. Medicare revenue remained consistent from the prior year.

The increase in revenue was primarily driven by strong performance across our skilled services operations. The negative impact of COVID-19 on our census started in mid-February 2020 and continued into the first quarter of 2021. Census began to recover in the second quarter of 2021 and continued throughout 2021. Our consolidated occupancy decreased by 0.7%, which includes operations acquired at lower occupancy, compared to the same period in the prior year. Consolidated patient days increased due to transitioning and newly acquired operations. The decline in consolidated occupancy was offset by the increase in average daily revenue rates and skilled days due to a shift in higher acuity. As COVID-19 cases decline, we have experienced a recovery in our census, which includes the return of our long-term care patients. This has a direct impact on our skilled days percentage as our long-term care patient days continue to climb and make up a higher percentage of the total patient days. Our ancillary revenue services also increased by 37.9%. In addition, we recorded \$75.2 million of state relief revenue during the year ended in 2021 compared to \$45.4 million in 2020, which correlated directly to the additional COVID-19 related expenses incurred.

Revenue in our Same Facilities increased \$80.0 million, or 4.2% due to higher average daily revenue rates due to a shift toward higher acuity patients, offset by the decrease in occupancy of 0.5%, which primarily declined in the first three months in 2021 and has steadily increased since April 2021. The decline in our occupancy is mainly in our non-skilled patient days, which was offset by the shift toward higher acuity patients. Total revenue for Same Facilities included \$58.4 million and \$37.2 million of Medicaid revenue related to state relief funding for the years ended December 31, 2021 and 2020, respectively. Managed care revenue increased by \$63.0 million or 19.8%, driven by increases in managed care days as our partnership with various managed care organizations, hospitals and the local communities strengthened.

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Revenue generated by our Transitioning Facilities increased \$30.7 million, or 9.1%, primarily due to increases in our daily rate and skilled mix days compared to the year ended December 31, 2020, demonstrating our ability to transition these healthcare operations that were acquired two and three years ago. In addition, we experienced a shift toward higher acuity patients as our skilled days increased by 10.1%.

Skilled services revenue generated by facilities purchased on or subsequent to January 1, 2020 (Recently Acquired Facilities) increased by approximately \$124.3 million compared to the year ended December 31, 2020. We acquired 17 operations between January 1, 2021 and December 31, 2021 across five states.

In the future, if we acquire additional facilities that are underperforming and need to be turned around or invest in start-up operations, we expect to see lower occupancy rates and skilled mix and these metrics are expected to vary from period to period based upon the maturity of the facilities within our portfolio. Historically, we have generally experienced lower occupancy rates and lower skilled mix at Recently Acquired Facilities and therefore, we anticipate generally lower overall occupancy during years of growth.

The following table reflects the change in skilled nursing average daily revenue rates by payor source, excluding services that are not covered by the daily rate (1):

Year	Ended	December	r 31,

	Same Facility			Transi	tionii	ng	Acqui			ns	Total				
		2021		2020	2021		2020		2021		2020		2021		2020
Skilled Nursing Average Daily Revenue Rates:															
Medicare	\$	689.50	\$	664.75	\$ 679.15	\$	648.10	\$	674.89	\$	520.05	\$	687.18	\$	660.78
Managed care		503.31		494.19	478.30		472.82		475.07		517.92		498.97		491.53
Other skilled		545.88		534.56	425.87		358.37		520.18		293.04		534.40		525.51
Total skilled revenue		587.37		582.47	567.32		568.14		588.41		511.91		584.72		580.14
Medicaid		250.47		240.32	241.51		229.59		242.57		252.31		248.41		238.62
Private and other payors		237.35		232.80	234.39		220.31		242.32		230.30		237.21		230.52
Total skilled nursing revenue	\$	361.43	\$	352.69	\$ 331.38	\$	314.49	\$	314.76	\$	297.01	\$	353.79	\$	345.92

<sup>(1)</sup> These rates exclude additional Federal Medical Assistance Percentages (FMAP) we recognized and include sequestration reversal of 2%.

Our Medicare daily rates at Same Facilities and Transitioning Facilities increased by 3.7% and 4.8%, respectively, compared to the year ended December 31, 2020. The increase is attributable to the 1.2% net market basket increase that became effective in October 2021 coupled with our continued shift towards higher acuity patients. Included in revenue for the year ended December 31, 2021 is the twelve-month impact of the temporary suspension of the 2% Medicare sequestration, which started on May 1, 2020 and was extended through April 1, 2022. Revenue for the year ended December 31, 2020 included eight months of impact from the temporary suspension of the 2% Medicare sequestration.

Our average Medicaid rates increased 4.1% due to state reimbursement increases and our participation in supplemental Medicaid payment programs and quality improvement programs in various states. Medicaid rates exclude the amount of state relief revenue we recorded.

Payor Sources as a Percentage of Skilled Nursing Services. We use our skilled mix as a measure of the quality of reimbursements we receive at our affiliated skilled nursing facilities over various periods.

The following tables set forth our percentage of skilled nursing patient revenue and days by payor source:

				Year Ended De	cember 31,			
	Same Fac	cility	Transitio	ning	Acquisiti	ons	Total	
	2021	2020	2021	2020	2021	2020	2021	2020
Percentage of Skilled Nursing Revenue:					'			
Medicare	26.2 %	29.8 %	26.8 %	30.5 %	23.5 %	23.1 %	26.1 %	29.8 %
Managed care	19.3	16.4	17.1	13.7	9.2	8.4	18.4	16.0
Other skilled	8.7	8.4	3.7	1.7	6.3	0.6	7.8	7.3
Skilled mix	54.2	54.6	47.6	45.9	39.0	32.1	52.3	53.1
Private and other payors	6.6	7.0	7.7	8.5	8.3	12.8	6.9	7.3
Medicaid	39.2	38.4	44.7	45.6	52.7	55.1	40.8	39.6
Total skilled nursing	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

				Year Ended Dec	eember 31,			
	Same Fac	cility	Transitio	ning	Acquisiti	ons	Total	
	2021	2020	2021	2020	2021	2020	2021	2020
Percentage of Skilled Nursing Days:								
Medicare	13.7 %	15.8 %	13.1 %	14.8 %	11.0 %	13.2 %	13.5 %	15.6 %
Managed care	13.9	11.7	11.9	9.1	6.1	4.8	13.0	11.2
Other skilled	5.7	5.6	2.8	1.5	3.8	0.6	5.2	4.9
Skilled mix	33.3	33.1	27.8	25.4	20.9	18.6	31.7	31.7
Private and other payors	10.1	10.5	10.8	12.2	10.7	16.6	10.2	10.9
Medicaid	56.6	56.4	61.4	62.4	68.4	64.8	58.1	57.4
Total skilled nursing	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

Cost of Services

The following table sets forth total cost of services for our skilled services segment for the periods indicated (dollars in thousands):

	Year Ended	Decembe	er 31,	Change			
	2021 2020			\$	%		
Cost of service	\$ 1,944,461	\$	1,770,336	\$ 174,125	9.8 %		
Revenue percentage	77.1 %		77.4 %		(0.3)%		

Cost of services related to our skilled services segment increased \$174.1 million, or 9.8%, due primarily to additional costs at new acquisitions, which accounted for \$97.1 million of the increase. Cost of services as a percentage of revenue decreased by 0.3% to 77.1%. We experienced a decrease in cost associated with operational improvements.

#### Real Estate Segment

	Year Ended	Decembe	er 31,	Change	!
	 2021		2020	\$	%
Rental revenue generated from third-party tenants	\$ 15,985	\$	15,157	\$ 828	5.5 %
Rental revenue generated from Ensign affiliated operations	49,551		46,118	3,433	7.4
Total rental revenue	\$ 65,536	\$	61,275	\$ 4,261	7.0 %
Segment income	35,986		31,323	4,663	14.9
Depreciation and amortization	 19,726		18,218	1,508	8.3
FFO	\$ 55,712	\$	49,541	\$ 6,171	12.5 %

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Rental revenue. Our rental revenue, including revenue generated from our affiliated facilities, increased by \$4.3 million, or 7.0% to \$65.5 million, compared to the year ended December 31, 2020. The increase in revenue is primarily attributable to acquisitions and CPI increases.

FFO. Our FFO increased \$6.2 million, or 12.5% to \$55.7 million, compared to the year ended December 31, 2020. The increase in FFO is primarily related to the increase in rental revenue and the decrease in interest expense.

#### All Other Service Revenue

Our other revenue decreased by \$11.0 million, or 11.1% to \$88.2 million, compared to the year ended December 31, 2020. Other revenue for 2021 includes senior living revenue of \$48.4 million and revenue from other ancillary services of \$39.8 million. The decrease in revenue is due to the impact of COVID-19, which negatively impacted services in our other ancillary services.

#### **Consolidated Financial Expenses**

Rent — cost of services. Our rent — cost of services as a percentage of total revenue decreased by 0.1% to 5.3%, primarily due to the growth in revenue outpacing the increase in rent expense.

General and administrative expense. General and administrative expense increased \$22.0 million or 17.0%, to \$151.8 million. This increase was primarily due to increases in wages and benefits due to enhanced performance and growth, as well as expenses incurred related to the formation of Standard Bearer REIT of \$5.7 million. General and administrative expense increased by 0.4% to 5.8%, as a percentage of revenue.

**Depreciation and amortization.** Depreciation and amortization expense increased \$1.4 million, or 2.6%, to \$56.0 million. This increase was primarily related to the additional depreciation and amortization incurred as a result of our newly acquired operations. Depreciation and amortization decreased 0.2%, to 2.1%, as a percentage of revenue.

Other expense, net. Other expense, net as a percentage of revenue decreased by 0.1%, to 0.1%. Other expense primarily includes interest expense related to borrowings under mortgage debt. As there was no outstanding debt under the Credit Facility, interest expense decreased.

**Provision for income taxes.** Our effective tax rate was 23.4% for the year ended December 31, 2021, compared to 21.3% for the same period in 2020. The effective tax rate for both periods is driven by the impact of excess tax benefits from stock-based compensation, partially offset by non-deductible expenses. See Note 14, *Income Taxes*, in the Notes to the Consolidated Financial Statements for further discussion.

#### Liquidity and Capital Resources

Our primary sources of liquidity have historically been derived from our cash flows from operations and long-term debt secured by our real property and our Credit Facility. Our liquidity as of December 31, 2021 is impacted by cash generated from strong operational performance and the repayment of Medicare Accelerated and Advance Payment Program funds and deferral of the employer portion of social security taxes.

Historically, we have primarily financed the majority of our acquisitions through the financing of our operating subsidiaries through mortgages, our Credit Facility, and cash generated from operations. Cash paid to fund acquisitions was \$104.1 million and \$11.0 million for the years ended December 31, 2021 and 2020, respectively. Total capital expenditures for property and equipment were \$69.6 million and \$50.3 million for the years ended December 31, 2021 and 2020, respectively. We currently have approximately \$70.0 million budgeted for renovation projects for 2022. We believe our current cash balances, our cash flow from operations and the amounts available under our Credit Facility will be sufficient to cover our operating needs for at least the next 12 months.

We may, in the future, seek to raise additional capital to fund growth, capital renovations, operations and other business activities, but such additional capital may not be available on acceptable terms on a timely basis or at all

Our cash and cash equivalents as of December 31, 2021 consisted of bank term deposits, money market funds and U.S. Treasury bill related investments. In addition, as of December 31, 2021, we held debt security investments of approximately \$50.3 million, which were split between AA, A and BBB rated securities. We believe our debt security investments that were in an unrealized loss position as of December 31, 2021 were not other-than-temporarily impaired, nor has any event occurred subsequent to that date that would indicate any other-than-temporary impairment.

As mentioned above, our primary sources of cash is from our ongoing operations. Our positive cash flows have supported our business and have allowed us to pay regular dividends to our stockholders. We currently anticipate that existing cash and total investments as of December 31, 2021, along with projected operating cash flows and available financing, will support our normal business operations for the foreseeable future.

On October 21, 2021, the Board of Directors approved a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months that starts on October 29, 2021. During the year ended December 31, 2021, we repurchased approximately 0.1 million shares of our common stock for \$10.1 million. Subsequent to December 31, 2021, we repurchase approximately 0.1 million shares of our common stock for \$9.9 million. This repurchase program expired upon the repurchase of the full authorized amount under the plan. On February 9, 2022, the Board of Directors approved a stock repurchase program pursuant to which we may repurchase up to \$20.0 million of our common stock under the program for a period of approximately 12 months that starts on February 10, 2022. The share repurchase programs do not obligate us to acquire any specific number of shares. Under these programs, shares may be repurchased in privately negotiated and/or open market transactions, including under plans complying with Rule 10b5-1 under the Exchange Act.

The following table presents selected data from our consolidated statement of cash flows for the periods presented:

	 2021		2020
Net cash provided by/(used in):	(In tho	usands)	
Operating activities	\$ 275,684	\$	373,351
Investing activities	(173,907)		(58,666)
Financing activities	 (76,138)		(137,298)
Net increase in cash and cash equivalents	25,639		177,387
Cash and cash equivalents beginning of period	 236,562		59,175
Cash and cash equivalents at end of period	\$ 262,201	\$	236,562

Year Ended December 31.

#### **Operating Activities**

Cash provided by operating activities is net income adjusted for certain non-cash items and changes in operating assets and liabilities.

The \$97.7 million decrease in cash provided by operating activities for the year ended December 31, 2021 compared to the same period in 2020, was primarily due to changes in working capital partially offset by higher net income. Changes in working capital was driven by a payment on the deferred employer portion of social security taxes in December 2021, timing of accounts receivable collections and payment of income taxes and expenses.

#### Investing Activities

Investing cash flows consist primarily of capital expenditures, investment activities, insurance proceeds and cash used for acquisitions.

The \$115.2 million increase in cash used in investing activities for the year ended December 31, 2021, compared to the same period in 2020, was primarily due to an increase in cash used for acquisitions and capital expenditures of \$93.1 million and \$19.2 million, respectively, which are partially offset by an increase in cash from insurance proceeds of \$6.1 million.

#### Financing Activities

Financing cash flows consist primarily of payment of dividends to stockholders, issuance and repayment of short-term and long-term debt, repayment of the Medicare Accelerated and Advance Payment Program funds and sale of shares of common stock through employee equity incentive plans.

The \$61.2 million decrease in cash used in financing activities for the year ended December 31, 2021, compared to the same period in 2020, was primarily due to the proceeds and repayment of the Medicare Accelerated and Advance Payment Program funds offset by net borrowing activity.

A discussion of our cash flows for the year ended December 31, 2019 is included in Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources, included in our

Annual Report on Form 10-K for the year ended December 31, 2020 filed with the Securities and Exchange Commission on February 3, 2021.

#### Material cash requirements from known contractual and other obligations

Total long-term debt obligations, net of debt discount, outstanding as of the end of each fiscal year were as follows:

					December 31,				
2021			2020		2019		2018		2017
					(In thousands)				
\$	_	\$	_	\$	210,000	\$	123,125	\$	190,625
	159,967		117,806		120,350		122,955		125,394
\$	159,967	\$	117,806	\$	330,350	\$	246,080	\$	316,019
	\$ \$	\$ — 159,967	\$ — \$ 159,967	\$ \$ 159,967	\$ \$ \$ \$ \$	\$ — \$ — (In thousands) \$ - \$ — \$ 210,000 159,967 117,806 120,350	2021         2020         2019           \$         (In thousands)         \$           \$         -         \$         210,000         \$           159,967         117,806         120,350         \$	2021         2020         2019         2018           (In thousands)         \$ 210,000         \$ 123,125           159,967         117,806         120,350         122,955	2021         2020         2019         2018           (In thousands)         \$ 210,000         \$ 123,125         \$ 159,967         \$ 117,806         120,350         122,955         \$ 122,955

Significant contractual obligations as of December 31, 2021 were as follows, including the future periods in which payments are expected:

	 2022	2023 2024		2025		2026	Thereafter	Total			
						(In thousands	)				
Operating lease obligations	\$ 135,125	\$	133,389	\$ 132,409	\$	132,304	\$	132,199	\$ 1,173,645	\$	1,839,071
Long-term debt obligations	3,759		3,818	3,950		4,086		4,227	140,127		159,967
Interest payments on long-term debt	 4,883		4,754	4,623		4,487		4,346	 62,734		85,827
Total	\$ 143,767	\$	141,961	\$ 140,982	\$	140,877	\$	140,772	\$ 1,376,506	\$	2,084,865

Not included in the table above are our actuarially determined self-insured general and professional malpractice liability, workers' compensation and medical (including prescription drugs) and dental healthcare obligations, which are broken out between current and long-term liabilities in our financial statements included in this Annual Report on Form 10-K.

#### Credit Facility with a Lending Consortium Arranged by Truist

We maintain the Credit Facility with a lending consortium arranged by Truist, which includes a revolving line of credit of up to \$350.0 million in aggregate principal amount. The maturity date of the Credit Facility is October 1, 2024. The interest rates applicable to loans under the Credit Facility are, at the Company's option, equal to either a base rate plus a margin ranging from 0.50% to 1.50% per annum or LIBOR plus a margin range from 1.50% to 2.50% per annum, based on the Consolidated Total Net Debt to Consolidated EBITDA ratio (as defined in the agreement). In addition, we pay a commitment fee on the unused portion of the commitments that ranges from 0.25% to 0.45% per annum, depending on the Consolidated Total Net Debt to Consolidated EBITDA ratio.

As of December 31, 2021, we had approximately \$6.7 million on the Credit Facility of borrowing capacity pledged as collateral to secure outstanding letters of credit, which is a reduction of \$0.9 million from 2020.

Subsequent to December 31, 2021, we amended our Credit Facility to include Standard Bearer REIT as a co-borrower. All existing terms and conditions remained the same. As of December 31, 2021, and February 4, 2022, there was no outstanding debt under the Credit Facility.

#### Mortgage Loans and Promissory Notes

During the year ended December 31, 2021, four of our subsidiaries entered into HUD mortgage loans in the aggregate amount of \$45.0 million. As a result, 23 of our subsidiaries have mortgage loans insured with HUD for an aggregate amount of \$156.6 million, as of December 31, 2021, which subjects these subsidiaries to HUD oversight and periodic inspections. The mortgage loans bear effective interest rates range of 3.1% to 4.2%, including fixed interest rates range of 2.4% to 3.3% per annum. Amounts borrowed under the mortgage loans may be prepaid, subject to prepayment fees of the principal balance on the date of prepayment. For the majority of the loans, the prepayment fee is 10% during the first three years and is reduced by 3% in the fourth year of the loan, and reduced by 1% per year for years five through ten of the loan. There is no prepayment penalty after year ten. The term of the mortgage loans are 25 to 35 years.

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In addition to the HUD mortgage loans above, we have two promissory notes. The notes bear fixed interest rates of 5.0% and 5.3% per annum and the term of the notes are ten months and 12 years, respectively. The 12-year note, which was used for an acquisition, is secured by the real property comprising the facility and the rent, issues and profits thereof, as well as all personal property used in the operation of the facility.

#### Operating Leases

During the fiscal year of 2021, 176 of our facilities are under long-term lease arrangements, of which 94 of the operations are under nine triple-net Master Leases and one stand-alone lease with CareTrust REIT, Inc. (CareTrust). The Master Leases consist of multiple leases, each with its own pool of properties, that have varying maturities and diversity in property geography. Under each master lease, our individual subsidiaries that operate those properties are the tenants and CareTrust's individual subsidiaries that own the properties subject to the Master Leases are the landlords. The rent structure under the Master Leases includes a fixed component, subject to annual escalation equal to the lesser of the percentage change in the Consumer Price Index (but not less than zero) or 2.5%. At our option, we can extend the Master Leases for two or three five-year renewal terms beyond the initial term, on the same terms and conditions. If we elect to renew the term of a Master Lease, the renewal will be effective as to all, but not less than all, of the leased property then subject to the Master Lease. Additionally, four of the 95 facilities leased from CareTrust include an option to purchase that we can exercise starting on December 1, 2024. In the second quarter of 2021, the Company added four operations and extended the term for one of the Master Leases for an additional 15 years. In the third quarter of 2021, we also added two operations and extended the term for one of the Master Leases for an additional 17 years. As a result, the total lease liabilities and right-of-use assets increased by \$54.7 million and \$63.4 million, respectively, to reflect the new lease obligations.

We also lease certain affiliated facilities and our administrative offices under non-cancelable operating leases, most of which have initial lease terms ranging from five to 20 years and is subject to annual escalation equal to the percentage change in the Consumer Price Index with a stated cap percentage. In addition, we lease certain of our equipment under non-cancelable operating leases with initial terms ranging from three to five years. Most of these leases contain renewal options, certain of which involve rent increases.

Forty-three of our affiliated facilities, excluding the facilities that are operated under the Master Leases from CareTrust, are operated under eight separate master lease arrangements. Under these master leases, a breach at a single facility could subject one or more of the other affiliated facilities covered by the same master lease to the same default risk. Failure to comply with Medicare and Medicaid provider requirements is a default under several of our leases, master lease agreements and debt financing instruments. In addition, other potential defaults related to an individual facility may cause a default of an entire master lease portfolio and could trigger cross-default provisions in our outstanding debt arrangements and other leases. With an indivisible lease, it is difficult to restructure the composition of the portfolio or economic terms of the lease without the consent of the landlord.

#### U.S. Department of Justice Civil Investigative Demand

On May 31, 2018, we received a Civil Investigative Demand (CID) from the U.S. Department of Justice stating that it is investigating to determine whether we have violated the False Claims Act and/or the Anti-Kickback Statute with respect to the relationships between certain of our skilled nursing facilities and persons who served as medical directors, advisory board participants or other referral sources. The CID covered the period from October 3, 2013 through 2018, and was limited in scope to ten of our Southern California skilled nursing facilities. In October 2018, the Department of Justice made an additional request for information covering the period of January 1, 2011 through 2018, relating to the same topic. As a general matter, our operating entities maintain policies and procedures to promote compliance with the False Claims Act, the Anti-Kickback Statute, and other applicable regulatory requirements. We have fully cooperated with the U.S. Department of Justice and promptly responded to its requests for information; in April 2020, we were advised that the U.S. Department of Justice declined to intervene in any subsequent action based on or related to the subject matter of this investigation.

#### Inflation

We have historically derived a substantial portion of our revenue from the Medicare program. We also derive revenue from state Medicaid and similar reimbursement programs. Payments under these programs generally provide for reimbursement levels that are adjusted for inflation annually based upon the state's fiscal year for the Medicaid programs and in each October for the Medicare program. These adjustments may not continue in the future, and even if received, such adjustments may not reflect the actual increase in our costs for providing healthcare services.

Labor and supply expenses make up a substantial portion of our cost of services. Those expenses can be subject to increase in periods of rising inflation and when labor shortages occur in the marketplace. To date, we have generally been able

to implement cost control measures or obtain increases in reimbursement sufficient to offset increases in these expenses. There can be no assurance that we will be able to anticipate fully or otherwise respond to any future inflationary pressures

#### Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk. We are exposed to risks associated with market changes in interest rates through our borrowing arrangements and investments. In particular, our Credit Facility exposes us to variability in interest payments due to changes in LIBOR interest rates. We manage our exposure to this market risk by monitoring available financing alternatives. Our mortgages and promissory notes require principal and interest payments through maturity pursuant to amortization schedules.

Our mortgages generally contain provisions that allow us to make repayments earlier than the stated maturity date. In some cases, we are not allowed to make early repayment prior to a cutoff date. Where prepayment is permitted, we are generally allowed to make prepayments only at a premium which is often designed to preserve a stated yield to the note holder. These prepayment rights may afford us opportunities to mitigate the risk of refinancing our debts at maturity at higher rates by refinancing prior to maturity.

As of December 31, 2021, there was no outstanding debt under our Credit Facility. We have outstanding indebtedness under mortgage loans insured with HUD and two promissory notes to third parties of \$160.0 million all of which are at fixed interest rates.

Our cash and cash equivalents as of December 31, 2021 consisted of bank term deposits, money market funds and U.S. Treasury bill related investments. In addition, as of December 31, 2021, we held debt security investments of approximately \$50.3 million which were split between AA, A, and BBB rated securities. We believe our debt security investments that were in an unrealized loss position as of December 31, 2021 were not other-than-temporarily impaired, nor has any event occurred subsequent to that date that would indicate any other-than-temporary impairment. Our market risk exposure is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. Due to the low risk profile of our investment portfolio, an immediate 10.0% change in interest rates would not have a material effect on the fair market value of our portfolio. Accordingly, we would not expect our operating results or cash flows to be affected to any significant degree by the effect of a sudden change in market interest rates on our securities portfolio.

The above only incorporates those exposures that exist as of December 31, 2021 and does not consider those exposures or positions which could arise after that date. If we diversify our investment portfolio into securities and other investment alternatives, we may face increased risk and exposures as a result of interest risk and the securities markets in general.

LIBOR Phase Out — LIBOR is expected to be phased out. Currently, our borrowings under our Credit Facility provide us flexibility to choose floating rates, one of which is based on LIBOR. We currently expect that the determination of interest under our credit agreement would be revised as provided under the agreement or amended as necessary to provide for an interest rate that will attempt to approximate the existing interest rate as calculated in accordance with LIBOR for similar types of loans.

The market transition from LIBOR to an alternative reference rate is expected to be complicated, including the development of term rates and credit adjustments to accommodate differences between LIBOR and the alternatives. During the transition period, LIBOR may exhibit increased volatility or become less representative. It is expected that U.S.-dollar LIBOR will be replaced with the Secured Overnight Financing Rate (SOFR) or the Bloomberg Short-Term Bank Yield Index (BSBY). The use of an alternative reference rate such as SOFR or BSBY (and the transition to that rate) will likely create uncertainty in our interest rate associated with our variable interest debt. Due to these uncertainties, we cannot be sure that our determination of interest under our agreement would materially approximate the current calculation in accordance with LIBOR.

#### Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

# THE ENSIGN GROUP, INC. INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULE

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#### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of The Ensign Group, Inc. San Juan Capistrano, California

#### **Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of The Ensign Group, Inc. and subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 9, 2022, expressed an unqualified opinion on the Company's internal control over financial reporting.

#### **Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

#### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### Self-Insurance Liabilities (General and Professional Liability Claims) - Refer to Notes 2 and 18 to the financial statements

Critical Audit Matter Description

The Company's self-insurance liabilities for general and professional liability claims totaled \$69.7 million at December 31, 2021. The Company develops information about the size of the ultimate claims based on historical experience, current industry information, and actuarial analysis.

The determination of case reserves for known general and professional liability claims, which is used in developing the actuarial estimated liability, is highly subjective. Given the significant judgments in estimating the case reserves for known claims, we have determined the reserve for general and professional liabilities to be a critical audit matter. This required a high degree of auditor judgment and an increased extent of effort when performing audit procedures to evaluate the reasonableness of management estimates of case reserves for known claims.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures relating to management's judgment regarding the estimation of the reserve for general and professional liability claims included the following, among others:

- · We tested the effectiveness of controls over the reserve for general and professional liabilities, including those over the determination of the case reserves for known claims.
- We obtained an understanding of the factors considered and assumptions made by management and the actuaries in developing the estimate of the general and professional liability reserves,
  the sources of data relevant to these factors and assumptions and the procedures used to obtain the data, and the methods used to calculate the estimate.
- We performed a retrospective review in which we compared the current portion of the total liability at the end of the prior year with what was actually paid in the current year in order to assess the ability of the Company to forecast the timing of reserve payouts.
- We tested known case reserves by making selections and obtaining the associated notice of claim and settlement support (if applicable), as well as inquiring with the Company as to the nature of each case reserve selection and the judgment rationale for the established reserve amount. Additionally, we selected external legal counsel and inquired about open cases handled by each legal firm and evaluated whether the information received from external legal counsel supported the known case reserves.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California February 9, 2022

We have served as the Company's auditor since 1999

### THE ENSIGN GROUP, INC. CONSOLIDATED BALANCE SHEETS

	 Decen	iber 31,	
	2021		2020
	(In thousands, e	xcept par values)	
Assets			
Current assets:			
Cash and cash equivalents	\$ 262,201	\$	236,562
Accounts receivable—less allowance for doubtful accounts of \$11,213 and \$8,718 at December 31, 2021 and 2020, respectively	328,731		305,062
Investments—current	13,763		13,449
Prepaid income taxes	5,452		1,224

Prepaid expenses and other current assets	29,562		26,659
Total current assets	639,709		582,956
Property and equipment, net	888,434		778,244
Right-of-use assets	1,138,872		1,025,510
Insurance subsidiary deposits and investments	36,567		32,105
Escrow deposits	_		100
Deferred tax assets	33,147		32,424
Restricted and other assets	47,046		33,155
Intangible assets, net	2,652		2,899
Goodwill	60,469		54,469
Other indefinite-lived intangibles	3,727		3,716
Total assets	\$ 2,850,623	\$	2,545,578
Liabilities and equity			,
Current liabilities:			
Accounts payable	\$ 58,116	\$	50,901
Accrued wages and related liabilities (Note 3)	278,770		236,614
Lease liabilities—current	52,181		48,187
Accrued self-insurance liabilities—current	40,831		34,396
Advance payment liabilities (Note 3)	_		102,023
Other accrued liabilities	89,410		87,318
Current maturities of long-term debt	3,760		2,960
Total current liabilities	523,068		562,399
Long-term debt—less current maturities	152,883		112,544
Long-term lease liabilities—less current portion	1,056,515		950,320
Accrued self-insurance liabilities—less current portion	69,308		62,402
Other long-term liabilities	27,135		39,686
Total liabilities	\$ 1,828,909	\$	1,727,351
Commitments and contingencies (Notes 15, 17 and 20)			
Equity			
Ensign Group, Inc. stockholders' equity:			
Common stock: \$0.001 par value; 100,000 shares authorized; 58,134 and 55,190 shares issued and outstanding at December 31, 2021, respectively, and 57,417 and 54,626 shares issued and outstanding at December 31, 2020, respectively	58		58
Additional paid-in capital	369,760		338,177
Retained earnings	733,992		551,055
Common stock in treasury, at cost, 2,944 and 2,791 shares at December 31, 2021 and 2020, respectively (Note 21)	(83,042)		(71,213)
Total Ensign Group, Inc. stockholders' equity	1,020,768		818,077
Non-controlling interest	946		150
Total equity	1,021,714		818,227
Total liabilities and equity	\$ 2,850,623	\$	2,545,578
Town morning and equity	 ,,	<u> </u>	7 7

See accompanying notes to consolidated financial statements.

# THE ENSIGN GROUP, INC. CONSOLIDATED STATEMENTS OF INCOME

		Year Ended December 31,					
		2021		2020		2019	
		(In t	housands,	except per share da	ta)		
Revenue:							
Service revenue	\$	2,611,476	\$	2,387,439	\$	2,031,266	
Rental revenue		15,985		15,157		5,258	
Total revenue	\$	2,627,461	\$	2,402,596	\$	2,036,524	
Expense:							
Cost of services		2,019,879		1,865,201		1,620,628	
Rent—cost of services		139,371		129,926		124,789	
General and administrative expense		151,761		129,743		110,873	
Depreciation and amortization		55,985		54,571		51,054	
Total expenses		2,366,996		2,179,441		1,907,344	
Income from operations		260,465		223,155		129,180	
Other income (expense):							
Interest expense		(6,849)		(9,362)		(15,662)	
Other income	-	4,388		3,813		2,649	
Other expense, net		(2,461)		(5,549)		(13,013)	
Income before provision for income taxes		258,004		217,606		116,167	
Provision for income taxes		60,279		46,242		23,954	
Net income from continuing operations		197,725		171,364		92,213	
Net income from discontinued operations, net of tax (Note 22)	<u> </u>	_				19,473	
Net income		197,725		171,364		111,686	
Less:							
Net income attributable to noncontrolling interests in continuing operations		3,073		886		523	
Net income attributable to noncontrolling interests in discontinued operations (Note 22)						629	
Net income attributable to noncontrolling interests		3,073		886		1,152	
Net income attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	110,534	
Amounts attributable to The Ensign Group, Inc.:							
Income from continuing operations attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	91,690	
Income from discontinued operations, net of income tax (Note 22)		_		_		18,844	
Net income attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	110,534	
Net income per share attributable to The Ensign Group, Inc.:	<del></del>						
Basic:							
Continuing operations	\$	3.57	\$	3.19	\$	1.72	
Discontinued operations		_		_		0.35	
Basic	\$	3.57	\$	3.19	\$	2.07	
Diluted:	<del></del>		_		_		
Continuing operations	S	3.42	\$	3.06	\$	1.64	
Discontinued operations	~	_	*	_	*	0.33	
Diluted	\$	3.42	\$	3.06	S	1.97	
Weighted average common shares outstanding:	<u>-</u>	3.42	<u> </u>	3.00		1.71	
Basic		54,486		53,434		53,452	
	·						
Diluted		56,925		55,787		55,981	

See accompanying notes to consolidated financial statements.

# THE ENSIGN GROUP, INC. CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Comn	non Stock		4.4	lditional Paid-In	Retained	Treasury Stock		Non-Controlling		
(In thousands)	Shares	Amou	ınt	Au	Capital	Earnings	Shares		Amount	Interest	Total
Balance - January 1, 2019	52,584	\$	55	\$	284,384	\$ 344,901	1,932	\$	(38,405)	\$ 11,405	\$ 602,340
Issuance of common stock to employees and directors resulting from the exercise of stock options and grant of stock awards	1,050		1		11,784	_	_		_	_	11,785
Repurchase of common stock (Note 21)	(138)		_		_	_	138		(6,406)	_	(6,406)
Shares of common stock used to satisfy tax withholding obligations	(9)		_		_	_	9		(485)	_	(485)
Dividends declared (0.1925 per share)	_		_		_	(10,370)	_		_	_	(10,370)
Employee stock award compensation	_		_		11,746	_	_		_	_	11,746
Distribution of net assets to Pennant (Note 22)	_		_		_	(71,181)	_		_	(13,252)	(84,433)
Dividends received from Pennant (Note 22)	_		_		_	11,600	_		_	_	11,600
Repurchase of common stock attributable to subsidiary equity plan	_		_		_	_	_		_	(394)	(394)
Noncontrolling interest attributable to subsidiary equity plan	_		_		_	(2,991)	_		_	3,585	594
Cumulative effect of accounting change, net of tax (Note 17)	_		_		_	9,030	_		_	_	9,030
Distribution to noncontrolling interest holder	_		_		_	_	_		_	(549)	(549)
Net income attributable to noncontrolling interest	_		_		_	_	_		_	1,152	1,152
Net income attributable to the Ensign Group, Inc.	_		_		_	110,534	_		_	_	110,534
Balance - December 31, 2019	53,487	\$	56	\$	307,914	\$ 391,523	2,079	\$	(45,296)	\$ 1,947	\$ 656,144
Issuance of common stock to employees and directors resulting from the exercise of stock options	979		1		12,654	_	_		_	_	12,655
Issuance of restricted stock, net of forfeitures	872		1		3,085	_	_		_	_	3,086
Shares of common stock used to satisfy tax withholding obligations	(20)		_			_	20		(917)	_	(917)
Dividends declared (\$0.2025 per share)			_		_	(10,946)	_			_	(10,946)
Employee stock award compensation	_		_		14,524	`	_		_	_	14,524
Repurchase of common stock (Note 21)	(692)		_			_	692		(25,000)	_	(25,000)
Net income attributable to noncontrolling interest	`		_		_	_	_		`	886	886
Distribution to noncontrolling interest holder	_		_		_	_	_		_	(2,683)	(2,683)
Net income attributable to the Ensign Group, Inc.	_		_		_	170,478	_		_	` _	170,478
Balance - December 31, 2020	54,626	\$	58	\$	338,177	\$ 551,055	2,791	\$	(71,213)	\$ 150	\$ 818,227
Issuance of common stock to employees and directors resulting from the	,,,,,				,	,,,,,	, , ,		( , , -,		
exercise of stock options	516		_		9,180	_	_		_	_	9,180
Issuance of restricted stock, net of forfeitures	201		_		3,725	_	_		_	_	3,725
Shares of common stock used to satisfy tax withholding obligations	(21)		_		_	_	21		(1,711)	_	(1,711)
Dividends declared (\$0.2125 per share)	_		_		_	(11,715)	_		_	_	(11,715)
Employee stock award compensation	_		_		18,678	_	_		_	_	18,678
Repurchase of common stock (Note 21)	(132)		_		_	_	132		(10,118)	_	(10,118)
Deconsolidation of an ancillary business	_		_		_	_	_		_	(1,369)	(1,369)
Capital contribution from noncontrolling interest holder	_		_		_	_	_		_	2,000	2,000
Net income attributable to noncontrolling interest	_		_		_	_	_		_	3,073	3,073
Distribution to noncontrolling interest holder	_		_		_	_	_		_	(2,908)	(2,908)
Net income attributable to the Ensign Group, Inc.	_		_		_	194,652	_		_	_	194,652
Balance - December 31, 2021	55,190	\$	58	\$	369,760	\$ 733,992	2,944	\$	(83,042)	\$ 946	\$ 1,021,714

See accompanying notes to consolidated financial statements.

# THE ENSIGN GROUP, INC. CONSOLIDATED STATEMENTS OF CASH FLOWS

CONSOLIDATED STATEMENTS OF CASH FLO	OWS		
	2021	Year Ended December 31	
(In thousands) Cash flows from operating activities:	2021	2020	2019
Net income	\$ 197,725	\$ 171,364	\$ 111,686
Net income from discontinued operations, net of tax	_		(19,473)
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	55,985	54,571	51,054
Impairment of long-lived assets	— 859	2,681 840	4,144
Amortization of deferred financing fees  Non-cash leasing arrangement	485	451	1,090 318
Write-off of deferred financing fees	-		329
Deferred income taxes	(724)	(27,809)	3,490
Provision for doubtful accounts	2,609	7,058	2,444
Stock-based compensation	18,678	14,524	11,322
Cash received from insurance proceeds (Gain)/loss on insurance claims and disposal of assets	2,382 (2,348)	625	1,599 (3,026)
Change in operating assets and liabilities	(2,346)	023	(3,020)
Accounts receivable	(30,771)	2,171	(60,424)
Prepaid income taxes	(4,228)	(485)	5,600
Prepaid expenses and other assets	(4,898)	(2,897)	(7,247)
Deferred employer portion of social security taxes	(24,154)	48,309	_
Cash surrender value of life insurance policy premiums  Operating lease obligations	(10,953) (5,814)	(6,577) (724)	(7,763)
Deferred compensation liability	11,078	6,615	(7,703)
Accounts payable	7,117	6,627	4,457
Accrued wages and related liabilities	47,701	68,365	47,386
Other accrued liabilities	1,297	17,536	11,353
Accrued self-insurance liabilities	13,724	10,293	6,286
Other long-term liabilities	(66)	(187)	4,302
Net cash provided by operating activities  Net cash provided by discontinued operating activities (Note 22)	275,684	373,351	168,927 23,296
Net cash provided by operating activities (Note 22)	275,684	373,351	192,223
Cash flows from investing activities:	273,004	373,331	172,223
Purchase of property and equipment	(69,550)	(50,326)	(71,541)
Cash payments for business acquisitions (Note 8)	(6,000)	· · ·	(6,455)
Cash payments for asset acquisitions (Note 8)	(98,224)	(24,997)	(141,595)
Escrow deposits	100	(100)	(14,050)
Escrow deposits used to fund acquisitions	6,899	14,050 800	7,271 644
Cash from insurance proceeds Cash proceeds from the sale of assets and ancillary business	1,854	412	7,407
Deconsolidation of an ancillary business	(1,984)	-	-,107
Cash payments for Medicare and Medicaid licenses	(106)	_	
Purchases of investments	(32,257)	(21,708)	(12,332)
Maturities of investments	27,481	24,479	8,857
Other restricted assets	(2,120)	(1,276)	(2,236)
Net cash used in investing activities  Net cash used in discontinued investing activities (Note 22)	(173,907)	(58,666)	(224,030) (22,985)
Net cash used in investing activities (Note 22)	(173,907)	(58,666)	(247,015)
iver easil used in investing activities	(173,707)	(50,000)	(247,013)
Cash flows from financing activities:			
Proceeds from debt (Note 15)	45,218	417,200	1,380,000
Payments on debt (Note 15)	(3,056)	(629,745)	(1,296,654)
Issuance of common stock upon exercise of options	9,180	12,654	8,503
Repurchase of shares of common stock to satisfy tax withholding obligations Repurchase of shares of common stock (Note 21)	(1,711) (10,118)	(917) (25,000)	(485) (6,406)
Dividends paid	(11,548)	(10,830)	(10,190)
Dividends received from Pennant	(11,540)	(10,050)	11,600
Cash retained by Pennant at spin-off	_	_	(47)
Non-controlling interest distribution	(2,908)	(2,683)	(549)
Contribution from noncontrolling interest	2,000	_	_
Payments of deferred financing costs	(1,172)	246.055	(2,494)
Proceeds from CARES Act Provider Relief Fund and Medicare Advance Payment Program (Note 3)  Repayments of CARES Act Provider Relief Fund and Medicare Advance Payment Program (Note 3)	11,637 (113,660)	246,955 (144,932)	
Net cash (used in)/provided by financing activities	(76,138)	(137,298)	83,278
Net cash used in discontinued financing activities	_	_	(394)
Net cash (used in)/provided by financing activities	(76,138)	(137,298)	82,884
Net increase in cash and cash equivalents	25,639	177,387	28,092
Cash and cash equivalents beginning of period	236,562	59,175	31,083
Cash and cash equivalents end of period	\$ 262,201	\$ 236,562	\$ 59,175
Supplemental disclosures of cash flow information:		_	
Cash paid during the period for:			
Interest	\$ 5,690	\$ 9,920	\$ 14,275
Income taxes	\$ 65,547	\$ 74,365	5 \$ 20,158
Lease liabilities	\$ 138,795	\$ 129,569	9 \$ 141,541
Non-cash financing and investing activity:		- ·	= =====================================
Accrued capital expenditures	\$ 3,700	\$ 3,400	\$ 4,100
Accrued dividends declared	\$ 3,035	\$ 2,868	3 \$ 2,705
Note receivable from insurance settlement	<u> </u>	\$ 5,500	\$ -
Right-of-use assets obtained in exchange for new and modified operating lease obligations	\$ 198,593		
C Spring Comment		= =====	

Distribution of net assets to Pennant S — \$

See accompanying notes to consolidated financial statements.

84,433

# THE ENSIGN GROUP, INC. NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Dollars, shares and options in thousands, except per share data)

#### 1. DESCRIPTION OF BUSINESS

The Company — The Ensign Group, Inc. (collectively, Ensign or the Company), is a holding company with no direct operating assets, employees or revenue. The Company, through its operating subsidiaries, is a provider of health care services across the post-acute care continuum, engaged in the ownership, acquisition, development and leasing of skilled nursing, senior living and other healthcare-related properties and other ancillary businesses. As of December 31, 2021, the Company operated 245 facilities and other ancillary operations located in Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Nevada, South Carolina, Texas, Utah, Washington and Wisconsin. The Company's operating subsidiaries, each of which strives to be the operation of choice in the community it serves, provide a broad spectrum of skilled nursing, senior living and other ancillary services. The Company's operating subsidiaries have a collective capacity of approximately 25,000 operational skilled nursing beds and 2,200 senior living units. As of December 31, 2021, the Company operated 176 facilities under long-term lease arrangements, and had options to purchase 11 of those 176 facilities. The Company's real estate portfolio includes 100 owned real estate properties, which included 69 facilities operated and managed by the Company, 32 senior living operations leased to and operated by The Pennant Group, Inc., or Pennant, as part of the spin-off transaction that occurred in October 2019, and the Service Center location. Of those 32 senior living operations, two are located on the same real estate properties as skilled nursing facilities that the Company owns and operates.

Certain of the Company's wholly-owned independent subsidiaries, collectively referred to as the Service Center, provide specific accounting, payroll, human resources, information technology, legal, risk management and other centralized services to the other operating subsidiaries through contractual relationships with such subsidiaries. The Company also has a wholly-owned captive insurance subsidiary (the Captive Insurance) that provides some claims-made coverage to the Company's operating subsidiaries for general and professional liabilities, as well as coverage for certain workers' compensation insurance liabilities.

On January 1, 2022, the Company completed its plan to form a captive real estate investment trust, which owns and manages its real estate business, called Standard Bearer Healthcare REIT, Inc. (Standard Bearer REIT). Standard Bearer REIT intends to qualify and elect to be taxed as a REIT, for U.S. federal income tax purposes, commencing with its taxable year ending December 31, 2022.

Each of the Company's affiliated operations are operated by separate, wholly-owned, independent subsidiaries that have their own management, employees and assets. References herein to the consolidated "Company" and "its" assets and activities in this Annual Report is not meant to imply, nor should it be construed as meaning that The Ensign Group, Inc. has direct operating assets, employees or revenue, or that any of the subsidiaries, are operated by The Ensign Group, Inc.

#### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation — The accompanying consolidated financial statements (the Financial Statements) have been prepared in accordance with accounting principles generally accepted in the United States (GAAP). The Company is the sole member or stockholder of various consolidated limited liability companies and corporations established to operate various acquired skilled nursing operations, senior living operations and related ancillary services. All intercompany transactions and balances have been eliminated in consolidation. The Company presents noncontrolling interests within the equity section of its consolidated balance sheets and the amount of consolidated net income that is attributable to The Ensign Group, Inc. and the noncontrolling interest in its consolidated statements of income.

The consolidated financial statements include the accounts of all entities controlled by the Company through its ownership of a majority voting interest. Additionally, the accounts of any variable interest entities (VIEs) where the Company is subject to a majority of the risk of loss from the VIE's activities are entitled to receive a majority of the entity's residual returns, or both. The Company assessess the requirements related to the consolidation of VIEs, including a qualitative assessment of power and economics that considers which entity has the power to direct the activities that "most significantly impacts" the VIE's economic performance and has the obligation to absorb losses of, or the right to receive benefits that could be potentially significant to, the VIE. On October 1, 2021, the Company deconsolidated its VIE as this entity no longer met the requirements for consolidation. As of December 31, 2021, the Company has no VIEs. The Company's relationship with the VIE prior to deconsolidation was not material during the years ended December 31, 2021, 2020, and 2019.

During the first quarter of 2019, the Company completed the sale of one of its senior living operations for a sale price of \$1,838. Both the deconsolidation of the VIE and the sale transaction did not meet the criteria of discontinued operations as it did not represent a strategic shift that had, or will have, a major effect on the Company's operations and financial results.

Estimates and Assumptions — The preparation of the Financial Statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the Financial Statements and the reported amounts of revenue and expenses during the reporting periods. The most significant estimates in the Company's Financial Statements relate to revenue, acquired property and equipment, intangible assets and goodwill, right-of-use assets, impairment of long-lived assets, lease liabilities, general and professional liabilities, workers' compensation and healthcare claims included in accrued self-insurance liabilities, and income taxes. Actual results could differ from those estimates.

Fair Value of Financial Instruments —The Company's financial instruments consist principally of cash and cash equivalents, debt security investments, accounts receivable, insurance subsidiary deposits, accounts payable and borrowings. The Company believes all of the financial instruments' recorded values approximate fair values because of their nature or respective short durations. Contracts insuring the lives of certain employees who are eligible to participate in non-qualified deferred compensation plans are held in a rabbi trust. Cash surrender value of the contracts is based on performance measurement funds that shadow the deferral investment allocations made by participants in the deferred compensation plan. The fair value of the pooled investment funds is derived using Level 2 inputs.

Service Revenue Recognition — The Company recognizes revenue in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 606, Revenue from Contracts with Customers (ASC 606). See Note 4, Revenue and Accounts Receivable.

**Rental Revenue Recognition** — The Company recognizes rental revenue for operating leases on a straight-line basis over the lease term when collectability of all minimum lease payments is probable in accordance with FASB ASC Topic 842, Leases (ASC 842). See Note 4, Revenue and Accounts Receivable.

Accounts Receivable and Allowance for Doubtful Accounts — Accounts receivable consist primarily of amounts due from Medicare and Medicaid programs, other government programs, managed care health plans and private payor sources, net of estimates for variable consideration. The allowance for doubtful accounts reflects the Company's best estimate of probable losses inherent in the accounts receivable balance. The Company determines the allowance based on known troubled accounts and other currently available evidence.

Cash and Cash Equivalents — Cash and cash equivalents consist of bank term deposits, money market funds and treasury bill related investments with original maturities of three months or less at time of purchase and therefore approximate fair value. The fair values of money market funds and treasury bills are determined based on "Level 1" inputs, which consist of unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets. The Company places its cash and short-term investments with high credit quality financial institutions.

Insurance Subsidiary Deposits and Investments — The Company's captive insurance subsidiary cash and cash equivalents, deposits and investments are designated to support long-term insurance subsidiary liabilities and have been classified as short-term and long-term assets based on the timing of expected future payments of the Company's captive insurance liabilities. The majority of these deposits and investments are currently held in AA, A and BBB rated debt security investments and the remainder is held in a bank account with a high credit quality financial institution.

The Company evaluates securities for other-than-temporary impairment (OTTI) on at least a quarterly basis, and more frequently when economic or market conditions warrant such an evaluation. If securities are in an unrealized loss position, the Company considers the extent and duration of the unrealized loss, and the financial condition and near-term prospects of the issuer. The Company also assesses whether it intends to sell, or it is more likely than not that it will be required to sell, a security in an unrealized loss position before recovery of its amortized cost basis. If either of the criteria regarding intent or requirement to sell is met, the entire difference between amortized cost and fair value is recognized as impairment through earnings. For the years ended December 31, 2021, 2020, and 2019, the Company did not recognize any OTTI for its investments.

**Property and Equipment** — Property and equipment are initially recorded at their historical cost. Repairs and maintenance are expensed as incurred. Depreciation is computed using the straight-line method over the estimated useful lives of the depreciable assets (ranging from three to 59 years). Leasehold improvements are amortized on a straight-line basis over the shorter of their estimated useful lives or the remaining lease term.

Leases and Leasehold Improvements — The Company leases skilled nursing facilities, senior living facilities and commercial office space. The Company determines if an arrangement is a lease at the inception of each lease. Leases commencing prior to the ASC 842 adoption date were classified as operating lease under historical guidance. As the Company has elected the package of practical expedients allowing it to not reassess lease classification, these leases are classified as operating leases under ASC 842 as well. For leases commencing subsequent to the ASC 842 adoption date, the Company performs an evaluation to determine whether the lease should be classified as an operating or finance lease at the inception of the lease. As of December 31, 2021, the Company does not have any leases that are classified as finance leases. Rights and obligations of operating leases are included as right-of-use assets, current lease liabilities and long-term lease liabilities on the Company's consolidated balance sheet. As the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at lease commencement date in determining the present value of future lease payments. The Company utilized a third-party valuation specialist to assist in estimating the incremental borrowing rate.

The Company records rent expense for operating leases on a straight-line basis over the term of the lease. The lease term used for straight-line rent expense is calculated from the date the Company is given control of the lease term unless through the end of the lease term. Renewals are not assumed in the determination of the lease term unless they are deemed to be reasonably assured at the inception of the lease. The lease term used for this evaluation also provides the basis for establishing depreciable lives for buildings subject to lease and leasehold improvements.

The Company's real estate leases generally have initial lease terms of ten years or more and typically include one or more options to renew, with renewal terms that generally extend the lease term for an additional ten to 15 years. Exercise of the renewal options is generally subject to the satisfaction of certain conditions which vary by contract and generally follow payment terms that are consistent with those in place during the initial term. The Company reassesses the renewal option using a "reasonably certain" threshold, which is understood to be a high threshold. For leases where the Company is reasonably certain to exercise its renewal option, the option periods are included within the lease term and, therefore, the measurement of the right-of-use asset and lease liability. The Company's leases generally contain annual escalation clauses that are either fixed or variable in nature, some of which are dependent upon published indices. The Company recognizes lease expense for leases with an initial term of 12 months or less on a straight-line basis over the lease term. These leases are not recorded on the consolidated balance sheet. Certain of the Company's lease agreements include rental payments that are adjusted periodically for inflation. The lease agreements do not contain any material residual value guarantees or material restrictive covenants. The Company does not have material subleases.

Impairment of Long-Lived Assets — The Company reviews the carrying value of long-lived assets that are held and used in the Company's operating subsidiaries for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of these assets is determined based upon expected undiscounted future net cash flows from the operating subsidiaries to which the assets relate, utilizing management's best estimate, appropriate assumptions, and projections at the time. If the carrying value is determined to be unrecoverable from future operating cash flows, the asset is deemed impaired and an impairment loss would be recognized to the extent the carrying value exceeded the estimated fair value of the asset. The Company estimates the fair value of assets based on the estimated future discounted cash flows of the asset. Management has evaluated its long-lived assets and determined there was no impairment during the year ended December 31, 2021. The Company recorded an impairment charge of \$2,681 and \$3,203 during the years ended December 31, 2021 and 2020, respectively. The Company also recorded an impairment charge of \$443 to right-of-use assets during the year ended December 31, 2019.

Intangible Assets and Goodwill — Definite-lived intangible assets consist primarily of patient base, facility trade names and customer relationships. Patient base is amortized over a period of four to eight months, depending on the classification of the patients and the level of occupancy in a new acquisition on the acquisition date. Trade names at affiliated facilities are amortized over 30 years and customer relationships are amortized over a period of up to 20 years.

The Company's indefinite-lived intangible assets consist of trade names, and Medicare and Medicaid licenses. The Company tests indefinite-lived intangible assets for impairment on an annual basis or more frequently if events or changes in circumstances indicate that the carrying amount of the intangible asset may not be recoverable.

Goodwill represents the excess of the purchase price over the fair value of identifiable net assets acquired in business combinations. Goodwill is subject to annual testing for impairment. In addition, goodwill is tested for impairment if events occur or circumstances indicate that its carrying value may not be recoverable. The Company performs its annual test for impairment during the fourth quarter of each year. The Company did not identify any goodwill or intangible asset impairment during the years ended December 31, 2021 and 2020. During the year ended December 31, 2019, the Company recorded an impairment charge of \$498, to goodwill and intangible assets.

Self-Insurance — The Company is partially self-insured for general and professional liability claims up to a base amount per claim (the self-insured retention) with an aggregate, one-time deductible above this limit. Losses beyond these amounts are insured through third-party policies with coverage limits per claim, per location and on an aggregate basis for the Company. The combined self-insured retention is \$500 per claim, subject to an additional one-time deductible of \$750 for California affiliated operations and a separate, one-time, deductible of \$1,000 for non-California operations. For all affiliated operations, except those located in Colorado, the third-party coverage above these limits is \$1,000 per claim, \$3,000 per operation, with a \$5,000 blanket aggregate limit and an additional state-specific aggregate where required by state law. In Colorado, the third-party coverage above these limits is \$1,000 per claim and \$3,000 per operation, which is independent of the aforementioned blanket aggregate limits that apply outside of Colorado.

The majority of the self-insured retention and deductible limits for general and professional liabilities and workers' compensation liabilities are self-insured through the Captive Insurance, the related assets and liabilities of which are included in the accompanying consolidated balance sheets. The Captive Insurance is subject to certain statutory requirements as an insurance provider.

The Company's policy is to accrue amounts equal to the actuarial estimated costs to settle open claims of insureds, as well as an estimate of the cost of insured claims that have been incurred but not reported. The Company develops information about the size of the ultimate claims based on historical experience, current industry information and actuarial analysis, and evaluates the estimates for claim loss exposure on a quarterly basis. The Company uses actuarial valuations to estimate the liability based on historical experience and industry information.

The Company's operating subsidiaries are self-insured for workers' compensation liabilities in California. To protect itself against loss exposure in California with this policy, the Company has purchased individual specific excess insurance coverage that insures individual claims that exceed \$625 per occurrence. In Texas, the operating subsidiaries have elected non-subscriber status for workers' compensation claims and the Company has purchased individual stop-loss coverage that insures individual claims that exceed \$750 per occurrence. The Company's operating subsidiaries in all other states, with the exception of Washington, are under a loss sensitive plan that insures individual claims that exceed \$350 per occurrence. In the state of Washington, the Company is self insured and has purchased individual specific excess insurance coverage that insures individual claims that exceed \$500 per occurrence. For all of the self insured plans and retention, the Company accrues amounts equal to the estimated costs to settle open claims, as well as an estimate of the cost of claims that have been incurred but not reported. The Company uses actuarial valuations to estimate the liability based on historical experience and industry information.

In addition, the Company has recorded an asset and equal liability of \$6,755 and \$7,138 as of December 31, 2021 and 2020, respectively, in order to present the ultimate costs of malpractice and workers' compensation claims and the anticipated insurance recoveries on a gross basis. See Note 12, Restricted and Other Assets.

The Company self-funds medical (including prescription drugs) and dental healthcare benefits to the majority of its employees. The Company is fully liable for all financial and legal aspects of these benefit plans. To protect itself against loss exposure with this policy, the Company has purchased individual stop-loss insurance coverage that insures individual claims that exceed \$500 for each covered person for fiscal year 2021.

The Company believes that adequate provision has been made in the Financial Statements for liabilities that may arise out of patient care, workers' compensation, healthcare benefits and related services provided to date. The amount of the Company's reserves was determined based on an estimation process that uses information obtained from both company-specific and industry data. This estimation process requires the Company to continuously monitor and evaluate the life cycle of the claims. Using data obtained from this monitoring and the Company's assumptions about emerging trends, the Company, with the assistance of an independent actuary, develops information about the size of ultimate claims based on the Company's historical experience and other available industry information. The most significant assumptions used in the estimation process include determining the trend in costs, the expected cost of claims incurred but not reported and the expected costs to settle or pay damage awards with respect to unpaid claims. The self-insured liabilities are based upon estimates, and while management believes that the estimates of loss are reasonable, the ultimate liability may be in excess of or less than the recorded amounts. Due to the inherent volatility of actuarially determined loss estimates, it is reasonably possible that the Company could experience changes in estimated losses that could be material to net income. If the Company's actual liabilities exceed its estimates of losses, its future earnings, cash flows and financial condition would be adversely affected.

Income Taxes — Deferred tax assets and liabilities are established for temporary differences between the financial reporting basis and the tax basis of the Company's assets and liabilities at tax rates in effect when such temporary differences are expected to reverse. The Company generally expects to fully utilize its deferred tax assets; however, when necessary, the

Company records a valuation allowance to reduce its net deferred tax assets to the amount that is more likely than not to be realized.

In determining the need for a valuation allowance or the need for and magnitude of liabilities for uncertain tax positions, the Company makes certain estimates and assumptions. These estimates and assumptions are based on, among other things, knowledge of operations, markets, historical trends and likely future changes and, when appropriate, the opinions of advisors with knowledge and expertise in certain fields. Due to certain risks associated with the Company's estimates and assumptions, actual results could differ.

Noncontrolling Interest — The noncontrolling interest in a subsidiary is initially recognized at estimated fair value on the acquisition date and is presented within total equity in the Company's consolidated balance sheets. The Company presents the noncontrolling interest and the amount of consolidated net income attributable to The Ensign Group, Inc. in its consolidated statements of income. Net income per share is calculated based on net income attributable to The Ensign Group, Inc.'s stockholders. The carrying amount of the noncontrolling interest is adjusted based on an allocation of subsidiary earnings based on ownership interest.

**Stock-Based Compensation** — The Company measures and recognizes compensation expense for all stock-based payment awards made to employees and directors including employee stock options based on estimated fair values, ratably over the requisite service period of the award. Net income has been reduced as a result of the recognition of the fair value of all stock options and restricted stock awards issued, the amount of which is contingent upon the number of future grants and other variables.

Recent Accounting Pronouncements — Except for rules and interpretive releases of the Securities and Exchange Commission (SEC) under authority of federal securities laws and a limited number of grandfathered standards, the FASB ASC is the sole source of authoritative GAAP literature recognized by the FASB and applicable to the Company. For any new pronouncements announced, the Company considers whether the new pronouncements could alter previous generally accepted accounting principles and determines whether any new or modified principles will have a material impact on the Company's reported financial position or operations in the near term. The applicability of any standard is subject to the formal review of the Company's financial management and certain standards are under consideration.

#### Recent Accounting Standards Adopted by the Company

In December 2019, the FASB issued Accounting Standards Update (ASU) 2019-12 "Simplifying the Accounting for Income Taxes (Topic 740)" as part of its simplification initiative to reduce the cost and complexity in accounting for income taxes. ASU 2019-12 removes certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. ASU 2019-12 also amends other aspects of the guidance to help simplify and promote consistent application of GAAP. The Company adopted this standard on January 1, 2021 and determined there was no material impact on the Company's financial position, results of operations and liquidity.

In May 2020, the SEC issued Final Rule Release No. 33-10786 "Amendments to Financial Disclosures about Acquired and Disposed Businesses" ("SEC Rule 33-10786"), which amends the disclosure requirements applicable to acquisitions and dispositions of businesses. Amendments within SEC Rule 33-10786 primarily impact (1) the tests and thresholds used to determine the significance of acquisitions and dispositions; (2) the form and content of pro forma information required to be disclosed in connection with significant acquisitions and dispositions; (3) acquiree financial statement requirements; and (4) thresholds used to determine the significance of acquisitions and dispositions of real estate operations, and related financial statement requirements, among others. The Company adopted this standard on January 1, 2021 and determined there was no material impact on the Company's consolidated financial statements.

In November 2020, the SEC issued final rules 33-10890 and 34-90459 "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information," which modernizes and simplifies certain disclosure requirements of Regulation S-K. Certain key rule amendments eliminate the requirement to disclose Selected Financial Data; Selected Quarterly Financial Data, with certain exceptions; the impact of inflation and changing prices, provided the impact is not material; off-balance sheet arrangements in tabular form; and the aggregate amount of contractual obligations in tabular form. The final rules also amended various aspects of Item 303, "Management's Discussion and Analysis of Financial Condition and Results of Operations," among others. The Company adopted the final rules as part of this Annual Report on Form 10-K.

In July 2021, the FASB issued ASU 2021-05 "Lessors—Certain Leases with Variable Lease Payments (Topic 842)," which amends the lessor classification guidance to introduce additional criteria when classifying leases with variable lease payments that do not depend on a reference index or a rate. The Company early adopted this standard on October 1, 2021 and determined there was no material impact on the Company's consolidated financial statements.

#### Accounting Standards Recently Issued but Not Yet Adopted by the Company

In February 2020, the FASB issued ASU 2020-04 "Reference Rate Reform (Topic 848)," which provides temporary, optional practical expedients and exceptions to enable a smoother transition to reference rates which are expected to replace LIBOR reference rates. Adoption of the provisions of ASU 2020-04 is optional. The amendments are effective for all entities from the beginning of the interim period that includes the issuance date of the ASU. An entity may elect to apply the amendments prospectively through December 31, 2022. The Company is currently evaluating the impact of ASU 2020-04 on its financial position, results of operations and liquidity.

#### 3. COVID-19 UPDATE

The Company's affiliated operations continued to be impacted by the worldwide outbreak of the 2019 coronavirus disease (COVID-19). The Company received cash distributions of relief fund payments (Provider Relief Funds) from the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act) and funds authorized by U.S. Department of Health and Human Services (HHS) to be used to protect residents of nursing homes and long-term care facilities from the impact of COVID-19 throughout 2020 and 2021. During the years ended December 31, 2021 and 2020, the Company received and returned \$11,637 and \$141,700, respectively, in Provider Relief Funds. The Company may continue to receive additional funding in future periods.

In fiscal year 2020, the Company applied for and received \$105,255 through the Medicare Accelerated and Advance Payment Program under the CARES Act. The purpose of the program is to assist in providing needed liquidity to care delivery providers. The Company repaid \$3,232 of the funds in 2020. In March 2021, the Company repaid the remaining funds of \$102,023.

The Family First Coronavirus Response Act was signed into law in 2020 to provide a temporary 6.2% increase to the Federal Medical Assistance Percentage (FMAP) effective January 1, 2020. The law permits states to retroactively change their state's Medicaid program rates effective as of January 1, 2020. The law provides discretion to each state and specifies the funds are to be used to reimburse the recipient for healthcare related expenses that are attributable to COVID-19 and associated with providing patient care. In addition, increases in Medicaid rates can come from other areas of the state's budget outside of FMAP funding. Revenues from these additional payments are recognized in accordance with ASC 606, subject to variable consideration constraints. In certain operations where the Company received additional payments that exceeded expenses incurred related to COVID-19, the Company characterized such payments as variable revenue that required additional consideration and accordingly, the amount of state relief revenue recognized is limited to the actual COVID-19 related expenses incurred. As of December 31, 2021 and 2020, the Company had \$1,781 and \$6,520 in unapplied state relief funds, respectively. During the year ended December 31, 2021 and 2020, the Company received an additional \$70,484 and \$51,927 in state relief funding and recognized \$75,231 and \$45,407, respectively, as revenue.

The CARES Act also provides for deferred payment of the employer portion of social security taxes through the end of 2020, with 50% of the deferred amount due by December 31, 2021 and the remaining 50% due by December 31, 2022. The Company recorded \$48,309 of deferred payments of social security taxes as a liability during 2020. The Company paid \$24,154 during the year ended December 31, 2021 and the remaining short-term balance of \$24,155 is included in accrued wages and related liabilities within the consolidated balance sheets as of December 31, 2021.

#### 4. REVENUE AND ACCOUNTS RECEIVABLE

#### Service Revenue

The Company's service revenue is derived primarily from providing healthcare services to its patients. Revenue is recognized when services are provided to the patients at the amount that reflects the consideration to which the Company expects to be entitled from patients and third-party payors, including Medicaid, Medicare and insurers (private and Medicare replacement plans), in exchange for providing patient care. The healthcare services in skilled patient contracts include routine services in exchange for a contractual agreed-upon amount or rate. Routine services are treated as a single performance obligation satisfied over time as services are rendered. As such, patient care services represent a bundle of services that are not

capable of being distinct. Additionally, there may be ancillary services which are not included in the daily rates for routine services, but instead are treated as separate performance obligations satisfied at a point in time, if and when those services are rendered.

Revenue recognized from healthcare services are adjusted for estimates of variable consideration to arrive at the transaction price. The Company determines the transaction price based on contractually agreed-upon amounts or rate on a per day basis, adjusted for estimates of variable consideration. The Company uses the expected value method in determining the variable component that should be used to arrive at the transaction price, using contractual agreements and historical reimbursement experience within each payor type. The amount of variable consideration which is included in the transaction price may be constrained, and is included in net revenue only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. If actual amounts of consideration ultimately received differ from the Company's estimates, the Company adjusts these estimates, which would affect net revenue in the period such variances become known.

Revenue from the Medicare and Medicaid programs accounted for 73.6%, 74.5% and 70.6% for the years ended December 31, 2021, 2020, and 2019, respectively. Settlements with Medicare and Medicaid payors for retroactive adjustments due to audits and reviews are considered variable consideration and are included in the determination of the estimated transaction price. These settlements are estimated based on the terms of the payment agreement with the payor, correspondence from the payor and the Company's historical settlement activity. Consistent with healthcare industry practices, any changes to these revenue estimates are recorded in the period the change or adjustment becomes known based on the final settlement. The Company recorded adjustments to revenue which were not material to the Company's consolidated revenue for the years ended December 31, 2021, 2020, and 2019.

#### Rental Revenue

The Company's rental revenues are primarily generated by leasing healthcare-related properties through triple-net lease arrangements, under which the tenant is solely responsible for the costs related to the property. Revenue is recognized on a straight-line basis over the lease term if it has been deemed probable of collection. The Company has elected the single component practical expedient, which allows a lessor, by class of underlying asset, not to allocate the total consideration to the lease and non-lease components based on their relative stand-alone selling prices where certain criteria are met. This single component practical expedient requires the Company to account for the lease component and non-lease component(s) associated with that lease as a single component if (1) the timing and pattern of transfer of the lease component and the non-lease component(s) associated with it are the same and (2) the lease component would be classified as an operating lease if it were accounted for separately. If the Company determines that the lease component is the predominant component, it accounts for the single component as an operating lease in accordance with the new lease standards. Conversely, the Company is required to account for the combined component under the revenue recognition standard if it determines that the non-lease component is the predominant component. As a result of this assessment, rental revenues from the lease of real estate assets that qualify for this expedient are accounted for as a single component under the new lease standards. The components of the Company's operating leases qualify for the single component presentation.

Tenant reimbursements related to property taxes and insurance are neither considered lease nor non-lease components under the new lease standards. Lessee payments for taxes and insurance paid directly to a third party, on behalf of the Company, are excluded from variable lease payments and rental revenue in the Company's consolidated statements of income. Otherwise, tenant reimbursements for taxes and insurance that are paid by the Company directly to a third party are classified as additional rental revenue and expense and recognized by the Company on a gross basis.

#### Disaggregation of Revenue

The Company disaggregates revenue from contracts with its patients by payors. The Company determines that disaggregating revenue into these categories achieves the disclosure objectives to depict how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

#### Revenue by Payor

The Company's revenue is derived primarily from providing healthcare services to patients and is recognized on the date services are provided at amounts billable to individual patients, adjusted for estimates for variable consideration. For patients under reimbursement arrangements with third-party payors, including Medicaid, Medicare and private insurers, revenue is recorded based on contractually agreed-upon amounts or rate, adjusted for estimates for variable consideration, on a per patient, daily basis or as services are performed.

31, 2021, 2020, 2019 December summarized following tables: Service revenue for the ended the vears and in

Year Ended	December	31.
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	20	21	20	20	2019			
	Revenue	% of Revenue	Revenue	% of Revenue	Revenue	% of Revenue		
Medicaid <sup>(1)</sup>	\$ 1,022,460	39.2 %	\$ 900,249	37.7 % \$	802,952	39.5 %		
Medicare	727,103	27.8	727,374	30.5	499,353	24.6		
Medicaid — skilled	172,770	6.6	149,846	6.3	132,889	6.5		
Total Medicaid and Medicare	1,922,333	73.6	1,777,469	74.5	1,435,194	70.6		
Managed care	456,728	17.5	367,095	15.4	351,054	17.3		
Private and other <sup>(2)</sup>	232,415	8.9	242,875	10.1	245,018	12.1		
Service revenue	\$ 2,611,476	100.0 %	\$ 2,387,439	100.0 %	2,031,266	100.0 %		

- (1) Medicaid payor includes revenue for senior living operations and revenue related to FMAP.
- (2) Private and other payors also includes revenue from all payors generated in other ancillary services.

In addition to the service revenue above, the Company's rental revenue derived from triple-net lease arrangements with third parties is \$15,985, \$15,157 and \$5,258 for the years ended December 31, 2021, 2020, and 2019.

#### **Balance Sheet Impact**

Included in the Company's consolidated balance sheets are contract balances, comprised of billed accounts receivable and unbilled receivables, which are the result of the timing of revenue recognition, billings and cash collections, as well as, contract liabilities, which primarily represent payments the Company receives in advance of services provided. The Company had no material contract liabilities and contract assets as of December 31, 2021 and 2020, or activity during the years ended December 31, 2021, 2020, and 2019.

Accounts receivable as of December 31, 2021 and 2020, is summarized in the following table:

		December 31, 2021	December 31, 2020		
Medicaid	\$	123,647	\$ 102,077		
Managed care		79,722	61,743		
Medicare		59,797	80,904		
Private and other payors		76,778	69,056		
	·	339,944	 313,780		
Less: allowance for doubtful accounts		(11,213)	(8,718)		
Accounts receivable, net	\$	328,731	\$ 305,062		

#### **Practical Expedients and Exemptions**

As the Company's contracts with its patients have an original duration of one year or less, the Company uses the practical expedient applicable to its contracts and does not consider the time value of money. Further, because of the short duration of these contracts, the Company has not disclosed the transaction price for the remaining performance obligations as of the end of each reporting period or when the Company expects to recognize this revenue. In addition, the Company has applied the practical expedient provided by ASC 340, Other Assets and Deferred Costs, and all incremental customer contract acquisition costs are expensed as they are incurred because the amortization period would have been one year or less.

#### 5. COMPUTATION OF NET INCOME PER COMMON SHARE

Basic net income per share is computed by dividing income from operations attributable to stockholders of The Ensign Group, Inc. by the weighted average number of outstanding common shares for the period. The computation of diluted net income per share is similar to the computation of basic net income per share, except that the denominator is increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares had been issued.

A reconciliation of the numerator and denominator used in the calculation of basic net income per common share follows:

·	Year Ended December 31,							
		2021		2020		2019		
Numerator:								
Net income	\$	197,725	\$	171,364	\$	92,213		
Less: net income attributable to noncontrolling interests		3,073		886		523		
Net income attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	91,690		
Net income from discontinued operations, net of tax		_		_		19,473		
Less: net income attributable to noncontrolling interests in discontinued operations		_		_		629		
Net income from discontinued operations, net of tax						18,844		
Net income attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	110,534		
Denominator:								
Weighted average shares outstanding for basic net income per share		54,486		53,434		53,452		
Basic net income per common share:	\$	3.57	\$	3.19	\$	1.72		
Income from discontinued operations		_		_		0.35		
Net income attributable to The Ensign Group, Inc.	\$	3.57	\$	3.19	\$	2.07		

A reconciliation of the numerator and denominator used in the calculation of diluted net income per common share follows:

			Year End	ded December 31	,	
		2021		2020		2019
Numerator:						<u> </u>
Net income	\$	197,725	\$	171,364	\$	92,213
Less: net income attributable to noncontrolling interests		3,073		886		523
Net income attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	91,690
Net income from discontinued operations, net of tax		_		_		19,473
Less: net income attributable to noncontrolling interests in discontinued operations		_		_		629
Net income from discontinued operations, net of tax						18,844
Net income attributable to The Ensign Group, Inc.	\$	194,652	\$	170,478	\$	110,534
Denominator:						
Weighted average common shares outstanding		54,486		53,434		53,452
Plus: incremental shares from assumed conversion (1)		2,439		2,353		2,529
Adjusted weighted average common shares outstanding		56,925		55,787		55,981
Diluted net income per common share:	\$	3.42	\$	3.06	\$	1.64
Income from discontinued operations		_		_		0.33
Net income attributable to The Ensign Group, Inc.	\$	3.42	\$	3.06	\$	1.97
	<del></del>	· · · · · · · · · · · · · · · · · · ·			_	

<sup>(1)</sup> Options outstanding which are anti-dilutive and therefore not factored into the weighted average common shares amount above were 198, 956 and 250 for the years ended December 31, 2021, 2020 and 2019, respectively.

#### 6. FAIR VALUE MEASUREMENTS

Fair value measurements are based on a three-tier hierarchy that prioritizes the inputs used to measure fair value. These tiers include: Level 1, defined as observable inputs such as quoted market prices in active markets; Level 2, defined as inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly; and Level 3, defined as unobservable inputs for which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The fair value of cash and cash equivalents of \$262,201 and \$236,562 as of December 31, 2021 and 2020, respectively, is derived using Level 1 inputs. The Company's other financial assets include contracts insuring the lives of certain employees who are eligible to participate in non-qualified deferred compensation plans which are held in a rabbi trust. The cash surrender

value of these contracts is based on performance measurement funds that shadow the deferral investment allocations made by participants in the deferred compensation plan. As of December 31, 2021, and 2020, the fair value of the pooled investment funds of \$17,530 and \$6,577, respectively, is derived using Level 2 inputs. The pooled investment funds are included in restricted and other assets in the consolidated balance sheets. See Note 12, Restricted and Other Assets.

The Company's non-financial assets, which includes goodwill, intangible assets, property and equipment and right-of-use assets, are not required to be measured at fair value on a recurring basis. However, on a periodic basis, or whenever events or changes in circumstances indicate that their carrying value may not be recoverable, the Company assesses its long-lived assets for impairment. When impairment has occurred, such long-lived assets are written down to fair value.

#### Debt Security Investments - Held to Maturity

As of December 31, 2021 and 2020, the Company had approximately \$50,330 and \$45,554, respectively, in debt security investments which were classified as held to maturity and carried at amortized cost. The carrying value of the debt securities approximates fair value based on Level 1 inputs. The Company has the intent and ability to hold these debt securities to maturity. Further, as of December 31, 2021, the debt security investments were held in AA, A and BBB rated debt securities. The Company believes its debt security investments that were in an unrealized loss position as of December 31, 2021 were not other-than-temporarily impaired, nor has any event occurred subsequent to that date that would indicate any other-than-temporary impairment.

#### 7. BUSINESS SEGMENTS

The Company has two reportable segments: (1) skilled services, which includes the operation of skilled nursing facilities and rehabilitation therapy services and (2) real estate, which is comprised of properties owned by the Company and leased to skilled nursing and assisted living operations where the properties are subject to triple-net long-term leases, including operations that are owned and operated by the Company.

As of December 31, 2021, the skilled services segment includes 214 skilled nursing operations and 22 campus operations that provide both skilled nursing and rehabilitative care services and senior living services. The Company's real estate segment includes 100 owned real estate properties. These properties include 69 operations the Company operated and managed, real estate properties of 32 senior living operations that are leased to and operated by Pennant and the Service Center location, which continues to lease office space to various third parties. Of the 32 real estate operations leased to Pennant, two senior living operations are located on the same real estate properties as skilled nursing facilities that the Company owns and operates. The Company also reports an "All Other" category that includes results from its senior living operations, which includes nine stand-alone senior living operations and 22 campus operations that provide both skilled nursing and rehabilitative care services and senior living services, mobile diagnostics, medical transportation and other ancillary operations. Services included in the "All Other" category are insignificant individually, and therefore do not constitute a reportable segment.

The Company's reportable segments are significant operating segments that offer differentiated services. The Company's CODM reviews financial information for each operating segment to evaluate performance and allocate capital resources. This structure reflects its current operational and financial management and provides the best structure to maximize the quality of care and investment strategy provided, while maintaining financial discipline. The Company's CODM does not review assets by segment in his resource allocation and therefore assets by segment are not disclosed below.

With the exception of intercompany rental revenue, the accounting policies of the reportable segments are the same as those described in Note 2, Summary of Significant Accounting Policies. Rental revenue from Ensign-affiliated operations are based on mutually agreed-upon base rent that are subject to change from time to time. Intercompany revenue is eliminated in consolidation, along with corresponding intercompany rent expenses of the related healthcare facilities. Included in the real estate segment income is interest expense related to the borrowings to fund real estate acquisitions.

The following tables set forth financial information for the segments:

		Year Ended December 31, 2021												
		Skilled Services		Real Estate		All Other(1)		Intercompany Elimination(2)		Total				
Service revenue	\$	2,523,234	\$	_	\$	88,242	\$		\$	2,611,476				
Rental revenue		_		65,536		<u> </u>		(49,551)		15,985				
Total revenue	\$	2,523,234	\$	65,536	\$	88,242	\$	(49,551)	\$	2,627,461				
Segment income (loss)		373,603		35,986		(152,025)		_		257,564				
Gain on sale of real estate		_		_		_		_		440				
Income before provision for income taxes		_		_		_		_	\$	258,004				
Depreciation and amortization		30,681		19,726		5,578		_		55,985				
Other expense (income) net(3)	S	_	S	6.842	\$	(4.381)	\$	_	S	2.461				

<sup>(1)</sup> General and administrative expense are included in the "all other" category.

<sup>(3)</sup> Other expense (income), net includes interest expense, interest income and gain and loss on investments.

	Year Ended December 31, 2020									
	Skilled Services		Real Estate	All Other(1)			Intercompany Elimination(2)		Total	
Service revenue	\$ 2,288,182	\$	_	\$	99,257	\$		\$	2,387,439	
Rental revenue	 		61,275				(46,118)		15,157	
Total revenue	\$ 2,288,182	\$	61,275	\$	99,257	\$	(46,118)	\$	2,402,596	
Segment income (loss)	327,812		31,323		(138,776)		_		220,359	
Loss on sale of real estate and impairment charges	_		_		_		_		(2,753)	
Income before provision for income taxes	_		_		_		_	\$	217,606	
Depreciation and amortization	28,585		18,218		7,768		_		54,571	
Other expense (income), net <sup>(3)</sup>	\$ _	\$	9,350	\$	(3,801)	\$	_	\$	5,549	

<sup>(1)</sup> General and administrative expense is included in the "all other" category.

<sup>(3)</sup> Other expense (income), net includes interest expense and interest income.

	<u></u>	Year Ended December 31, 2019									
	Skilled Services			Real Estate	All Other(1)			Intercompany Elimination(2)		Total	
Service revenue	\$	1,934,243	\$	_	\$	97,023	\$	_	\$	2,031,266	
Rental revenue		<u> </u>		49,868				(44,610)		5,258	
Total revenue	\$	1,934,243	\$	49,868	\$	97,023	\$	(44,610)	\$	2,036,524	
Segment income (loss)		225,910		17,479		(125,797)		_		117,592	
Loss on sale of real estate and impairment charges										(1,425)	
Income before provision for income taxes		_		_		_		_	\$	116,167	
Depreciation and amortization		27,837		15,196		8,021		_		51,054	
Other expense (income), net <sup>(3)</sup>	\$	_	\$	15,612	\$	(2,599)	\$	_	\$	13,013	

<sup>(2)</sup> Intercompany elimination represents rental income at the real estate segment generated from triple-net lease arrangements with the Company's affiliated wholly-owned healthcare facilities. Intercompany rental revenue is eliminated in consolidation, along with corresponding intercompany rent expenses of related healthcare facilities.

<sup>(2)</sup> Intercompany elimination represents rental income at the real estate segment generated from triple-net lease arrangements with the Company's affiliated wholly-owned healthcare facilities. Intercompany rental revenue is eliminated in consolidation, along with corresponding intercompany rent expenses of related healthcare facilities.

<sup>(1)</sup> General and administrative expense is included in the "all other" category.
(2) Intercompany elimination represents rental income at the real estate segment generated from triple-net lease arrangements with the Company's affiliated wholly-owned healthcare facilities. Intercompany rental revenue is eliminated in consolidation, along with corresponding intercompany rent expenses of related healthcare facilities.

<sup>(3)</sup> Other expense (income), net includes interest expense and interest revenue.

Service revenue by major payor source were as follows:

Year Ended December 31, 2021

	SI	tilled Services	All Other	Tota	l Service Revenue	Revenue %
Medicaid <sup>(1)</sup>	\$	1,007,061	\$ 15,399	\$	1,022,460	39.2 %
Medicare		727,103	_		727,103	27.8
Medicaid-skilled		172,770	_		172,770	6.6
Subtotal		1,906,934	15,399		1,922,333	73.6
Managed care		456,728	_		456,728	17.5
Private and other <sup>(2)</sup>		159,572	72,843		232,415	8.9
Total service revenue	\$	2,523,234	\$ 88,242	\$	2,611,476	100.0 %

- (1) Medicaid payor includes revenue generated from senior living operations and revenue related to FMAP for the year ended December 31, 2021.
- (2) Private and other payors also includes revenue from senior living operations and all payors generated in other ancillary services for the year ended December 31, 2021.

Year Ended December 31, 2020

	Skilled Services	All Other			Total Service Revenue	Revenue %	
Medicaid <sup>(1)</sup>	\$	886,991	\$	13,258	\$	900,249	37.7 %
Medicare		727,374		_		727,374	30.5
Medicaid-skilled		149,846				149,846	6.3
Subtotal		1,764,211		13,258		1,777,469	74.5
Managed care		367,095		_		367,095	15.4
Private and other <sup>(2)</sup>		156,876		85,999		242,875	10.1
Total service revenue	\$	2,288,182	\$	99,257	\$	2,387,439	100.0 %

- (1) Medicaid payor includes revenue generated from senior living operations and revenue related to FMAP for the year ended December 31, 2020.
- (2) Private and other payors also includes revenue from senior living operations and all payors generated in other ancillary services for the year ended December 31, 2020.

Year Ended December 31, 2019

	Sk	Skilled Services			Total Service Revenue	Revenue %
Medicaid <sup>(1)</sup>	\$	789,873	\$	13,079	\$ 802,952	39.5 %
Medicare		499,353		_	499,353	24.6
Medicaid-skilled		132,889		_	132,889	6.5
Subtotal	·	1,422,115		13,079	1,435,194	70.6
Managed care		351,054		_	351,054	17.3
Private and other(2)		161,074		83,944	245,018	12.1
Total service revenue	\$	1,934,243	\$	97,023	\$ 2,031,266	100.0 %

- (1) Medicaid payor includes revenue generated from senior living operations for the year ended December 31, 2019.
- (2) Private and other payors also includes revenue from senior living operations and all payors generated in other ancillary services for the year ended December 31, 2019.

In addition to the service revenue above, the Company's rental revenue derived from triple-net lease arrangements with third parties is \$15,985, \$15,157 and \$5,258 for the years ended December 31, 2021, 2020, and 2019, respectively.

#### 8. OPERATION EXPANSIONS

The Company's subsidiaries expansion focus is to purchase or lease operations that are complementary to the current affiliated operations, accretive to the business, or otherwise advance the Company's strategy. The results of all operating subsidiaries are included in the Financial Statements subsequent to the date of acquisition. Acquisitions are accounted for using the acquisition method of accounting. The Company's affiliated operations also enter into long-term leases that may include options to purchase the facilities. As a result, from time to time, a real estate affiliated subsidiary will acquire the property of facilities that have previously been operated under third-party leases.

FASB ASC Topic 805, Clarifying the Definition of a Business (ASC 805) defined the definition of a business to assist entities with evaluating when a set of transferred assets and activities is deemed to be a business. Determining whether a transferred set constitutes a business is important because the accounting for a business combination differs from that of an asset acquisition. The definition of a business also affects the accounting for dispositions. When substantially all of the fair value of assets acquired is concentrated in a single asset, or a group of similar assets, the assets acquired would not represent a business and business combination accounting would not be required.

#### 2021 Expansions

During the year ended December 31, 2021, the Company expanded its operations and real estate portfolio through a combination of long-term leases and real estate purchases, with the addition of 17 stand-alone skilled nursing operations and five real estate purchases, four of which the Company previously operated and continues to operate. The remaining real estate purchase is operated by Pennant. These new operations added a total of 1,832 operational skilled nursing beds operated by the Company's affiliated operating subsidiaries. The aggregate purchase price for these acquisitions during the year ended December 31, 2021 was \$104,224.

In connection with the new operations made through long-term leases, the Company did not acquire any material assets or assume any liabilities other than the tenant's post-assumption rights and obligations under the long-term lease. The Company entered into a separate operations transfer agreement with the prior operator as part of each transaction.

The fair value of assets for 18 of the acquisitions was concentrated in property and equipment and as such, these transactions were classified as asset acquisitions. The aggregate purchase price for the asset acquisitions during the year ended December 31, 2021 was \$98,224. The fair value of assets for the remaining four additions was concentrated in goodwill of \$6,000 and as such, the transaction was classified as a business combination

Subsequent to December 31, 2021, the Company expanded its operations and real estate portfolio through a combination of two long-term leases and one real estate purchase, which added three stand-alone skilled nursing operations. These new operations added 379 operational skilled nursing beds to be operated by the Company's affiliated operating subsidiaries. The aggregate purchase price for these acquisitions was approximately \$27,400.

#### 2020 Expansions

During the year ended December 31, 2020, the Company expanded its operations through a combination of long-term leases and real estate purchases, with the addition of five stand-alone skilled nursing operations, one stand-alone senior living operation and one campus operation. Of these additions, four are related to purchases of owned properties, further expanding the Company's real estate portfolio. These new operations added a total of 507 operational skilled nursing beds and 298 operational senior living units to be operated by the Company's affiliated operating subsidiaries. The aggregate purchase price for these acquisitions during the year ended December 31, 2020 was \$24,997.

In connection with the new operations made through long-term leases, the Company did not acquire any material assets or assume any liabilities other than the tenant's post-assumption rights and obligations under the long-term lease. The Company entered into a separate operations transfer agreement with the prior operator as part of each transaction.

The fair value of assets for the purchases of these properties was concentrated in property and equipment and as such, these transactions were classified as asset acquisitions.

During the first quarter of 2020, the Company entered into a long-term lease agreement to transfer two senior living operations to Pennant. Ensign affiliates retained ownership of the real estate for these two senior living communities.

#### 2019 Expansions

During the year ended December 31, 2019, the Company expanded its operations and real estate portfolio through a combination of long-term leases and real estate purchases, with the addition of 22 stand-alone skilled nursing operations, one stand-alone senior living operations and four campus operations. Of these acquisitions, 15 relate to purchases of owned properties, further expanding our real estate portfolio. The addition of these operations added 3,142 operational skilled nursing beds and 407 senior living units to be operated by the Company's affiliated operating subsidiaries. The Company also invested in new ancillary services that are complementary to its existing businesses. In addition, the Company invested in real estate and Medicare and Medicare and Medicare string the year. The aggregate purchase price for these acquisitions during the year ended December 31, 2019 was \$148,974.

The Company did not acquire any material assets or assume any liabilities other than tenant's post-assumption rights and obligations under the long-term lease. The Company entered into a separate operations transfer agreement with the prior operator as part of each transaction.

The fair value of assets for 30 of the acquisitions was concentrated in property and equipment and as such, these transactions were classified as asset acquisitions. The purchase price for the asset acquisitions was \$141,595. The fair value of assets for the remaining one acquisition was concentrated in goodwill and as such, the transaction was classified as a business combination. The purchase price for the business combination was \$7,379. The Company also entered into a note payable with the seller of \$924, which was subsequently paid off in the second quarter of 2019 and was included as payments of debt in the consolidated statement of cash flows.

In connection with the Spin-Off, the Company transferred the assets of two stand-alone senior living operations, two home health agencies, five hospice agencies and two home care agencies that were purchased for an aggregate price of \$18,780. The Company retained the real estate for one stand-alone senior living operation.

The table below presents the allocation of the purchase price for the operations acquired during the years ended December 31, 2021, 2020, and 2019, excluding assets that were contributed to Pennant that occurred during the Spin-Off.

	•	nded December 3	r <b>31</b> ,		
	 2021		2020		2019
Land	\$ 19,928	\$	9,496	\$	34,377
Building and improvements	77,975		14,178		101,217
Equipment, furniture, and fixtures	217		568		6,024
Assembled occupancy	29		107		638
Definite-lived intangible assets	_		_		440
Goodwill	6,000		_		5,382
Favorable leases	_		_		294
Other indefinite-lived intangible assets	 75		648		602
Total acquisitions	\$ 104,224	\$	24,997	\$	148,974

The Company's acquisition strategy has been focused on identifying both opportunistic and strategic acquisitions within its target markets that offer strong opportunities for return. The operations added by the Company are frequently underperforming financially and can have regulatory and clinical challenges to overcome. Financial information, especially with underperforming operations, is often inadequate, inaccurate or unavailable. Consequently, the Company believes that prior operating results are not a meaningful representation of the Company's current operating results or indicative of the integration potential of its newly acquired operating subsidiaries. The assets added during the year ended December 31, 2021 were not material operations to the Company individually or in the aggregate. Accordingly, pro forma financial information is not presented. These additions have been included in the December 31, 2021 consolidated balance sheets of the Company, and the operating results have been included in the consolidated statements of operations of the Company since the date the Company gained effective control.

#### 9. PROPERTY AND EQUIPMENT - NET

Property and equipment, net consists of the following:

	Decem	ber 31,	
	 2021		2020
Land	\$ 121,164	\$	101,236
Buildings and improvements	646,221		555,416
Leasehold improvements	140,012		129,727
Equipment	262,246		233,453
Furniture and fixtures	4,305		4,409
Construction in progress	10,253		3,008
	 1,184,201		1,027,249
Less: accumulated depreciation	(295,767)		(249,005)
Property and equipment, net	\$ 888,434	\$	778,244

The Company completed the sale of real estate for \$7,138 during the year ended December 31, 2019, of which a gain of \$2,861 was recognized during the year ended December 31, 2019 related to the transaction. In addition, the Company evaluated its long-lived assets and did not record an impairment charge for the fiscal year ended 2021. The Company recorded impairment charges of \$2,681 and \$3,203 for the fiscal years ended 2020 and 2019, respectively.

See also Note 8, Operation Expansions for information on acquisitions during the years ended December 31, 2021 and 2020.

#### 10. INTANGIBLE ASSETS - NET

		December 31,																	
			2021		2020														
Intangible Assets	Weighted Average Life (Years)	6	Gross Carrying Amount		Gross Carrying Amount							Net		Gross Carrying Net Amount		Accumulated Amortization			Net
Assembled occupancy	0.4	\$	68	\$	(68)	\$	_	\$	39	\$	(26)	\$	13						
Facility trade name	30.0		733		(391)		342		733		(366)		367						
Customer relationships	18.4		4,582		(2,272)		2,310		4,640		(2,121)		2,519						
Total		\$	5,383	\$	(2,731)	\$	2,652	\$	5,412	\$	(2,513)	\$	2,899						

During the years ended December 31, 2021, 2020, and 2019, amortization expense was \$1,435, \$1,813 and \$3,660, respectively, of which \$1,158, \$1,223 and 1,981 was related to the amortization of right-of-use assets, respectively. In addition, the Company identified intangible assets which became fully amortized during the prior year and removed these fully amortized balances from the gross asset and accumulated amortization amounts. The Company did not record any impairment charge to intangible assets during the years ended December 31, 2021, 2020 and 2019.

Estimated amortization expense for each of the years ending December 31 is as follows:

Year	Amount
2022	234
2023	234
2024	234
2025	234
2026	234
Thereafter	1,482
	\$ 2,652

#### 11. GOODWILL AND OTHER INDEFINITE-LIVED INTANGIBLE ASSETS

The Company tests goodwill during the fourth quarter of each year or more often if events or circumstances indicate there may be impairment. The Company performs its analysis for each reporting unit that constitutes a business for which discrete financial information is produced and reviewed by operating segment management and provides services that are distinct from the other components of the operating segment, in accordance with the provisions of FASB ASC Topic 350, Intangibles—Goodwill and Other (ASC 350). This guidance provides the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If, based on a review of qualitative factors, it is more likely than not that the fair value of a reporting unit is less than its carrying value of each reporting unit to its respective fair value. The Company determines the estimated fair value of each reporting unit using a discounted cash flow analysis. The fair value of the reporting unit is the implied fair value of goodwill. In the event a reporting unit's carrying value exceeds its fair value, an impairment loss will be recognized. An impairment loss is measured by the difference between the carrying value of the reporting unit and its fair value.

The Company performs its goodwill impairment test annually and evaluates goodwill when events or changes in circumstances indicate that its carrying value may not be recoverable. The Company performs the annual impairment testing of goodwill using October 1 as the measurement date. The Company completed its goodwill impairment test as of October 1, 2021 and did not record any impairment charge to goodwill or other intangible assets for the fiscal year 2021 or 2020. For fiscal year 2019, management determined that the improvements in operations and related forecasted cash flows were slower than anticipated at the time of acquisition, resulting in the impairment to goodwill for the year ended December 31, 2019 for other ancillary services. Since 1999, the Company has recognized cumulative goodwill impairment losses of \$7,410.

The Company anticipates that the majority of total goodwill recognized will be fully deductible for tax purposes as of December 31, 2021.

All of the Company's acquisitions during the year ended December 31, 2020 were classified as asset acquisitions and accordingly, no goodwill was recognized for these acquisitions. There were no other activities in goodwill during the year ended December 31, 2020. Provided that goodwill corresponds to the acquisition of a business and not merely the acquisition of real estate property, the Company's real estate segment appropriately does not carry a goodwill balance. The following table represents the goodwill value by skilled service segment and "all other" category, which includes other ancillary services, as of and for the years ended December 31, 2021, 2020 and 2019:

- Courtin										
Skilled Services					Total					
\$	45,486	\$	4,099	\$	49,585					
	_		5,382		5,382					
	_		(498)		(498)					
\$	45,486	\$	8,983	\$	54,469					
\$	45,486	\$	8,983	\$	54,469					
	6,000				6,000					
\$	51,486	\$	8,983	\$	60,469					
	Skil   S   S   S   S   S   S   S   S   S	\$ 45,486 \$ 45,486 \$ 45,486 6,000	Skilled Services         A           \$         45,486         \$           \$         45,486         \$           \$         45,486         \$           \$         6,000         \$	Skilled Services         All Other           \$ 45,486         \$ 4,099           -         5,382           -         (498)           \$ 45,486         \$ 8,983           \$ 45,486         \$ 8,983           6,000         -	Skilled Services         All Other           \$ 45,486         \$ 4,099           -         5,382           -         (498)           \$ 45,486         \$ 8,983           \$ 45,486         \$ 8,983           \$ 8,983         \$ 8,983					

During the year ended December 31, 2021, the Company acquired \$181 in Medicare and Medicaid licenses compared to \$648 and \$602 in the fiscal years 2020 and 2019, respectively.

Other indefinite-lived intangible assets consist of the following:

	December 31,				
	2021 2020				
Trade name	\$	89	\$	889	
Medicare and Medicaid licenses	2,8	38		2,827	
	\$ 3,	27	\$	3,716	

#### 12. RESTRICTED AND OTHER ASSETS

Restricted and other assets consist of the following:

	December 31,				
	2021		2020		
Debt issuance costs, net	\$	1,953	\$	2,664	
Long-term insurance losses recoverable asset		6,755		7,138	
Deposits with landlords		13,705		12,400	
Capital improvement reserves with landlords and lenders		7,103		4,376	
Deferred compensation plan investments		17,530		6,577	
Restricted and other assets	\$	47,046	\$	33,155	

Included in restricted and other assets as of December 31, 2021 and 2020 are anticipated insurance recoveries related to the Company's workers' compensation liabilities and general and professional liability claims that are recorded on a gross rather than net basis in accordance with ASU issued by the FASB.

#### 13. OTHER ACCRUED LIABILITIES

Other accrued liabilities consists of the following:

	December 31,							
	2021		2020					
Quality assurance fee	\$	6,474	\$	6,631				
Refunds payable		34,814		36,323				
Resident advances		9,337		8,558				
Unapplied state relief funds		1,781		6,520				
Cash held in trust for patients		6,430		6,052				
Dividends payable		3,035		2,868				
Property taxes		9,124		9,222				
Other		18,415		11,144				
Other accrued liabilities	\$	89,410	\$	87,318				

Quality assurance fee represents the aggregate of amounts payable to Arizona, California, Colorado, Idaho, Iowa, Kansas, Nebraska, Nevada, Utah, Washington and Wisconsin as a result of a mandated fee based on patient days or licensed beds. Refunds payable includes payables related to overpayments, duplicate payments and credit balances from various payor sources. Resident advances occur when the Company receives payments in advance of services provided. Resident deposits include refundable deposits to patients. Cash held in trust for patients reflects monies received from or on behalf of patients. Maintaining a trust account for patients is a regulatory requirement and, while the trust assets offset the liabilities, the Company assumes a fiduciary responsibility for these funds. The cash balance related to this liability is included in other current assets in the consolidated balance sheets.

#### 14. INCOME TAXES

The provision for income taxes on continuing operations for the years ended December 31, 2021, 2020 and 2019 is summarized as follows:

		Y				
	2021		2020	2019		
Current:			•	·		
Federal	\$	49,105	\$ 60,591	\$ 14,363		
State		11,898	13,460	5,425		
		61,003	74,051	19,788		
Deferred:						
Federal		(716)	(23,054)	4,451		
State		(8)	(4,755)	(285)		
	_	(724)	(27,809)	4,166		
Total	<u>\$</u>	60,279	\$ 46,242	\$ 23,954		

A reconciliation of the federal statutory rate to the effective tax rate for income from continuing operations for the years ended December 31, 2021, 2020 and 2019, respectively, is comprised as follows:

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	December 31,					
	2021	2020	2019			
Income tax expense at statutory rate	21.0 %	21.0 %	21.0 %			
State income taxes - net of federal benefit	3.7	3.2	3.5			
Non-deductible expenses	2.4	1.8	3.1			
Equity compensation	(3.3)	(4.3)	(5.2)			
Other adjustments	(0.4)	(0.4)	(1.8)			
Total income tax provision	23.4 %	21.3 %	20.6 %			

The Company's effective tax rate was 23.4% for the year ended December 31, 2021, compared to 21.3% for the same period in 2020 and 20.6% in 2019. The higher effective tax rate is due to lower tax benefits from stock compensation, offset by higher tax expense from non-deductible expenses.

The	Company's	deferred	tax	assets	and	liabilities	as	of	December	31,	2021	and	2020	are su	mmariz	red below.
														Decer	1,	
														2021		2020
Deferred tax	assets (liabilities	s):														
Accrued e	expenses												\$	58,640	\$	54,700
Allowance	e for doubtful ac	counts												13,171		11,598
Tax credit	S													2,138		2,497
Insurance														8,712		7,686
Lease liab	oility													285,643		256,216
State taxes	S													(165)		223
														368,139		332,920
Valuation	allowance													(789)		(879)
Total d	leferred tax asset	ts												367,350		332,041
Depreciati	ion and amortiza	ition												(45,827)		(41,801)
Prepaid ex	xpenses													(4,265)		(3,137)
Right of u	ise asset													(284,111)		(254,679)
Total d	leferred tax liabi	lities												(334,203)		(299,617)
Net	deferred tax asse	ets											\$	33,147	\$	32,424

The Company had state credit carryforwards as of December 31, 2021 and 2020 of \$2,138 and \$2,497, respectively. These carryforwards almost entirely relate to state limitations on the application of Enterprise Zone employment-related tax credits. Unless the Company uses the Enterprise Zone credits beforehand, the carryforward will begin to expire in 2023. As of December 31, 2021 and 2020, the valuation allowance of \$789 and \$879, respectively, was primarily recorded against the Enterprise Zone credits as the Company believes it is more likely than not that some of the benefit of the credits will not be realized.

The Company's operating loss carry forwards for states were not material during the years ended December 31, 2021 and 2020.

As of December 31, 2021, 2020 and 2019, the Company did not have any unrecognized tax benefits, net of its state benefits that would affect the Company's effective tax rate. The Company classifies interest and/or penalties on income tax liabilities or refunds as additional income tax expense or income. Such amounts are not material.

The Federal statutes of limitations on the Company's 2017, 2016, and 2015 income tax years lapsed during the third quarter of 2021, 2020, and 2019, respectively. During the fourth quarter of each year, various state statutes of limitations also lapsed. The lapses for the years ended December 31, 2021 and 2020 had no impact on the Company's unrecognized tax benefits.

During the year ended December 31, 2021, the state of Wisconsin initiated and completed an examination of the Company's 2019, 2018, and 2017 state tax years with no adjustments. The Company is not under examination by any major income tax jurisdiction.

#### **15. DEBT**

Debt consists of the following:

Mortgage loans and promissory notes Less: current maturities Less: debt issuance costs, net Long-term debt less current maturities

December 31,					
	2021		2020		
\$	159,967	\$	117,806		
	(3,760)		(2,960)		
	(3,324)		(2,302)		
\$	152,883	\$	112,544		

#### Mortgage Loans and Promissory Notes

As of December 31, 2021, the Company's operating subsidiaries had \$159,967 outstanding under the mortgage loans and notes, of which \$3,760 is classified as short-term and the remaining \$156,207 is classified as long-term. The Company was in compliance with all loan covenants as of December 31, 2021.

During year ended December 31, 2021, four of the Company's subsidiaries entered into the Department of Housing and Urban Development (HUD) mortgage loans in the aggregate amount of \$44,990. As a result, 23 of the Company's subsidiaries have mortgage loans insured with HUD in the aggregate amount of \$156,636, as of December 31, 2021, which subjects these subsidiaries to HUD oversight and periodic inspections. The mortgage loans bear effective interest rates in a range of 3.1% to 4.2%, including fixed interest rates in a range of 2.4% to 3.3% per annum. In addition to the interest rate, we incur other fees for HUD placement, including but not limited to addit fees. Amounts borrowed under the mortgage loans may be prepaid, subject to prepayment fees based on the principal balance on the date of prepayment. For the majority of the loans, during the first three years, the prepayment fee is 10.0% and is reduced by 3.0% in the fourth year of the loan, and reduced by 1.0% per year for years five through ten of the loan. There is no prepayment penalty after year ten. The terms for all the mortgage loans are 25 to 35 years.

In addition to the HUD mortgage loans above, the Company has two promissory notes. The notes bear fixed interest rates of 5.0% and 5.3% per annum and the term of the notes are ten months and 12 years, respectively. The 12 year note which was used for an acquisition is secured by the real property comprising the facility and the rent, issues and profits thereof, as well as all personal property used in the operation of the facility.

#### Credit Facility with a Lending Consortium Arranged by Truist

The Company maintains a revolving credit facility under the Third Amended and Restated Credit Agreements, dated as of October 1, 2019, between the Company and Truist Financial Corporation (Truist) (formerly known as SunTrust Bank, Inc.) (the Credit Facility). The Credit Facility includes a revolving line of credit of up to \$350,000 in aggregate principal amount. The maturity date of the Credit Facility is October 1, 2024. Borrowings are supported by a lending consortium arranged by Truist. The interest rates applicable to loans under the Credit Facility are, at the Company's option, equal to either a base rate plus a margin ranging from 0.50% to 1.50% per annum or LIBOR plus a margin range from 1.50% to 2.50% per annum, based on the Consolidated Total Net Debt to Consolidated EBITDA ratio (as defined in the agreement). In addition, the Company pays a commitment fee on the unused portion of the commitments that ranges from 0.25% to 0.45% per annum, depending on the Consolidated Total Net Debt to Consolidated EBITDA ratio.

The Credit Facility is guaranteed, jointly and severally, by certain of the Company's wholly owned subsidiaries, and is secured by a pledge of stock of the Company's material operating subsidiaries as well as a first lien on substantially all of its personal property. The Credit Facility contains customary covenants that, among other things, restrict, subject to certain exceptions, the ability of the Company and its operating subsidiaries to grant liens on their assets, incur indebtedness, sell assets, make investments, engage in acquisitions, mergers or consolidations, amend certain material agreements and pay certain dividends and other restricted payments. Under the Credit Facility, the Company must comply with financial maintenance covenants to be tested quarterly, consisting of (i) a maximum consolidated total net debt to consolidated EBITDA ratio (which shall not be greater than 3.00:1.00; provided that if the aggregate consideration for approved acquisitions in a six month period is greater than \$50,000, then the ratio can be increased at the election of the Company with notice to the administrative agent to 3.50:1.00 for the first fiscal quarter and the immediately following three fiscal quarters), and (ii) a minimum interest/rent coverage ratio (which cannot be less than 1.50:1.00). Subsequent to December 31, 2021, we amended our Credit Facility to include Standard Bearer REIT as a co-borrower. All existing terms and conditions remained the same. As of December 31,

2021, and February 4, 2022, there was no outstanding debt under the Credit Facility. The Company was in compliance with all loan covenants as of December 31, 2021.

Future principal payments due under the long-term debt arrangements discussed above are as follows:

Years Ending December 31,	Amount
2022	\$ 3,759
2023	3,818
2024	3,950
2025	4,086
2026	4,227
Thereafter	140,127
	\$ 159,967

Based on Level 2, the carrying value of the Company's long-term debt is considered to approximate the fair value of such debt for all periods presented based upon the interest rates that the Company believes it can currently obtain for similar debt.

#### Off-Balance Sheet Arrangements

As of December 31, 2021, the Company had approximately \$6,710 on the Credit Facility of borrowing capacity pledged as collateral to secure outstanding letters of credit, which is a reduction of \$870 from 2020.

#### 16. OPTIONS AND AWARDS

Stock-based compensation expense consists of stock-based payment awards made to employees and directors, including employee stock options and restricted stock awards, based on estimated fair values. As stock-based compensation expense recognized in the Company's consolidated statements of income for the years ended December 31, 2021, 2020, and 2019 was based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. The Company estimates forfeitures at the time of grant and, if necessary, revises the estimate in subsequent periods if actual forfeitures differ

2017 Omnibus Incentive Plan - The Company has one active stock incentive plan, the 2017 Omnibus Incentive Plan (the 2017 Plan). The 2017 Plan provided for the issuance of 6,881 shares of common stock which are to be proportionally adjusted in the event of any Equity Restructuring. The number of shares available to be issued under the 2017 Plan were adjusted to 8,118 shares of common stock in order to reflect the proportional adjustments as part of the spin-off transaction that occurred in October 2019. The number of shares available to be issued under the 2017 Plan will be reduced by (i) one share for each share that relates to an option or stock appreciation right award and (ii) 2.5 shares for each share which relates to an award other than a stock option or stock appreciation right award (a full-value award). Granted non-employee director options vest and become exercisable in three equal annual installments, or the length of the term if less than three years, on the completion of each year of service measured from the grant date. All other options generally vest over five years at 20% per year on the anniversary of the grant date. Options expire ten years from the date of grant. As of December 31, 2021, there were approximately 2,114 unissued shares of common stock available for issuance under this plan.

The Company uses the Black-Scholes option-pricing model to recognize the value of stock-based compensation expense for stock option awards. Determining the appropriate fair-value model and calculating the fair value of stock option awards at the grant date requires judgment, including estimating stock price volatility, expected option life, and forfeiture rates. The fair-value of the restricted stock awards at the grant date is based on the market price on the grant date, adjusted for forfeiture rates. The Company develops estimates based on historical data and market information, which can change significantly over time. The Black-Scholes model required the Company to make several key judgments including:

- The expected option term is calculated by the average of the contractual term of the options and the weighted average vesting period for all options. The calculation of the expected option term is based on the Company's experience due to sufficient history.
- The Company utilizes its own experience to calculate estimated volatility for options granted.
- · The dividend yield is based on the Company's historical pattern of dividends as well as expected dividend patterns.
- The risk-free rate is based on the implied yield of U.S. Treasury notes as of the grant date with a remaining term approximately equal to the expected term.

Estimated forfeiture rate of approximately 7.79% per year is based on the Company's historical forfeiture activity of unvested stock options.

#### Modifications of Equity Awards

Effective at the time of the consummation of the Spin-Off, all holders of the Company's restricted stock awards on the date of record for the Spin-Off, received Pennant restricted stock awards consistent with the distribution ratio, with terms and conditions substantially similar to the terms and conditions applicable to the Company's restricted stock awards. For purposes of the vesting of these equity awards, continued employment or service with Ensign or with Pennant is treated as continued employment for purposes of both Ensign's and Pennant's equity awards and the vesting terms of each converted grant remained unchanged. Also, effective with the Spin-Off, the holders of the Company's stock options on the date of record received stock options consistent with a conversion ratio that was necessary to maintain the pre Spin-Off intrinsic value of the options. The stock options terms and conditions are based on the preexisting terms in the 2017 Plan, including nondiscretionary antidilution provisions. In order to preserve the aggregate intrinsic value of the Company's stock options held by such persons, the exercise prices of such awards were adjusted by using the proportion of the Pennant closing stock price to the total Company closing stock prices on the distribution date. All of these adjustments were designed to equalize the fair value of each award before and after Spin-Off. These adjustments were accounted for as modifications to the original awards. Due to the modification of the equity options as a result of the Spin-Off, the Company did not record any incremental compensation expense as a result of the modifications to the awards on the date of the Spin-Off.

#### Stock Option:

The Company granted 621 stock options during the year ended December 31, 2021. The Company used the following assumptions for stock options granted during the years ended December 31, 2021, 2020, and 2019:

	W	eighted Average Risk-Free			Weighted Average Dividend
Grant Year	Options Granted	Rate	Expected Life	Weighted Average Volatility	Yield
2021	621	1.0%	6.2 years	42.4%	0.3%
2020	669	0.6%	6.2 years	39.4%	0.4%
2019	776	2.0%	6.2 years	34.0%	0.4%

For the years ended December 31, 2021, 2020, and 2019, the following represents the exercise price and fair value displayed at grant date for stock option grants:

Grant Year	Granted <sup>(1)</sup>	Weighted Average Exercise Price <sup>(2)</sup>			Weighted Average Fair Value of Options <sup>(3)</sup>		
2021	621	\$	80.19	\$	32.82		
2020	669	\$	52.20	\$	19.52		
2019	776	\$	44.31	\$	15.71		

- (1) Options granted from January 1, 2019 through September 30, 2019 represent historical grant values prior to the impact of the Spin-Off. Options granted subsequent to October 1, 2019 represent grant values reflective of the Spin-Off.
- (2) Weighted average exercise price was calculated using exercise prices reflective of the Spin-Off Conversion for all periods presented.
- (3) Weighted average fair value of options was calculated using the fair values reflective of the Spin-Off Conversion for all periods presented.

The weighted average exercise price equaled the weighted average fair value of common stock on the grant date for all options granted during the periods ended December 31, 2021, 2020 and 2019 and therefore, the intrinsic value was \$0 at the date of grant.

The following table represents the employee stock option activity during the year ended December 31, 2021, 2020 and 2019:

	Number of Options Outstanding <sup>(1)</sup>	Weighted Average Exercise Price <sup>(3)</sup>		Number of Options Vested <sup>(1)</sup>	Weighted Average Exercise Price of Options Vested <sup>(3)</sup>		
January 1, 2019	4,188	\$	14.71	2,431	\$	10.48	
Granted	776		44.31				
Forfeited	(63)		26.84				
Exercised	(809)		8.83				
Equitable adjustment(2)	336		N/A				
December 31, 2019	4,428	\$	20.85	2,557	\$	12.82	
Granted	669		52.20				
Forfeited	(80)		33.68				
Exercised	(979)		12.93				
December 31, 2020	4,038	\$	27.71	2,148	\$	16.66	
Granted	621		80.19				
Forfeited	(105)		44.76				
Exercised	(516)		17.80				
December 31, 2021	4,038	\$	36.60	2,183	\$	21.02	

<sup>(1)</sup> Options activity from January 1, 2019 through September 30, 2019 represents historical grant values prior to the impact of the Spin-Off as discussed above. Options activity subsequent to October 1, 2019 represent values reflective of the Spin-Off. (2) The equitable adjustment represents equity awards modifications upon the Spin-Off Conversion related to fiscal years prior to October 1, 2019.

(3) Weighted average exercise prices were calculated using exercise prices reflective of the Spin-Off Conversion for all periods presented.

 $The following summary information \ reflects \ stock \ options \ outstanding, \ vested \ and \ related \ details \ as \ of \ December \ 31, 2021;$ 

			Stock Options Vested				
Year of Grant	Exe	rcise P	rice	Number Outstanding	Black-Scholes Fair Value	Remaining Contractual Life (Years)	Vested and Exercisable
2012	5.56	-	6.75	66	199	1	66
2013	6.76	-	9.74	140	539	2	140
2014	8.94	-	16.05	616	2,964	3	616
2015	18.20	-	21.39	270	2,095	4	270
2016	15.93	-	16.86	249	1,468	5	249
2017	15.80	-	19.41	308	1,812	6	223
2018	22.49	-	32.71	525	5,074	7	275
2019	41.07	-	45.76	652	10,237	8	233
2020	44.84	-	59.49	602	11,837	9	111
2021	\$73.47	-	\$83.64	610	19,999	10	<u> </u>
Total				4,038	\$ 56,224		2,183

The aggregate intrinsic value of options outstanding, vested and expected to vest as of December 31, 2021, 2020 and 2019 is as follows:

		December 31,						
Options	2	021	2020	20	19			
Outstanding	\$	191,242 \$	182,552	\$	108,623			
Vested		137,382	120,867		83,243			
Expected to vest		48,548	53,366		22,399			

The intrinsic value is calculated as the difference between the market value of the underlying common stock and the exercise price of the options. The aggregate intrinsic value of options that vested during the years ended December 31, 2021,

2020, and 2019 was \$27,731, \$26,030 and \$21,952, respectively. The total intrinsic value of options exercised during the years ended December 31, 2021, 2020, and 2019 was \$34,278, \$45,081 and \$29,032, respectively.

#### Restricted Stock Awards

The Company granted 222, 281 and 290 restricted stock awards during the years ended December 31, 2021, 2020 and 2019, respectively. All awards were granted at an issue price of \$0 and generally vest over five years. The fair value per share of restricted awards granted during the years ended December 31, 2021, 2020 and 2019 ranged from \$72.84 to \$93.31, \$35.47 to \$58.06 and \$35.33 to \$48.64, respectively. The fair value per share includes quarterly stock awards to non-employee directors.

A summary of the status of the Company's non-vested restricted stock awards as of December 31, 2021 and changes during the year ended December 31, 2021, 2020 and 2019 is presented below:

	Non-Vested Restricted Awards	Weighted Average Grant Date Fair Value <sup>(1)</sup>
Nonvested at January 1, 2019	573	\$ 24.84
Granted	290	43.51
Vested	(241)	30.24
Forfeited	(12)	28.49
Nonvested at December 31, 2019	610	\$ 31.35
Granted	281	48.73
Vested	(280)	32.84
Forfeited	(20)	31.71
Nonvested at December 31, 2020	591	\$ 38.90
Granted	222	81.65
Vested	(244)	47.45
Forfeited	(20)	45.64
Nonvested at December 31, 2021	549	\$ 52.16

<sup>(1)</sup> Weighted average grant date fair value was calculated using the fair values reflective of the Spin-Off Conversion.

During the year ended December 31, 2021, the Company granted 21 automatic quarterly stock awards to non-employee directors for their service on the Company's board of directors. The fair value per share of these stock awards was \$72.84 to \$93.31 based on the market price on the grant date.

#### Long-Term Incentive Plan

On August 27, 2019, the Board approved the Long-Term Incentive Plan (the 2019 LTI Plan). The 2019 LTI Plan provides that certain employees of the Company who assisted in the consummation of the spin-off transaction that occurred in October 2019 are granted shares of restricted stock upon the successful completion of the spin-off. The 2019 LTI Plan provides for the issuance of 500 shares of Pennant restricted stock. The shares are vested over five years at 20% per year on the anniversary of the grant date. If a recipient is terminated or voluntarily leaves the Company, all shares subject to restriction or not yet vested shall be entirely forfeited. The total stock-based compensation related to the 2019 LTI Plan was approximately \$854, \$881 and \$271 for the years ended December 31, 2021, 2020, and 2019, respectively.

Stock-based compensation expense recognized for the Company's equity incentive plans and long-term incentive plan for the years ended December 31, 2021, 2020, and 2019 was as follows:

Vear Ended December 31

	icai Ended December 31,				
	2021		2020		2019(1)
Stock-based compensation expense related to stock options	\$ 8,459	\$	6,132	\$	5,148
Stock-based compensation expense related to restricted stock awards	8,385		7,373		4,955
Stock-based compensation expense related to stock options and restricted stock awards to non-employee directors	 1,834		1,019		1,219
Total	\$ 18,678	\$	14,524	\$	11,322

<sup>(1)</sup> The amount of stock-based compensation expense that was classified as discontinued operations was \$424 for the year ended December 31, 2019.

In future periods, the Company expects to recognize approximately \$34,978 and \$26,038 in stock-based compensation expense for unvested options and unvested restricted stock awards, respectively, that were outstanding as of December 31, 2021. Future stock-based compensation expense will be recognized over 3.7 and 3.5 weighted average years for unvested options and restricted stock awards, respectively. There were 1,855 unvested and outstanding options as of December 31, 2021, of which 1,750 shares are expected to vest. The weighted average contractual life for options outstanding, vested and expected to vest as of December 31, 2021 was 6.0 years.

#### Equity Instrument Denominated in the Shares of a Subsidiary

On May 26, 2016, the Company granted stock options and restricted stock awards under the Subsidiary Equity Plan to employees and management of the subsidiary. During 2019, the Company contributed the net assets of the subsidiary to Pennant prior to the consummation of the Spin-Off on October 1, 2019. Effective upon the Spin-Off, all shares under the Subsidiary Equity Plan were converted to Pennant's Board of Directors hold full administrative authority of the Subsidiary Equity Plan. No additional shares will be granted under this plan.

The Company did not grant any new restricted shares during the year ended December 31, 2019. The awards granted generally vested over a period of three to five years, or upon the occurrence of certain prescribed events. During the year ended December 31, 2019, there were 976 restricted stock awards that vested.

The Company did not grant any options during the fiscal year 2019. The value of the stock options and restricted stock awards had been tied to the value of the common stock of the subsidiary. Prior to the Spin-Off, the awards could be put to the Company at various prescribed dates, which in no event was earlier than six months after vesting of the restricted awards or exercise of the stock options. The Company had the ability to call the awards, generally upon employee termination.

Prior to the Spin-Off, the grant-date fair value of the awards was recognized as compensation expense over the relevant vesting periods, with a corresponding adjustment to noncontrolling interests. As a result of the conversion of the Subsidiary Equity Plan, the Company's noncontrolling interest in the subsidiary was eliminated. The grant values were determined based on an independent valuation of the subsidiary shares. For the year ended December 31, 2019, the Company expensed \$594 in stock-based compensation related to the Subsidiary Equity Plan.

During the year ended December 31, 2019, the Company repurchased 534 shares of common stock under the Subsidiary Equity Plan for \$2,687. The Company subsequently sold the shares and received net proceeds of \$2,293 during the year ended December 31, 2019. Stock-based compensation expense related to the Subsidiary Equity Plan, payments from the repurchase of shares and the proceeds from the sale of the repurchased shares related to the Subsidiary Equity Plan are all included within the Company's consolidated financial statements as discontinued operations.

#### 17. LEASES

The Company leases from CareTrust REIT, Inc. (CareTrust) real property associated with 95 affiliated skilled nursing and senior living facilities used in the Company's operations, 94 of which are under nine "triple-net" master lease agreements (collectively, the Master Leases), which range in terms from 13 to 20 years. At the Company's option, the Master Leases may be extended for two or three five-year renewal terms beyond the initial term, on the same terms and conditions. The extension of the term of any of the Master Leases is subject to the following conditions: (1) no event of default under any of the Master Leases having occurred and being continuing; and (2) the tenants providing timely notice of their intent to renew. The term of the Master Leases is subject to termination prior to the expiration of the then current term upon default by the tenants in their obligations, if not cured within any applicable cure periods set forth in the Master Lease. If the Company elects to renew the term of a Master Lease, the renewal will be effective to all, but not less than all, of the leased property then subject to the Master Lease. Additionally, four of the 95 facilities leased from CareTrust include an option to purchase that the Company can exercise starting on December 1, 2024. In the second quarter of 2021, the Company added four operations and

term for one of the Master Leases for an additional 15 years. In the third quarter of 2021, the Company added two operations and extended the term for one of the Master Leases for an additional 17 years. As a result, the total lease liabilities and right-of-use assets increased by \$54,716 and \$63,374, respectively, to reflect the new lease obligations.

The Company does not have the ability to terminate the obligations under a Master Lease prior to its expiration without CareTrust's consent. If a Master Lease is terminated prior to its expiration other than with CareTrust's consent, the Company may be liable for damages and incur charges such as continued payment of rent through the end of the lease term as well as maintenance and repair costs for the leased property.

The rent structure under the Master Leases includes a fixed component, subject to annual escalation equal to the lesser of (1) the percentage change in the Consumer Price Index (but not less than zero) or (2) 2.5%. In addition to rent, the Company is required to pay the following: (1) all impositions and taxes levied on or with respect to the leased properties (other than taxes on the income of the lessor); (2) all utilities and other services necessary or appropriate for the leased properties and the business conducted on the leased properties; (3) all insurance required in connection with the leased properties and the business conducted on the leased properties and the business or authorizations necessary or appropriate for the leased properties and the business conducted on the leased properties. The terms and conditions of the one stand-alone lease are substantially the same as those for the master leases described above. Total rent expense for continuing operations under the Master Leases was approximately \$59,571, \$52,838 and \$55,644 for the years ended December 31, 2021, 2020 and 2019, respectively.

Among other things, under the Master Leases, the Company must maintain compliance with specified financial covenants measured on a quarterly basis, including a portfolio coverage ratio and a minimum rent coverage ratio. The Master Leases also include certain reporting, legal and authorization requirements. The Company is in compliance with requirements of the Master Leases as of December 31, 2021.

In connection with the spin-off transaction that occurred in October 2019, the Company guaranteed certain leases of Pennant based on the underlying terms of the leases. The Company does not consider these guarantees to be probable and the likelihood of Pennant defaulting is remote, and therefore no liabilities have been accrued.

The Company also leases certain affiliated operations and certain administrative offices under non-cancelable operating leases, most of which have initial lease terms ranging from five to 20 years. The Company has entered into multiple lease agreements with various landlords to operate newly constructed state-of-the-art, full-service healthcare resorts. The term of each lease is 15 years with two five-year renewal options and is subject to annual escalation equal to the percentage change in the Consumer Price Index with a stated cap percentage. In addition, the Company leases certain of its equipment under non-cancelable operating leases with initial terms ranging from three to five years. Most of these leases contain renewal options, certain of which involve rent increases. Total rent expense for continuing operations inclusive of straight-line rent adjustments and rent associated with the Master Leases noted above, was \$139,458, \$129,990 and \$125,167 for the years ended December 31, 2021, 2020 and 2019, respectively.

Forty-three of the Company's affiliated facilities, excluding the facilities that are operated under the Master Leases with CareTrust, are operated under eight separate master lease arrangements. Under these master leases, a breach at a single facility could subject one or more of the other facilities covered by the same master lease to the same default risk. Failure to comply with Medicare and Medicaid provider requirements is a default under several of the Company's leases, master lease agreements and debt financing instruments. In addition, other potential defaults related to an individual facility may cause a default of an entire master lease portfolio and could trigger cross-default provisions in the Company's outstanding debt arrangements and other leases. With an indivisible lease, it is difficult to restructure the composition of the portfolio or economic terms of the lease without the consent of the landlord.

The components of operating lease expense are as follows:

			Year Ended December 3	1,	
	2021		2020		2019
Rent - cost of services <sup>(1)</sup>	\$	139,371	\$ 129,926	\$	124,789
General and administrative expense		87	64		378
Depreciation and amortization <sup>(2)</sup>		1,158	1,223		1,981
Variable lease costs <sup>(3)</sup>		14,077	12,774		12,194
	\$	154,693	\$ 143,987	\$	139,342

- Rent cost of services includes deferred rent expense adjustments of \$485, \$451 and \$318 for the years ended December 31, 2021, 2020 and 2019, respectively. Additionally, rent cost of services includes other variable lease costs such as consumer price index increases and short-term leases of \$3,702, \$2,394 and \$1,486 for the years ended December 31, 2021, 2020 and 2019, respectively.
- Depreciation and amortization is related to the amortization of favorable and direct lease costs.

  Variable lease costs, including property taxes and insurance, are classified in cost of services in the Company's consolidated statements of income

Future minimum lease payments for all leases as of December 31, 2021 are as follows:

Year	Amount
2022	\$ 135,125
2023	133,389
2024	132,409
2025	132,304
2026	132,199
Thereafter	 1,173,645
Total lease payments	1,839,071
Less: present value adjustment	(730,375)
Present value of total lease liabilities	1,108,696
Less: current lease liabilities	 (52,181)
Long-term operating lease liabilities	\$ 1,056,515

Operating lease liabilities are based on the net present value of the remaining lease payments over the remaining lease term. In determining the present value of lease payments, the Company used its incremental borrowing rate based on the information available at the lease commencement date. As of December 31, 2021, the weighted average remaining lease term is 14.8 years and the weighted average discount rate used to determine the operating lease liabilities is 7.6%.

Subsequent to December 31, 2021, the Company expanded its operations through long-term leases with the addition of two stand-alone skilled nursing operations. The Company added one of these additions to an existing master lease agreement and amended the terms of the master lease for an additional five years. The aggregate impact to the fair value of lease liabilities and right-of-use assets related to the new long-term lease and amended master lease arrangement is estimated to be approximately \$101,955.

#### Lessor Activities

In connection with the spin-off transaction that occurred in October 2019, Ensign affiliates retained ownership of the real estate at 29 senior living operations that were contributed to Pennant. During the year ended December 31, 2021, the Company acquired and transferred the operations of one senior living operation to Pennant. During the year ended December 31, 2020, the Company transferred the operations of two senior living operations to Pennant, respectively. Ensign affiliates retained ownership of the real estate for these 32 senior living communities. All of these properties are leased to Pennant on a triple-net basis, whereas the respective Pennant affiliates are responsible for all costs at the properties including: (1) all impositions and taxes levied on or with respect to the leased properties (other than taxes on the income of the lessor); (2) all utilities and other services necessary or appropriate for the leased properties and the business conducted on the leased properties; (3) all insurance required in connection with the leased properties and the business conducted on the leased properties; (4) all facility maintenance and repair costs; and (5) all fees in connection with any licenses or authorizations necessary or appropriate for the leased properties and the business conducted on the leased properties. The initial terms range between 14 to 16 years.

Total rental income from all third-party sources for the years ended December 31, 2021, 2020, and 2019 is as follows:

	Year Ended December 31,				
	2021		2020		2019
\$	14,073	\$	13,163	\$	3,041
	1,912		1,994		2,217
\$	15,985	\$	15,157	\$	5,258
·		_		_	

(1) Pennant rental income includes variable rent such as property taxes of \$1,199 and \$1,224 for the years ended December 31, 2021 and 2020, respectively. Variable rent was immaterial for the year ended December 31, 2010

Future annual rental income for all leases as of December 31, 2021 were as follows:

Year		Amount <sup>(1)</sup>
2022	<u>s</u>	16,659
2023		16,319
2024		15,632
2025		15,237
2026		15,026
Thereafter		93,622
Total	<u>\$</u>	172,495

(1) Annual rental income includes base rents and variable rental income pursuant to existing leases as of December 31, 2021.

#### 18. SELF INSURANCE LIABILITIES

The following table represents activity in our insurance liabilities as of and for the years ended December 31, 2021 and 2020:

	General and Professional Liability W		Health	Total	
Balance January 1, 2020	\$ 50,068	\$ 30,334	\$ 6,964	\$ 87,366	
Current year provisions 38,741		13,397	49,213	101,351	
Claims paid and direct expenses (28,09°		(14,317)	(48,644)	(91,058)	
Change in long-term insurance losses recoverable	182	(1,043)	<u> </u>	(861)	
Balance December 31, 2020	\$ 60,894	\$ 28,371	\$ 7,533	\$ 96,798	
Current year provisions	34,712	17,339	62,856	114,907	
Claims paid and direct expenses	(26,182)	(14,503)	(60,498)	(101,183)	
Change in long-term insurance losses recoverable	324	(707)		(383)	
Balance December 31, 2021	\$ 69,748	\$ 30,500	\$ 9,891	\$ 110,139	

Included in long-term insurance losses recoverable as of December 31, 2021 and 2020 are anticipated insurance recoveries related to the Company's general and professional liability claims that are recorded on a gross rather than net basis in accordance with GAAP.

#### 19. DEFINED CONTRIBUTION PLANS

The Company has a 401(k) defined contribution plan (the 401(k) Plan), whereby eligible employees may contribute up to 15% of their annual basic earnings. Additionally, the 401(k) Plan provides for discretionary matching contributions (as defined in the 401(k) Plan) by the Company. The Company expensed matching contributions to the 401(k) Plan of \$2,121, \$1,889 and \$1,328 during the years ended December 31, 2021, 2020 and 2019, respectively. The 401(k) Plan allowed eligible employees to contribute up to 90% of their eligible compensation, subject to applicable annual Internal Revenue Code limits.

During the year ended December 31, 2019, the Company implemented non-qualified deferred compensation plan (the DCP) that was effective in 2019 for certain executives. The plan was then offered to other highly compensated employees, which went into effect on January 1, 2020. These individuals are otherwise ineligible for participation in the Company's 401(k) plan. The DCP allows participating employees to defer the receipt of a portion of their base compensation and certain

employees up to 100% of their eligible bonuses. Additionally, the plan allows for the employee deferrals to be deposited into a rabbi trust and the funds are generally invested in individual variable life insurance contracts owned by the Company that are specifically designed to informally fund savings plans of this nature. The Company paid for related administrative costs, which were not significant during fiscal years 2021, 2020 and 2019.

As of the years ended December 31, 2021 and 2020, the Company accrued \$26,832 and \$14,232, respectively as long term deferred compensation in other long term liabilities on the consolidated balance sheet. Cash surrender value of the contracts is based on performance measurement funds that shadow the deferral investment allocations made by participants in the deferred compensation plan. For the years ended December 31, 2021 and 2020, the Company recorded net income on the investment acquired in connection with our deferred compensation plan of \$1,612 and \$1,396, respectively, which is included in other income (expense), net, and an offsetting expense of \$1,758 and \$1,355, respectively, which is split between cost of services and general and administrative expenses. No such gain nor offsetting expense occurred for the year ended December 31, 2019.

#### 20. COMMITMENTS AND CONTINGENCIES

Regulatory Matters — Laws and regulations governing Medicare and Medicaid programs are complex and subject to review and interpretation. Compliance with such laws and regulations is evaluated regularly, the results of which can be subject to future governmental review and interpretation, and can include significant regulatory action including fines, penalties, and exclusion from certain governmental programs. Included in these laws and regulations is monitoring performed by the Office of Civil Rights which covers the Health Insurance Portability and Accountability Act of 1996, the terms of which require healthcare providers (among other things) to safeguard the privacy and security of certain patient protected health information.

Cost-Containment Measures — Both government and private pay sources have instituted cost-containment measures designed to limit payments made to providers of healthcare services, and there can be no assurance that future measures designed to limit payments made to providers will not adversely affect the Company.

Indemnities — From time to time, the Company enters into certain types of contracts that contingently require the Company to indemnify parties against third-party claims. These contracts primarily include (i) certain real estate leases, under which the Company may be required to indemnify property owners or prior facility operators for post-transfer environmental or other liabilities and other claims arising from the Company's use of the applicable premises, (ii) operations transfer agreements, in which the Company agrees to indemnify past operators of facilities the Company acquires against certain liabilities arising from the transfer of the operation and/or the operation thereof after the transfer to the Company's independent operating subsidiary, (iii) certain lending agreements, under which the Company may be required to indemnify the lender against various claims and liabilities, and (iv) certain agreements with the Company's officers, directors and others, under which the Company may be required to indemnify such persons for liabilities arising out of the nature of their relationship to the Company. The terms of such obligations vary by contract and, in most instances, do not expressly state or include a specific or maximum dollar amount. Generally, amounts under these contracts cannot be reasonably estimated until a specific claim is asserted. Consequently, because no claims have been asserted, no liabilities have been recorded for these obligations on the Company's consolidated balance sheets for any of the periods presented.

In connection with the spin-off transaction that occurred in October 2019, certain landlords required, in exchange for their consent to the transaction, that the Company's lease guarantees remain in place for a certain period of time following the spin-off. These guarantees could result in significant additional liabilities and obligations for the Company if Pennant were to default on their obligations under their leases with respect to these properties.

U.S. Department of Justice Civil Investigative Demand — On May 31, 2018, the Company received a Civil Investigative Demand (CID) from the U.S. Department of Justice stating that it was investigating whether there had been a violation of the False Claims Act and/or the Anti-Kickback Statute with respect to relationships between certain of the Company's independently operated skilled nursing facilities and persons who serve or have served as medical directors, advisory board participants or other potential referral sources. The CID covered the period from October 3, 2013 through 2018, and was limited in scope to ten of the Company's Southern California independent operating entities. In October 2018, the Department of Justice made an additional request for information covering the period of January 1, 2011 through 2018, relating to the same topic. As a general matter, the Company's independent operating entities have established and maintain policies and procedures to promote compliance with the False Claims Act, the Anti-Kickback Statute, and other applicable regulatory requirements. The Company fully cooperated with the U.S. Department of Justice and promptly responded to its requests for information; in April 2020, the Company was advised that the U.S. Department of Justice declined to intervene in any subsequent action filed by a relator in connection with the subject matter of this investigation.

U.S. House of Representatives Select Subcommittee Request — In 2020, the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis launched a nation-wide investigation into the COVID-19 pandemic, which included the impact of the coronavirus on residents and employees in nursing homes. In June 2020, the Company received a document and information request from the House Select Subcommittee in connection with its investigation. The Company has cooperated in responding to this inquiry. However, it is not possible to predict the ultimate outcome of any such investigation or whether and what other investigations or regulatory responses may result from the investigation, which could have a material adverse effect on our reputation, business, financial condition, and results of operations.

Litigation — The skilled nursing business involves a significant risk of liability given the age and health of the patients and residents served by the Company's independent operating subsidiaries. The Company, its independent operating subsidiaries, and others in the industry are subject to an increasing number of claims and lawsuits, including professional liability claims, alleging that services provided have resulted in personal injury, elder abuse, wrongful death or other related claims. In addition, the Company, its independent operating subsidiaries, and others in the industry are subject to claims and lawsuits in connection with COVID-19 and a facility's preparation for and/or response to COVID-19. The defense of these lawsuits may result in significant legal costs, regardless of the outcome, and can result in large settlement amounts or damage awards.

In addition to the potential lawsuits and claims described above, the Company and its independent operating subsidiaries are also subject to potential lawsuits under the Federal False Claims Act and comparable state laws alleging submission of fraudulent claims for services to any healthcare program (such as Medicare or Medicaid) or other payor. A violation may provide the basis for exclusion from Federally-funded healthcare programs. Such exclusions could have a correlative negative impact on the Company's financial performance. Under the *qui tam* or "whistleblower" provisions of the False Claims Act, a private individual with knowledge of fraud or potential fraud may bring a claim on behalf of the Federal Government and receive a percentage of the Federal Government's recovery. Due to these whistleblower incentives, *qui tam* lawsuits have become more frequent. For example, and despite the decision of the U.S. Department of Justice to decline to participate in litigation based on the subject matter of its previously issued Civil Investigative Demand, the involved *qui tam* relator has continued on with the lawsuit and is pursuing claims that the Company and certain of its independent operating subsidiaries have allegedly violated the False Claims Act and/or the Anti-Kickback Statute.

In addition to the Federal False Claims Act, some states, including California, Arizona and Texas, have enacted similar whistleblower and false claims laws and regulations. Further, the Deficit Reduction Act of 2005 created incentives for states to enact anti-fraud legislation modeled on the Federal False Claims Act. As such, the Company and its independent operating subsidiaries could face increased scrutiny, potential liability and legal expenses and costs based on claims under state false claims acts in markets in which its independent operating subsidiaries do business.

In May 2009, Congress passed the Fraud Enforcement and Recovery Act (FERA) which made significant changes to the Federal False Claims Act and expanded the types of activities subject to prosecution and whistleblower liability. Following changes by FERA, health care providers face significant penalties for the knowing retention of government overpayments, even if no false claim was involved. Health care providers can now be liable for knowingly and improperly avoiding or decreasing an obligation to pay money or property to the government. This includes the retention of any government overpayment. The government can argue, therefore, that a Federal False Claims Act violation can occur without any affirmative fraudulent action or statement, as long as the action or statement is knowingly improper. In addition, FERA extended protections against retaliation for whistleblowers, including protections not only for employees, but also contractors and agents. Thus, an employment relationship is generally not required in order to qualify for protection against retaliation for whistleblowing.

Healthcare litigation (including class action litigation) is common and is filed based upon a wide variety of claims and theories, and the Company's independent operating subsidiaries are routinely subjected to varying types of claims, including class action "staffing" suits where the allegation is understaffing at the facility level. These class-action "staffing" suits have the potential to result in large jury verdicts and settlements, and may result in significant legal costs. The Company expects the plaintiffs' bar to continue to be aggressive in their pursuit of these staffing and similar claims. While the Company has been able to settle these claims without an ongoing material adverse effect on its business, future claims could be brought that may materially affect its business, financial condition and results of operations.

Other claims and suits, including class actions, continue to be filed against the Company and other companies in its industry. The Company and its independent operating subsidiaries have been subjected to, and are currently involved in, class action litigation alleging violations (alone or in combination) of state and federal wage and hour laws as related to the alleged failure to pay wages, to timely provide and authorize meal and rest breaks, and related causes of action. The Company does not believe that the ultimate resolution of these actions will have an ongoing material adverse effect on the Company's business, cash flows, financial condition or results of operations.

The Company and its independent operating subsidiaries have been, and continue to be, subject to claims and legal actions that arise in the ordinary course of business, including potential claims filed by residents and responsible parties related to patient care and treatment (professional negligence claims), as well as employment related claims filed by current or former employees. A significant increase in the number of these claims, or an increase in the amounts owing should plaintiffs be successful in their prosecution of these claims, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

The Company and its independent subsidiaries are also subject to requests for information and investigations by other State and Federal governmental entities (e.g., offices of the attorney general and offices of the inspector general). The Company cannot predict or provide any assurance as to the possible outcome of any inquiry, investigation or litigation. If any such inquiry, investigation or litigation were to proceed, and the Company and its independent operating subsidiaries are subjected to, alleged to be liable for, or agree to a settlement of, claims or obligations under Federal Medicare statutes, the Federal False Claims Act, or similar state and federal statutes and related regulations, or if the Company or its independent operating subsidiaries are alleged or found to be liable on theories of general or professional negligence or wage and hour violations, the Company's business, financial condition and results of operations and cash flows could be materially and adversely affected and its stock price could be adversely impacted. Among other things, any settlement or litigation could involve the payment of substantial sums to settle any alleged violations, and may also include the assumption of specific procedural and financial obligations by the Company or its independent operating subsidiaries under a corporate integrity agreement and/or other such arrangement.

Medicare Revenue Recoupments — The Company's independent operating entities are subject to regulatory reviews relating to the provision of Medicare services, billings and potential overpayments as a result of Recovery Audit Contractors (RAC), Program Safeguard Contractors, and Medicaid Integrity Contractors programs (collectively referred to as Reviews). For several months during the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) suspended its Targeted Probe and Educate Program. Beginning in August 2020, CMS resumed Targeted Probe and Educate Program activity. If an operation fails a Review and/or subsequent Reviews, the operation could then be subject to extended review or an extrapolation of the identified error rate to billings in the same time period. The Company anticipates that these Reviews could increase in frequency in the future. As of December 31, 2021 and subsequently, thirteen of the Company's independent operating subsidiaries had Reviews scheduled, on appeal, or in a dispute resolution process.

#### Concentrations

Credit Risk — The Company has significant accounts receivable balances, the collectability of which is dependent on the availability of funds from certain governmental programs, primarily Medicare and Medicaid. These receivables represent the only significant concentration of credit risk for the Company. The Company does not believe there are significant credit risks associated with these governmental programs. The Company believes that an appropriate allowance has been recorded for the possibility of these receivables proving uncollectible, and continually monitors and adjusts these allowances as necessary. The Company's receivables from Medicare and Medicaid payor programs accounted for 54.0% and 58.3% of its total accounts receivable as of December 31, 2021 and 2020, respectively. Revenue from reimbursement under the Medicare and Medicaid programs accounted for 73.6%, 74.5% and 70.6% of the Company's revenue for the years ended December 31, 2021, 2020 and 2019, respectively.

Cash in Excess of FDIC Limits — The Company currently has bank deposits with financial institutions in the U.S. that exceed FDIC insurance limits. FDIC insurance provides protection for bank deposits up to \$250. In addition, the Company has uninsured bank deposits with a financial institution outside the U.S. As of February 4, 2022, the Company had approximately \$2,042 in uninsured cash deposits. All uninsured bank deposits are held at high quality credit institutions.

#### 21. COMMON STOCK REPURCHASE PROGRAM

As approved by the Board of Directors on October 21, 2021, the Company entered into a stock repurchase program pursuant to which the Company may repurchase up to \$20,000 of its common stock under the program for a period of approximately 12 months that started on October 29, 2021. Under this program, the Company is authorized to repurchase its issued and outstanding common shares from time to time in open-market and privately negotiated transactions and block trades in accordance with federal securities laws. During the year ended December 31, 2021, the Company repurchased 132 shares of its common stock for \$10,118. Subsequent to December 31, 2021, the Company repurchased 133 shares of its common stock for \$9,882. This repurchase program expired upon the repurchase of the full authorized amount under the plan.

On February 9, 2022, the Board of Directors approved the Company to enter into a stock repurchase program pursuant to which the Company may repurchase up to \$20,000 of its common stock under the program for a period of approximately 12 months that starts on February 10, 2022. Under this program, the Company is authorized to repurchase its issued and outstanding common shares from time to time in open-market and privately negotiated transactions and block trades in accordance with federal securities laws.

As approved by the Board of Directors on March 4, 2020 and March 13, 2020, the Company entered into two stock repurchase programs pursuant to which the Company was authorized to repurchase up to \$20,000 and \$5,000, respectively, of its common stock under the programs for a period of approximately 12 months. Under these programs, the Company was authorized to repurchase its issued and outstanding common shares from time to time in open-market and privately negotiated transactions and block trades in accordance with federal securities laws. During the first quarter of 2020, the Company repurchased 503 and 189 shares of its common stock for \$20,000 and \$5,000, respectively. These repurchase programs expired upon the repurchase of the full authorized amount under the two plans.

As approved by the Board of Directors on August 26, 2019, the Company entered into a stock repurchase program pursuant to which the Company may repurchase up to \$20,000 of its common stock under the program for a period of approximately 12 months. Under this program, the Company is authorized to repurchase its issued and outstanding common shares from time to time in openmarket and privately negotiated transactions and block trades in accordance with federal securities laws. The Company repurchased 138 shares of its common stock for a total of \$6,406 in fiscal year 2019 before the repurchase program was cancelled in the first quarter of 2020.

#### 22. SPIN-OFF OF SUBSIDIARIES

On October 1, 2019, the Company completed the separation of its transitional and skilled nursing services, ancillary businesses, home health and hospice operations and substantially all of its senior living operations into two separate, publicly traded companies:

- Ensign, which includes skilled nursing and senior living services, physical, occupational and speech therapies and other rehabilitative and healthcare services at 245 healthcare facilities and campuses, post-acute-related ancillary operations and real estate investments; and
- The Pennant Group, Inc. (Pennant), which is a holding company of operating subsidiaries that provide home health, hospice and senior living services.

The Company completed the separation through a tax-free distribution of substantially all of the outstanding shares of common stock of Pennant to Ensign stockholders on a pro rata basis. Ensign stockholders received one share of Pennant common stock for every two shares of Ensign common stock held at the close of business on September 20, 2019, the record date for the Spin-Off. In number of shares of Ensign common stock each stockholder owns and the related proportionate interest in Ensign did not change as a result of the Spin-Off. Each Ensign stockholder received only whole shares of Pennant common stock in the distribution, as well as eash in lieu of any fractional shares. The Spin-Off was effective October 1, 2019, with shares of Pennant common stock distributed on October 1, 2019. Pennant is listed on the NASDAQ Global Select Market (NASDAQ) and trades under the ticker symbol "PNTG".

In connection with the Spin-Off, Pennant's operations consist of 63 home health, hospice and home care agencies and 52 senior living communities. Ensign affiliates retained ownership of all the real estate, which includes the real estate of 29 of the 52 senior living operations that were contributed to Pennant. These assets are leased to Pennant on a triple-net basis. Pennant affiliates are responsible for all costs at the properties, including property taxes, insurance and maintenance and repair costs. The initial terms range between 14 to 16 years. Pennant's remaining 23 senior living operations are leasing the underlying real estate from unrelated third parties. Subsequent to the Spin-Off, Ensign affiliates acquired the real estate of an additional three senior living operations operated by Pennant.

The Company received \$11,600 from Pennant as a dividend payment in connection with the distribution of assets to Pennant. The Company used the funds to repay certain outstanding third-party bank debt. The assets and liabilities were contributed to Pennant based on their historical carrying values, which were as follows:

Cash and cash equivalents	\$ 47
Accounts receivable, net	30,064
Prepaid expenses and other current assets	4,483
Property and equipment, net	13,728
Right-of-use assets	150,385
Goodwill and intangibles, net	74,747
Accounts payable	(4,725)
Accrued wages and related liabilities	(14,544)
Other accrued liabilities - current	(17,531)
Lease liabilities, net	 (152,221)
Net contribution	\$ 84,433

In accordance with FASB ASC Subtopic 505-60, Spinoffs and Reverse Spinoffs, the accounting for the separation of the Company follows its legal form, with Ensign as the legal and accounting spinner and Pennant as the legal and accounting spinner, due to the relative significance of Ensign's healthcare business, the relative fair values of the respective companies, the retention of all senior management and other relevant indicators.

As a result of the Spin-Off, the Company recorded a \$71,181 reduction in retained earnings, which included net assets of \$84,433 as of October 1, 2019. The Company transferred cash of \$47 to Pennant, with the remainder considered a non-cash activity in the consolidated statements of cash flows. The Spin-Off also resulted in a reduction of noncontrolling interest of \$13,252.

Ensign and Pennant entered into several agreements in connection with the Spin-Off, including a transition services agreement (TSA), separation and distribution agreement, tax matters agreement and an employee matters agreement. Pursuant to the TSA, Ensign, Pennant and their respective subsidiaries are providing various services to each other on an interim, transitional basis. Services being provided by Ensign include, among others, certain finance, information technology, human resources, employee benefits and other administrative services. The TSA is no longer in place as of December 31, 2021. Billings by Ensign under the TSA were not material during the years ended December 31, 2021, 2020 and 2019.

Prior to the consummation of the Spin-Off, Pennant granted awards to certain employees and directors of Ensign under the 2019 LTI Plan, in recognition of their performance in assisting with the Spin-Off. These awards were exchanged for Pennant common stock prior to the distribution.

Immediately after the Spin-Off, Ensign ceased to consolidate the results of Pennant operations into its financial results. Pennant's operating results and cash flows for the year ended December 31, 2019 presented have been classified as discontinued operations within the Consolidated Financial Statements.

Voor Ended December 31 2010

The following table presents the financial results of Pennant for the indicated period and does not include overhead allocations:

	Tear Elided D	Tear Ended December 31, 2019		
	(In th	ousands)		
Service revenue	\$	249,039		
Expense:				
Cost of services		187,560		
Rent—cost of services		17,295		
General and administrative expense		16,672		
Depreciation and amortization		2,402		
Total expenses		223,929		
Income from discontinued operations		25,110		
Interest income		26		
Provision for income taxes		5,663		
Income from discontinued operations, net of tax		19,473		
Net income attributable to discontinued noncontrolling interests		629		
Net income attributable to The Ensign Group, Inc.	\$	18,844		

Table Contents

## THE ENSIGN GROUP, INC. NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

The Company incurred transaction costs of \$9,119 related to the Spin-Off since commencing in 2018, of which \$7,909 are reflected in the Company's consolidated statement of operations as discontinued operations for the year ended December 31, 2019. Transaction costs primarily consist of third-party advisory, consulting, legal and professional services, as well as other items that are incremental and one-time in nature that are related to the separation. Transaction costs for 2019 incurred prior to October 1, 2019 are reflected in discontinued operations.

#### Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

None

#### Item 9A. CONTROLS AND PROCEDURES

#### (a) Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to its management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, our management recognized that any system of controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as ours are designed to do, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

In connection with the preparation of this Annual Report on Form 10-K our management evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Annual Report on Form 10-K.

#### (b) Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) promulgated under the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our internal control over financial reporting using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control - Integrated Framework (2013)*. As a result of this assessment, management concluded that, as of December 31, 2021, our internal control over financial reporting was effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Our independent registered public accounting firm, Deloitte & Touche LLP, has audited the consolidated financial statements included in this Annual Report on Form 10-K and, as part of their audit, has issued an audit report, included herein, on the effectiveness of our internal control over financial reporting. Their report is set forth below.

#### (c) Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting, as defined in Rule 13a-15(f) promulgated under the Exchange Act, that occurred during the fourth quarter of fiscal 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### (d) Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of The Ensign Group, Inc. San Juan Capistrano, California

#### Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The Ensign Group, Inc. and subsidiaries (the "Company") as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework (2013) issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the financial statements as of and for the year ended December 31, 2021 of the Company and our report dated February 9, 2022, expressed an unqualified opinion on those financial statements.

#### **Basis for Opinion**

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

#### Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California February 9, 2022

#### Item 9B. OTHER INFORMATION

None.

#### Item 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III.

#### Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item is hereby incorporated by reference to our definitive proxy statement for the 2022 Annual Meeting of Stockholders.

We have adopted a code of ethics and business conduct that applies to all employees, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer), and employees of our subsidiaries, as well as each member of our Board of Directors. The code of ethics and business conduct is available on our website at www.ensigngroup.net under the Investor Relations section. We intend to satisfy any disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of the code of ethics by posting such information on our website, at the address specified above.

#### Item 11. EXECUTIVE COMPENSATION

The information required by this Item is hereby incorporated by reference to our definitive proxy statement for the 2022 Annual Meeting of Stockholders.

#### Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item is hereby incorporated by reference to our definitive proxy statement for the 2022 Annual Meeting of Stockholders.

#### Item 13, CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

The information required by this Item is hereby incorporated by reference to our definitive proxy statement for the 2022 Annual Meeting of Stockholders.

#### Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item is hereby incorporated by reference to our definitive proxy statement for the 2022 Annual Meeting of Stockholders. Our principal accountant is Deloitte & Touche LLP (PCAOB ID No.34).

#### PART IV.

#### Item 15. EXHIBITS, FINANCIAL STATEMENTS AND SCHEDULES

The following documents are filed as a part of this report:

(a) (1) Financial Statements:

The Financial Statements described in Part II. Item 8 and beginning on page 81 are filed as part of this Annual Report on Form 10-K.

(a) (3) Exhibits: The following exhibits are filed or furnished with or incorporated by reference this Annual Report on Form 10-K.

Exhibit No.	Exhibit Description*	Form	File No.	Exhibit No.	Filing Date	Filed Herewith
3.1	Fifth Amended and Restated Certificate of Incorporation of The Ensign Group, Inc., filed with the Delaware Secretary of State on November 15, 2007	10-Q	001-33757	3.1	12/21/2007	
<u>3.2</u>	Certificate of Amendment to the Fifth Amended and Restated Certificate of Incorporation of The Ensign Group, Inc., filed with the Delaware Secretary of State on February 4, 2020	10-K	001-33757	3.2	2/5/2020	
<u>3.3</u>	Amendment to the Amended and Restated Bylaws, dated August 5, 2014	8-K	001-33757	3.2	8/8/2014	
<u>3.4</u>	Amended and Restated Bylaws of The Ensign Group, Inc.	10-Q	001-33757	3.2	12/21/2007	
<u>4.1</u>	Description of the Common stock of The Ensign Group, Inc.	10-K	001-33757	4.1	2/5/2020	
<u>4.2</u>	Specimen common stock certificate	S-1	333-142897	4.1	10/5/2007	
<u>10.1</u> +	The Ensign Group, Inc. 2007 Omnibus Incentive Plan	S-1	333-142897	10.3	10/5/2007	
<u>10.2</u> +	Amendment to The Ensign Group, Inc. 2007 Omnibus Incentive Plan	8-K	001-33757	99.2	7/28/2009	
<u>10.3</u> +	Form of 2007 Omnibus Incentive Plan Notice of Grant of Stock Options; and form of Non- Incentive Stock Option Award Terms and Conditions	S-1	333-142797	10.4	10/5/2007	
<u>10.4</u> +	Form of 2007 Omnibus Incentive Plan Restricted Stock Agreement	S-1	333-142897	10.5	10/5/2007	
<u>10.5</u> +	Form of Indemnification Agreement entered into between The Ensign Group, Inc. and its directors, officers and certain key employees	S-1	333-142897	10.6	10/5/2007	
<u>10.6</u>	Form of Independent Consulting and Centralized Services Agreement between Ensign Facility Services, Inc. and certain of its subsidiaries	S-1	333-142897	10.41	5/14/2007	
<u>10.7</u>	Form of Health Insurance Benefit Agreement pursuant to which certain subsidiaries of The Ensign Group, Inc. participate in the Medicare program	S-1	333-142897	10.48	10/19/2007	
10.8	Form of Medi-Cal Provider Agreement pursuant to which certain subsidiaries of The Ensign Group, Inc. participate in the California Medicaid program	S-1	333-142897	10.49	10/19/2007	
<u>10.9</u>	Form of Provider Participation Agreement pursuant to which certain subsidiaries of The Ensign Group, Inc. participate in the Arizona Medicaid program	S-1	333-142897	10.50	10/19/2007	
<u>10.10</u>	Form of Contract to Provide Nursing Facility Services under the Texas Medical Assistance Program pursuant to which certain subsidiaries of The Ensign Group, Inc. participate in the Texas Medicaid program	S-1	333-142897	10.51	10/19/2007	
<u>10.11</u>	Form of Client Service Contract pursuant to which certain subsidiaries of The Ensign Group, Inc. participate in the Washington Medicaid program	S-1	333-142897	10.52	10/19/2007	
<u>10.12</u>	Form of Provider Agreement for Medicaid and UMAP pursuant to which certain subsidiaries of The Ensign Group, Inc. participate in the Utah Medicaid program	S-1	333-142897	10.53	10/19/2007	
<u>10.13</u>	Form of Medicaid Provider Agreement pursuant to which a subsidiary of The Ensign Group, Inc. participates in the Idaho Medicaid program	S-1	333-142897	10.54	10/19/2007	
<u>10.14</u>	Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and The Ensign Group, Inc. dated October 1, 2013.	10-K	001-33757	10.74	2/13/2014	
10.15	Settlement agreement dated October 1, 2013, entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States") and the Company.	8-K	001-33757	10.75	5/8/2014	

Exhibit No.	Exhibit Description*	Form	File No.	Exhibit No.	Filing Date	Filed Herewith
<u>10.16</u>	Form of Master Lease by and among certain subsidiaries of The Ensign Group, Inc. and certain subsidiaries of CareTrust REIT, Inc.	8-K	001-33757	10.1	6/5/2014	
<u>10.17</u>	Form of Guaranty of Master Lease by The Ensign Group, Inc. in favor of certain subsidiaries of CareTrust REIT, Inc., as landlords under the Master Leases	8-K	001-33757	10.2	6/5/2014	
<u>10.18</u>	Amended and Restated Credit Agreement as of February 5, 2016, by and among The Ensign Group, Inc., SunTrust Bank, now known as Truist, as administrative agent, and the lenders party thereto	8-K	001-33757	10.1	2/8/2016	
<u>10.19</u>	Second Amended Credit Agreement as of July 19, 2016, by and among The Ensign Group, Inc., SunTrust Bank, now known as Truist, as administrative agent, and the lenders party thereto	8-K	001-33757	10.1	7/25/2016	
<u>10.20</u>	The Ensign Group, Inc. 2017 Omnibus Incentive Plan	DEF 14A	001-33757	A	4/13/2017	
<u>10.21</u>	Form of 2017 Omnibus Incentive Plan Notice of Grant of Stock Options; and form of Non- Incentive Stock Option Award Terms and Conditions	10-K	001-33757	10.87	2/8/2018	
<u>10.22</u>	Form of 2017 Omnibus Incentive Plan Restricted Stock Agreement	10-K	001-33757	10.88	2/8/2018	
10.23	Form of U.S. Department of Housing and Urban Development Healthcare Facility Note and schedule of individual subsidiary loans, by and among The Ensign Group, Inc.'s subsidiaries listed therein and U.S. Department of Housing and Urban Development	8-K	001-33757	10.1	1/3/2018	
<u>10.24</u>	Form of U.S. Department of Housing and Urban Development Security Instrument/Mortgage/Deed of Trust	8-K	001-33757	10.2	1/3/2018	
<u>10.25</u>	Transition Services Agreement, dated as of October 1, 2019, by and between The Ensign Group, Inc. and The Pennant Group, Inc	8-K	001-33757	10.1	10/1/2019	
<u>10.26</u>	Tax Matters Agreement, dated as of October 1, 2019, by and between The Ensign Group, Inc. and The Pennant Group, Inc.	8-K	001-33757	10.2	10/1/2019	
<u>10.27</u>	Employee Matters Agreement, dated as of October 1, 2019, by and between The Ensign Group, Inc. and The Pennant Group, Inc.	8-K	001-33757	10.3	10/1/2019	
10.28	Third Amended and Restated Credit Agreement, dated as of October 1, 2019, by and among The Ensign Group, Inc., SunTrust Bank, now known as Truist, as administrative agent, and the lenders party thereto	8-K	001-33757	10.4	10/1/2019	
<u>10.29</u>	Lease Agreement, dated as of October 1, 2019, by and between The Ensign Group, Inc. and The Pennant Group, Inc.	8-K	001-33757	10.5	10/1/2019	
<u>10.30</u> +	The Ensign Services, Inc. Deferred Compensation Plan	10-K	001-33757	10.1	2/3/2021	
<u>10.31</u> +	First Amendment to The Ensign Services, Inc. Deferred Compensation Plan	10-K	001-33757	10.2	2/3/2021	
10.32	First Amendment to Third Amended and Restated Credit Agreement, dated as of February 8, 2022, by and among The Ensign Group, Inc., Standard Bearer Healthcare REIT, Inc., Truist Bank (as successor by merger to SunTrust Bank), as administrative agent, and the lenders party thereto					X
<u>21.1</u>	Subsidiaries of The Ensign Group, Inc., as amended					X
<u>23.1</u>	Consent of Deloitte & Touche LLP					X
<u>31.1</u>	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
<u>31.2</u>	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X

Table Contents

# $\label{thm:consolidated} THE\ ENSIGN\ GROUP, INC.$ NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

Exhibit			File	Exhibit	Filing	Filed
No.	Exhibit Description*	Form	No.	No.	Date	Herewith
<u>32.1</u>	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
<u>32.2</u>	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
101	Interactive data file (furnished electronically herewith pursuant to Rule 406T of Regulations S-T)					
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					
+	Indicates management contract or compensatory plan.					
*	Documents not filed herewith are incorporated by reference to the prior filings identified in the tal	ble above.				

#### Item 16. FORM 10-K SUMMARY

Not applicable

#### SIGNATURES

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

#### THE ENSIGN GROUP, INC.

February 9, 2022

BY: /s/ SUZANNE D. SNAPPER

Suzanne D. Snapper

Chief Financial Officer, Executive Vice President and Director (Principal Financial Officer and Accounting Officer and Duly Authorized Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ BARRY R. PORT	Chief Executive Officer and Director (principal executive officer)	February 9, 2022
Barry R. Port		
/s/ SUZANNE D. SNAPPER	Chief Financial Officer, Executive Vice President and Director (principal financial officer and accounting officer and duly authorized officer)	February 9, 2022
Suzanne D. Snapper		
/s/ CHRISTOPHER R. CHRISTENSEN	Executive Chairman and Chairman of the Board	February 9, 2022
Christopher R. Christensen		
/s/ ANN S. BLOUIN	Director	February 9, 2022
Ann S. Blouin		
/s/ SWATI B. ABBOTT	Director	February 9, 2022
Swati B. Abbott		
/s/ DAREN J. SHAW	Director	February 9, 2022
Daren J. Shaw		
/s/ LEE A. DANIELS	Director	February 9, 2022
Lee A. Daniels		
/s/ BARRY M. SMITH	Director	February 9, 2022
Barry M. Smith		

#### FIRST AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This FIRST AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT, dated as of February 8, 2022 (this "Amendment"), among The Ensign Group, Inc., a Delaware corporation (the "Existing Borrower"), Standard Bearer Healthcare REIT, Inc., a Maryland corporation (the "New Borrower" and, together with the Existing Borrower, the "Borrowers"), the several banks and other financial institutions party hereto (the "Consenting Lenders") and Truist Bank (as successor by merger to SunTrust Bank, "Truist"), as administrative agent (in such capacity, together with its successors and assigns, the "Administrative Agent"), which amends that certain Third Amended and Restated Credit Agreement, dated as of October 1, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement"), among the Existing Borrower, the several banks and other financial institutions from time to time party thereto, the Administrative Agent and Truist as issuing bank and swingline lender. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in this Amendment or the Amended Credit Agreement (as defined below), as applicable.

WHEREAS, the Existing Borrower has requested certain amendments to the Credit Agreement as necessary to permit, among other things, the addition of the New Borrower as an additional Borrower under the Credit Agreement; and

WHEREAS, the Existing Borrower, the New Borrower, the other Subsidiaries of the Existing Borrower party hereto, the Administrative Agent and the Consenting Lenders desire to enter into this Amendment in order to effect the amendments to the Credit Agreement contemplated herein, in each case, on the terms and subject to the conditions set forth in <u>Section 2</u> hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

- Section 1. <u>Amendments to the Credit Agreement</u>. Subject to the satisfaction (or waiver by the Consenting Lenders) of the conditions set forth in <u>Section 2</u> hereof, the Credit Agreement, including all schedules thereto (but excluding the Exhibits thereto, which shall remain as in effect immediately prior to the First Amendment Effective Date (as defined herein)), shall be amended as follows:
- (a) The Credit Agreement is hereby amended by inserting the language indicated in double underlined text (indicated textually in the same manner as the following example: <u>underlined text</u>) in <u>Exhibit A</u> hereto and by deleting the language indicated by strikethrough text (indicated textually in the same manner as the following example: <u>stricken text</u>) in Exhibit A hereto; and
- (b) The Schedules to the Credit Agreement are hereby amended and restated in their entirety as set forth in Exhibit B hereto.

The Credit Agreement and Schedules thereto, as so amended pursuant to the foregoing clauses (a) and (b), are referred to herein as the "Amended Credit Agreement".

Section 2. <u>Conditions to Effectiveness</u>. The effectiveness of this Amendment is subject only to the satisfaction (or waiver by the Consenting Lenders) of the following conditions precedent (the date on which such conditions have been satisfied (or waived by the Consenting Lenders), the "First Amendment Effective Date"):

- (a) The Administrative Agent shall have received executed counterparts of this Amendment from each Loan Party, the Administrative Agent and the Consenting Lenders constituting the Required Lenders.
- (b) The Administrative Agent shall have received executed counterparts of each of the documents listed on Exhibit C hereto (the "Joinder Documents").
- (c) The representations and warranties of each Loan Party set forth in Article IV of the Amended Credit Agreement or any other Loan Document shall be true and correct in all material respects on and as of the First Amendment Effective Date; <u>provided</u> that, in each case, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; <u>provided further</u> that, in each case, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on the date of such credit extension or on such earlier date, as the case may be.
- (d) No Event of Default shall have occurred and be continuing as of the time of the First Amendment Effective Date or immediately after giving effect to this Amendment.
- (e) The Administrative Agent shall have received a copy of (i) each organizational document of Standard Bearer Healthcare OP GP, LLC, a Delaware limited liability company, and Standard Bearer Healthcare OP, LP, a Delaware limited partnership (in each case, together with the New Borrower, collectively the "New Loan Parties" and each a "New Loan Party") certified as of a recent date by the applicable Governmental Authority, (ii) an incumbency certificate identifying the name and title and bearing the signatures of the authorized signatories of each New Loan Party, (iii) copies of resolutions of the governing body of each New Loan Party approving and authorizing the execution, delivery and performance of this Amendment and the Joinder Documents, as applicable, to which such New Loan Party is a party, as applicable, certified as of the First Amendment Effective Date by its secretary, an assistant secretary or a Responsible Officer as being in full force and effect without modification or amendment and (iv) a good standing certificate (to the extent such concept exists) from the applicable Governmental Authority of each New Loan Party's jurisdiction of incorporation, organization or formation.
- (f) The Administrative Agent shall have received a customary written opinion (addressed to the Administrative Agent and the Consenting Lenders and dated as of the First Amendment Effective Date) of (i) Kirkland & Ellis LLP, special counsel to the New Loan Parties and (ii) Venable LLP, special Maryland counsel to the New Borrower, each in form and substance reasonably satisfactory to the Administrative Agent.
- (g) The Administrative Agent shall have received a certificate of a Responsible Officer of the Existing Borrower certifying that the conditions set forth in Sections 3(c) and (d) have been satisfied.
- (h) At least three (3) days prior to the First Amendment Effective Date, (A) all documentation and other information with respect to New Borrower that the Administrative Agent or any Lender reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation, to the extent reasonably requested by the Administrative Agent at least ten (10) days before the First Amendment Effective Date, and (B) if New Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to New Borrower.
- Section 3. <u>Fees and Expenses</u>. The Borrowers agree to reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent

in connection with this Amendment to the extent reimbursable by the Borrowers pursuant to Section 10.03 of the Amended Credit Agreement.

- Section 4. <u>Amendments; Counterparts</u>. This Amendment may not be amended or waived except by an instrument in writing signed by each of the parties party hereto. This Amendment and each other Loan Document may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Amendment and each other Loan Document shall be effective as delivery of an original executed counterpart of this Amendment and such other Loan Document. The Administrative Agent may also require that any such documents and signatures delivered by telecopier or other electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier or other electronic transmission.
- Section 5. Governing Law, Jurisdiction and Waiver of Right to Trial by Jury. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. The governing law, jurisdiction, consent to service of process, and waiver of jury trial provisions in Sections 10.5 and 10.6 of the Credit Agreement are incorporated herein by reference mutatis mutandis.
- Section 6. <u>Headings</u>. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

#### Section 7. Effect of Amendment.

- (a) On and after the date hereof, each reference in the Credit Agreement to "this Agreement", "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement, mean and are a reference to the Credit Agreement as modified by this Amendment.
- (b) Except as expressly amended hereby, all of the terms and provisions of the Credit Agreement and all other Loan Documents are and shall remain in full force and effect and are hereby ratified and confirmed. In furtherance of the foregoing, each of the Loan Parties party hereto hereby irrevocably and unconditionally ratifies its grant of security interest and pledge under the Security Agreement and each Loan Document and confirms that the liens, security interests and pledges granted thereunder continue to secure the Obligations, including, without limitation, any additional Obligations resulting from or incurred pursuant to this Amendment.
- (c) Each of the Loan Parties as debtor, grantor, mortgagor, pledgor, guarantor, assignor, or in other any other similar capacity in which such Loan Party grants liens or security interests in its property or otherwise acts as accommodation party, guarantor or indemnitor, as the case may be, hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party, (ii) ratifies and reaffirms each grant of a lien on, or security interest in, its property made pursuant to the Loan Documents (including, without limitation, the grant of security made by such Loan Party pursuant to the Guaranty and Security Agreement) and confirms that such liens and security interests continue to secure the Obligations under the Loan Documents, in each case subject to the terms thereof, (iii) in the case of each Guarantor, ratifies and reaffirms its guaranty of the Obligations pursuant to the Loan Documents and (iv) acknowledges and agrees to the addition of the New Borrower as a Borrower under the Amended Credit Agreement. The execution of this Amendment

shall not operate as a waiver of any right, power or remedy of the Administrative Agent or Consenting Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

- (d) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent or any Consenting Lender under, the Credit Agreement or any of the other Loan Documents. This Amendment shall be deemed to be a Loan Document as defined in the Credit Agreement.
- Section 8. <u>No Novation</u>. By its execution of this Amendment, each of the parties hereto acknowledges and agrees that the terms of this Amendment do not constitute a novation, but, rather, a supplement of a pre-existing indebtedness and related agreement, as evidenced by the Amended Credit Agreement.
- Section 9. <u>Joinder Documents</u>. By its execution of this Amendment, each Lender hereby consents to, and instructs the Administrative Agent and/or the Collateral Agent, as applicable, to enter into, each of the Joinder Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

THE ENSIGN GROUP, INC.

By: /s/ Chad A. Keetch

Name: Chad A. Keetch

Title: Chief Investment Officer, Executive Vice

President and Secretary

STANDARD BEARER HEALTHCARE REIT, INC.

By: /s/ Chad A. Keetch

Name: Chad Keetch Title: President ALICE BRANCH HEALTHCARE LLC ALLEN CREEK HEALTHCARE, INC. ANZA HEALTHCARE, INC. APPALOOSA HEALTHCARE, INC. ARMSTRONG HEALTHCARE, INC. ARVADA HEALTHCARE, INC. ATLANTIC MEMORIAL HEALTHCARE ASSOCIATES, INC. AVENUES HEALTHCARE, INC. AZ NURSING CAREERS, INC. AZTEC HEALTHCARE, INC. BARDWELL HEALTHCARE, INC. BAYSHORE HEALTHCARE, INC. BAYSIDE HEALTHCARE, INC. BEACON HILL HEALTHCARE, INC. BENNETT HEALTHCARE LLC BERNARDO HEIGHTS HEALTHCARE, INC. BERTETTI HEALTHCARE, INC. BIG BLUE HEALTHCARE LLC BIJOU HEALTHCARE LLC BLACK RIDGE CANYON HEALTHCARE LLC BOUVERIE HEALTHCARE SERVICES, INC. BRACKENRIDGE HEALTHCARE, INC. BROWNSVILLE CARE ASSOCIATES, INC. **BUFFALO CREEK HEALTHCARE LLC** CALAVARAS CREEK HEALTHCARE LLC CAMARILLO COMMUNITY CARE, INC. CANARY BEND HEALTHCARE LLC CANE ISLAND HEALTHCARE, INC. CARDIFF HEALTHCARE, INC. CAROLINA HEALTHCARE LLC CARROLLTON HEIGHTS HEALTHCARE, INC. CEDAR CITY HEALTHCARE LLC CENTRAL AVENUE HEALTHCARE, INC. CHAPARRAL HEALTHCARE, INC. CHATEAU JULIA HEALTHCARE, INC. CHEROKEE HEALTHCARE, INC. CHERRY HILLS HEALTHCARE, INC. CLOVERLEAF HEALTHCARE LLC CONSTITUTION ROAD HEALTHCARE, INC. COPELAND HEALTHCARE, INC. COW CREEK HEALTHCARE, INC. CRESS CREEK HEALTHCARE LLC DA VINCI HEALTHCARE, INC. DAFFODIL HEALTHCARE, INC. DE MOISY HEALTHCARE LLC DESERT COVE HEALTHCARE, INC. DESSAU HEALTHCARE, INC. DEVONSHIRE HEALTHCARE, INC. DUCK CREEK HEALTHCARE, INC. EAGLE HARBOR HEALTHCARE LLC ECHO CANYON HEALTHCARE, INC. EIFFEL HEALTHCARE LLC ENDURA HEALTHCARE LLC FLAGSTONE HEALTHCARE NORTH, INC. FORNEY LAKE HEALTHCARE, INC.

FOSSIL CREEK HEALTHCARE, INC. FULLERTON HEALTHCARE, INC. **GATEWAY HEALTHCARE LLC** GEM HEALTHCARE, INC. GETZENDANER HEALTHCARE, INC. GOLDEN OAKS HEALTHCARE, INC. GOLDEN YEARS PROGRAM, INC. GOLDFIELD MOUNTAIN HEALTHCARE LLC GOOD HOPE HEALTHCARE, INC. GRAND VILLA PHX, INC. GRASSLAND HEALTHCARE AND REHABILITATION, INC. GREEN MOUNTAIN HEALTHCARE LLC GYPSUM CREEK HEALTHCARE, INC. HARLINGEN HEALTHCARE, INC. HIGLEY HEALTHCARE, INC. HOMEDALE HEALTHCARE, INC. HOPEWELL HEALTHCARE LLC HOQUIAM HEALTHCARE, INC. HUB CITY HEALTHCARE LLC HUENEME HEALTHCARE, INC. HUTCHINS HEALTHCARE, INC. IRON HORSE HEALTHCARE LLC JACK FINNEY HEALTHCARE, INC. JORDAN HEALTH ASSOCIATES, INC. JRT HEALTHCARE, INC. KLEMENT HEALTHCARE, INC. LA VETA HEALTHCARE, INC. LAKE ISLAND HEALTHCARE LLC LAKE PLEASANT HEALTHCARE, INC. LAKEWOOD HEALTHCARE, INC. LIL' TOTS DAY PROGRAM, INC. LINDAHL HEALTHCARE, INC. LIVINGSTON CARE ASSOCIATES, INC. LOOKOUT MOUNTAIN HEALTHCARE LLC LOWELL HEALTHCARE, INC. LUDDEN HEALTHCARE LLC LYNNWOOD HEALTH SERVICES, INC. MAPLE HILLS HEALTHCARE, INC. MARKET BAYOU HEALTHCARE, INC. MCALLEN CARE ASSOCIATES, INC. MCALLEN COMMUNITY HEALTHCARE LLC MCCALL HEALTHCARE LLC MERIDIAN HEALTHCARE LLC MIDLAND NAMPA HEALTHCARE LLC MISSION TRAILS HEALTHCARE LLC MISTY WILLOW HEALTHCARE, INC. MONROE HEALTHCARE, INC. MYRTLE SPRINGS HEALTHCARE, INC. NAUTILUS HEALTHCARE, INC. NB BROWN ROCK HEALTHCARE, INC. NORTH PARKWAY HEALTHCARE LLC NORTHERN OAKS HEALTHCARE, INC. OAK POINT HEALTHCARE, INC. OCEANVIEW HEALTHCARE, INC. OLYMPUS HEALTH, INC.

OTTAWA HEALTHCARE LLC PARKSIDE HEALTHCARE, INC. PENNANT HEALTHCARE LLC PEORIA HEALTHCARE LLC PERCHERON HEALTHCARE, INC. PIKES PEAK HEALTHCARE, INC. PINE FOREST HEALTHCARE, INC. PINEY LUFKIN HEALTHCARE, INC. POCATELLO HEALTH SERVICES, INC. POINTE MEADOW HEALTHCARE, INC. PORTSIDE HEALTHCARE, INC. POWDERHORN MOUNTAIN HEALTHCARE LLC POWERS PARK HEALTHCARE, INC. PRAIRIE CREEK HEALTHCARE, INC. PRICE HEALTHCARE, INC. QUEENSTON HEALTHCARE, INC. RAMON HEALTHCARE ASSOCIATES LLC RANDOLPH HEALTHCARE, INC. RED CLIFFS HEALTHCARE, INC. RED MOUNTAIN HEALTHCARE LLC RENEWCARE OF SCOTTSDALE, INC. RICHMOND SENIOR SERVICES, INC. RIO HONDO HEALTHCARE, INC. RIVERSIDE HEALTHCARE, INC. RIVERVIEW HEALTHCARE, INC. RIVERWALK HEALTHCARE, INC. ROCK CANYON HEALTHCARE LLC ROCK HILL HEALTHCARE LLC ROSE PARK HEALTHCARE ASSOCIATES, INC. ROWLETT CREEK HEALTHCARE LLC ROYAL VIEW HEALTHCARE LLC SAGE TERRACE HEALTHCARE LLC SALADO CREEK SENIOR CARE, INC. SAND HOLLOW HEALTHCARE LLC SANTA CATALINA HEALTHCARE, INC. SANTA MARIA HEALTHCARE, INC. SANTIAGO HEALTHCARE LLC SANTIAGO PERSONAL CARE, INC. SAVOY HEALTHCARE, INC. SAWTOOTH HEALTHCARE, INC. SOUTH VALLEY HEALTHCARE, INC. SOUTHERN CHARM HEALTHCARE LLC SOUTHSIDE HEALTHCARE, INC. SPRING CREEK HEALTHCARE, INC. STANTON LAKE HEALTHCARE, INC. STONEY HILL HEALTHCARE LLC SUBACUTE FACILITY SERVICES, INC. SUMMIT HEALTHCARE, INC. SUNNY ACRES HEALTHCARE LLC SUNRISE MOUNTAIN HEALTHCARE LLC TOP CITY HEALTHCARE LLC TORTOLITA HEALTHCARE, INC. TOWERS PARK HEALTHCARE LLC TOWERS PARK PERSONAL CARE, INC. TOWN EAST HEALTHCARE, INC. TRADEWIND HEALTHCARE, INC.

TREATY HEALTHCARE, INC. TREE CITY HEALTHCARE, INC. TUSTIN HILLS HEALTHCARE, INC. TWO TRAILS HEALTHCARE, INC. UNION HILL HEALTHCARE, INC. UPLAND COMMUNITY CARE, INC. VALLEY VIEW HEALTH SERVICES, INC. VIEWPOINT HEALTHCARE LLC WASHINGTON HEIGHTS HEALTHCARE LLC WATERFALL CANYON HEALTHCARE LLC WATSON WOODS HEALTHCARE, INC. WELLINGTON HEALTHCARE, INC. WEST 5600 HEALTHCARE LLC WEST VAN BUREN HEALTHCARE, INC. WILDCREEK HEALTHCARE, INC. WILDWOOD HEALTHCARE, INC. WILLOW CANYON HEALTHCARE LLC WOLF RIVER HEALTHCARE LLC WOOD BAYOU HEALTHCARE, INC. YOUNGTOWN HEALTH, INC. ZION HEALTHCARE, INC., each a Nevada corporation

By: /s/ Soon Burnam

Name: Soon Burnam Title: Treasurer

HUNTINGTON BEACH CONVALESCENT HOSPITAL ASSET LLC, a Delaware limited liability company

By: /s/ Soon Burnam
Name: Soon Burnam
Title: Treasurer

ENSIGN SERVICES, INC., a Nevada corporation

By: Is/ Chad A. Keetch
Name: Chad A. Keetch
Title: Secretary

ADIPISCOR, LLC
BANDERA HEALTHCARE LLC
BANNOCK HEALTH HOLDINGS LLC
BRIDGESTONE LIVING LLC
DIAMOND VALLEY HEALTH HOLDINGS LLC
ELKHORN HEALTH HOLDINGS LLC
FLAGSTONE HEALTHCARE CENTRAL LLC
FLAGSTONE HEALTHCARE SOUTH LLC
HARMONY HEALTH HOLDINGS LLC
LAKE CASSIDY HEALTH HOLDINGS LLC
MARGUERITE HOLDINGS LLC
MENOMONEE HEALTH HOLDINGS LLC

ROSEMEAD HEALTH HOLDINGS LLC
SHOSHONE HEALTH HOLDINGS LLC
SOUTH C HEALTH HOLDINGS LLC
KEYSTONE CARE LLC
SUNNY ACRES HEALTH HOLDINGS LLC
MILESTONE HEALTHCARE LLC
THUNDERBIRD HEALTH HOLDINGS LLC
WEST OWYHEE HEALTH HOLDINGS LLC
YELLOW ROSE HEALTH HOLDINGS LLC, each a Nevada limited liability company

By: THE ENSIGN GROUP, INC., a Delaware corporation, its sole member

By: /s/ Chad A. Keetch

Name: Chad A. Keetch

Title: Chief Investment Officer, Executive Vice

President and Secretary

2410 STILLHOUSE HEALTH HOLDINGS LLC AGAPE HEALTH HOLDINGS LLC BAINBRIDGE HEALTH HOLDINGS LLC BEST SW HEALTH HOLDINGS LLC BIJOU HEALTH HOLDINGS LLC BRUCE NEENAH HEALTH HOLDINGS LLC BURCH CREEK HEALTH HOLDINGS LLC CLARK HEALTH HOLDINGS LLC CONGAREE HEALTH HOLDINGS LLC CONRAD HEALTH HOLDINGS LLC CONWAY HEALTH HOLDINGS LLC DEER CREEK HEALTH HOLDINGS LLC EAST MESA HEALTH HOLDINGS LLC FLOYDE HEALTH HOLDINGS LLC FRANKLIN HEALTH HOLDINGS LLC GOODING HEALTH HOLDINGS LLC GRAND AVENUE HEALTH HOLDINGS LLC HARLAN HEIGHTS HEALTH HOLDINGS LLC HARRISON HEALTH HOLDINGS LLC HILL COUNTRY HEALTH HOLDINGS LLC HOLFORD HEALTH HOLDINGS LLC IRON HEALTH HOLDINGS LLC KETTLE CREEK HEALTH HOLDINGS LLC KNIGHT HEALTH HOLDINGS LLC LAKE POINTE HEALTH HOLDINGS LLC LAKEWOOD HEALTH HOLDINGS LLC LEDBETTER HEALTH HOLDINGS LLC LEGEND LAKE HEALTH HOLDINGS LLC LITTLE BLUE HEALTH HOLDINGS LLC LITTLETON HEALTH HOLDINGS LLC LONGBOARD HEALTH HOLDINGS LLC MADISON HEALTH HOLDINGS LLC MIDLAND NAMPA HEALTH HOLDINGS LLC NORDIC VALLEY HEALTH HOLDINGS LLC NORTH PARKWAY HEALTH HOLDINGS LLC OLMSTEAD HEALTH HOLDINGS LLC

PADUA HEALTH HOLDINGS LLC PLEASANT RUN HEALTH HOLDINGS LLC PRAIRIE RIDGE HEALTH HOLDINGS LLC PRIMROSE HEALTH HOLDINGS LLC QUAIL CREEK HEALTH HOLDINGS LLC RIO MESA HEALTH HOLDINGS LLC SECOND WEST HEALTH HOLDINGS LLC SEDGEWOOD HEALTH HOLDINGS LLC SHERMAN HEALTH HOLDINGS LLC SOMERS KENOSHA HEALTH HOLDINGS LLC STATLER HEALTH HOLDINGS LLC SUMMIT TRAIL HEALTH HOLDINGS LLC TOWERS PARK HEALTH HOLDINGS LLC TREASURE HILLS HEALTH HOLDINGS LLC TURNBERRY HEALTH HOLDINGS LLC VELDA ROSE HEALTH HOLDINGS LLC WEST 5600 HEALTH HOLDINGS LLC WEST OLIVE HEALTH HOLDINGS LLC WEST PINE HEALTH HOLDINGS LLC WOLF POINT HEALTH HOLDINGS LLC YUCCA FLATS HEALTH HOLDINGS LLC

## 24TH STREET HEALTHCARE ASSOCIATES LLC

ENSIGN SABINO LLC
GLENDALE HEALTHCARE ASSOCIATES LLC
HIGHLAND HEALTHCARE LLC
NORTH MOUNTAIN HEALTHCARE LLC
PARK WAVERLY HEALTHCARE LLC
PRESIDIO HEALTH ASSOCIATES LLC
RADIANT HILLS HEALTH ASSOCIATES LLC
SUNLAND HEALTH ASSOCIATES LLC, each a Nevada limited liability company

By: BANDERA HEALTHCARE LLC, a Nevada limited liability company, its sole member

By: THE ENSIGN GROUP, INC., a Delaware corporation, its sole member

By: Is/ Chad A. Keetch
Name: Chad A. Keetch
Title: Chief Investment Officer, Executive Vice
President and Secretary

C STREET HEALTH ASSOCIATES LLC ENSIGN PALM I LLC ENSIGN PANORAMA LLC

[Signature Page to First Amendment to First Lien Credit Agreement]

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ENSIGN SAN DIMAS LLC REDBROOK HEALTHCARE ASSOCIATES LLC VICTORIA VENTURA HEALTHCARE LLC EMPIRECARE HEALTH ASSOCIATES LLC, each a Nevada limited liability company

By: FLAGSTONE HEALTHCARE CENTRAL LLC, a Nevada limited liability company, its sole member

By: THE ENSIGN GROUP, INC., a Delaware corporation, its sole member

By: /s/ Chad A. Keetch

Name: Chad A. Keetch

Title: Chief Investment Officer, Executive Vice

President and Secretary

ENSIGN CLOVERDALE LLC
ENSIGN MONTGOMERY LLC
ENSIGN PLEASANTON LLC
ENSIGN SANTA ROSA LLC
ENSIGN SONOMA LLC
ENSIGN WILLITS LLC, each a Nevada limited liability company

By: FLAGSTONE HEALTHCARE NORTH, INC., a Nevada corporation, its sole member

By: Isl Soon Burnam

Name: Soon Burnam Title: Treasurer

BELL VILLA CARE ASSOCIATES LLC
COSTA VICTORIA HEALTHCARE LLC
DOWNEY COMMUNITY CARE LLC
ENSIGN WHITTIER EAST LLC
GATE THREE HEALTHCARE LLC
HB HEALTHCARE ASSOCIATES LLC
LEMON GROVE HEALTH ASSOCIATES LLC
SOUTHLAND MANAGEMENT LLC
WEST ESCONDIDO HEALTHCARE LLC, each a Nevada
limited liability company

By: FLAGSTONE HEALTHCARE SOUTH LLC, a Nevada limited liability company, its sole member

By: THE ENSIGN GROUP, INC., a Delaware corporation, its sole member

By: /s/ Chad A. Keetch

Name: Chad A. Keetch

Title: Chief Investment Officer, Executive Vice

[Signature Page to First Amendment to First Lien Credit Agreement]

#### President and Secretary

FORREST HILL HEALTHCARE LLC POMERADO RANCH HEALTHCARE LLC SOUTHERN OAKS HEALTHCARE LLC, each a Nevada limited liability company

By: KEYSTONE CARE LLC, a Nevada limited liability company, its sole member

By: THE ENSIGN GROUP, INC., a Delaware corporation, its sole member

By: Isl Chad A. Keetch

Name: Chad A. Keetch

Title: Chief Investment Officer, Executive Vice

President and Secretary

SUCCESSOR HEALTHCARE LLC, a Nevada limited liability company

By: MILESTONE HEALTHCARE LLC, a Nevada limited liability company, its sole member

By: THE ENSIGN GROUP, INC., a Delaware corporation, its sole member

By: /s/ Chad A. Keetch

Name: Chad A. Keetch

Title: Chief Investment Officer, Executive Vice

President and Secretary

MANOR PARK HEALTHCARE LLC, a Nevada limited liability company

By: PENNANT HEALTHCARE LLC, a Nevada limited liability company, its sole member

By: /s/ Soon Burnam

Name: Soon Burnam Title: Treasurer

STANDARD BEARER HEALTHCARE OP GP, LLC, a Delaware limited liability company

By: /s/ Chad A. Keetch

Name: Chad Keetch Title: President

[Signature Page to First Amendment to First Lien Credit Agreement]

# STANDARD BEARER HEALTHCARE OP, LP, a Delaware limited partnership

By: /s/ Chad A. Keetch

Name: Chad Keetch Title: President

TRI Len	JIST BANK, as the Administrative Agent and a der
Ву:	
	Name:
	Title:

[		], as a
Consenting L	.ender	
By:		
Name:		
Title:		

## **EXHIBIT A**

# Amended Credit Agreement

Deal CUSIP: 29358XAH7 Revolver CUSIP: 29358XAJ3

### THIRD AMENDED AND RESTATED CREDIT AGREEMENT

dated as of October 1, 2019

among

THE ENSIGN GROUP, INC.

and

STANDARD BEARER HEALTHCARE REIT, INC.
as Borrower

### THE LENDERS FROM TIME TO TIME PARTY HERETO

and

SUNTRUST BANK as Administrative Agent

SUNTRUST ROBINSON HUMPHREY, INC., BOFA SECURITIES, INC. and REGIONS SECURITIES LLC as Joint Lead Arrangers and Joint Book Managers

> BANK OF AMERICA, N.A. and REGIONS BANK as Co-Syndication Agents

> > and

BBVA USA,
CITIZENS BANK, N.A.,
FIFTH THIRD BANK
and
WELLS FARGO BANK, NATIONAL ASSOCIATION
as Co-Documentation Agents

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### THIRD AMENDED AND RESTATED CREDIT AGREEMENT

THIS THIRD AMENDED AND RESTATED CREDIT AGREEMENT (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, this "Agreement") is made and entered into as of October 1, 2019, by and among THE ENSIGN GROUP, INC., a Delaware corporation (the ""Ensign"), STANDARD BEARER HEALTHCARE REIT, INC., a Maryland corporation ("Ensign REIT" and, together with Ensign, collectively and each individually, the "Borrower"), the several banks and other financial institutions and lenders from time to time party hereto (the "Lenders") and SUNTRUST BANK, in its capacity as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), as issuing bank (in such capacity, an "Issuing Bank") and as swingline lender (in such capacity, the "Swingline Lender").

#### WITNESSETH:

WHEREAS, on May 30, 2014 (the "Original Closing Date"), the Borrower Ensign, the Administrative Agent and certain lenders entered into a Credit Agreement (the "2014 Credit Agreement");

WHEREAS, on February 5, 2016 (the "First Amendment and Restatement Date"), the BorrowerEnsign, the Administrative Agent and certain lenders entered into an Amended and Restated Credit Agreement (as amended, restated, amended and restated, supplemented or otherwise modified prior to the Second Amendment and Restatement Date (as defined below), the "2016 Credit Agreement"), which amended and restated the 2014 Credit Agreement in its entirety;

WHEREAS, on July 19, 2016 (the "Second Amendment and Restatement Date"), the BorrowerEnsign, the Administrative Agent and certain lenders entered into a Second Amended and Restated Credit Agreement (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement"), which amended and restated the 2016 Credit Agreement in its entirety;

WHEREAS, the Borrower Ensign has requested that the Lenders amend and restate the Existing Credit Agreement in order to, among other things, make available a credit facility consisting of a \$350,000,000 revolving credit facility;

WHEREAS, the Lenders, the Issuing Banks and the Swingline Lender party hereto have agreed to amend and restate the Existing Credit Agreement on the terms and conditions set forth in this Agreement and to provide and/or continue the Revolving Commitments, as the case may be, in the amounts set forth for each such Lender on Schedule I hereto on the Closing Date; and

WHEREAS, on the Closing Date, all Refinanced Indebtedness, together with all interest, fees and other amounts accrued and payable thereon, and all accrued fees and other amounts payable in respect of all "Letters of Credit" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement, shall be repaid in full with the proceeds of the initial Borrowings under this Agreement and each "Letter of Credit" (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement shall be continued as a Letter of Credit under this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Borrower Ensign, the Lenders, the Administrative Agent, the Issuing Banks and the Swingline Lender agree as follows:

#### ARTICLE I

#### **DEFINITIONS; CONSTRUCTION**

- Section 1.1. <u>Definitions</u>. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):
  - "2014 Credit Agreement" shall have the meaning set forth in the Recitals.
  - "2016 Credit Agreement" shall have the meaning set forth in the Recitals.
  - "Accounts Collateral" shall have the meaning set forth in Section 7.2(i).
- "Acquisition" shall mean (a) any Investment by the Borrower or any of its Subsidiaries in any other Person organized in the United States (with all or substantially all of the assets of such Person and its Subsidiaries located in the United States), pursuant to which such Person shall become a Subsidiary of the Borrower or any of its Subsidiaries or shall be merged or otherwise consolidated or combined with the Borrower or any of its Subsidiaries or (b) any acquisition by the Borrower or any of its Subsidiaries of the assets of any Person (other than a wholly owned Subsidiary of the Borrower) that constitute all or substantially all of the assets of such Person or a division or business unit of such Person, whether through purchase, capital lease, exercise of an option to purchase, merger or other business combination or transaction (and all or substantially all of such assets, division or business unit are located in the United States). With respect to a determination of the amount of an Acquisition, such amount shall include all consideration (including any deferred payments) set forth in the applicable agreements governing such Acquisition as well as the assumption of any Indebtedness in connection therewith.
- "Acquisition Consideration" shall mean purchase consideration for a Permitted Acquisition of an Excluded Subsidiary and all other payments (but excluding any related acquisition fees, costs and expenses incurred in connection with any Permitted Acquisition of an Excluded Subsidiary), directly or indirectly, by the Borrower or any of its Subsidiaries in exchange for, or as part of, or in connection with, a Permitted Acquisition of an Excluded Subsidiary, whether paid in cash or cash equivalents or by exchange of equity interests or of any property or by the assumption of debt of the Person or business unit or asset group of any Person acquired or proposed to be acquired in any such Acquisition or otherwise and whether payable at or prior to the consummation of a Permitted Acquisition of an Excluded Subsidiary or deferred for payment at any future time (including earn-outs); provided, that any such future payment that is subject to a contingency shall be considered Acquisition Consideration only to the extent of the reserve, if any, required under GAAP at the time of such sale to be established in respect thereof by the Borrower or any of its Subsidiaries; provided, further, that Acquisition Consideration shall not include (a) any consideration or payment paid by the Borrower or any of its Subsidiaries (i) with the net cash proceeds of Capital Stock of the Borrower Ensign to its shareholders and/or (ii) in the form of Capital Stock of the Borrower Ensign and (b) cash and cash equivalents acquired by the Borrower or any of its Subsidiaries as part of the applicable Permitted Acquisition of an Excluded Subsidiary.
  - "Additional Lender" shall have the meaning set forth in Section 2.23.
- "Adjusted LIBOR" shall mean, with respect to each Interest Period for a Eurodollar Loan, (i) the rate per annum equal to the London interbank offered rate for deposits in U.S. Dollars appearing on Reuters screen page LIBOR 01 (or on any successor or substitute page of such service or any successor to such service, or such other commercially available source providing such quotations as

may be designated by the Administrative Agent from time to time) at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period, with a maturity comparable to such Interest Period, divided by (ii) a percentage equal to 1.00% minus the then stated maximum rate of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves and without benefit of credits for proration, exceptions or offsets that may be available from time to time) expressed as a decimal (rounded upward to the next 1/100<sup>th</sup> of 1%) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided, that if the rate referred to in clause (i) above is not available at any such time for any reason, then the rate referred to in clause (i) shall instead be the interest rate per annum, as determined by the Administrative Agent, to be the arithmetic average of the rates per annum at which deposits in U. S. Dollars in an amount equal to the amount of such Eurodollar Loan are offered by major banks in the London interbank market to the Administrative Agent at approximately 11:00 A.M. (London time), two (2) Business Days prior to the first day of such Interest Period. For the avoidance of doubt, if Adjusted LIBOR shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Administrative Agent" shall have the meaning set forth in the introductory paragraph hereof.

"Administrative Questionnaire" shall mean, with respect to each Lender, an administrative questionnaire in the form provided by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"Affiliate" shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person; provided that from and after the consummation of the Pennant Transaction, none of the Pennant Subsidiaries shall constitute an Affiliate of the Borrower or any of its Subsidiaries. For the purposes of this definition, "Control" shall mean the power, directly or indirectly, either to (i) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person or (ii) direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by control or otherwise. The terms "Controlled by" and "under common Control with" have the meanings correlative thereto.

"Agents" shall mean, collectively, the Administrative Agent, the Lead Arrangers, the Co-Documentation Agents and the Co-Syndication Agents.

"Aggregate Revolving Commitment Amount" shall mean the aggregate principal amount of the Aggregate Revolving Commitments from time to time. On the Closing Date, the Aggregate Revolving Commitment Amount is \$350,000,000.

"Aggregate Revolving Commitments" shall mean, collectively, all Revolving Commitments of all Lenders at any time outstanding.

"Anti-Corruption Laws" shall have the meaning set forth in Section 4.21.

"Anti-Terrorism Order" shall mean Executive Order 13224, signed by President George W. Bush on September 23, 2001.

"Applicable Lending Office" shall mean, for each Lender and for each Type of Loan, the "Lending Office" of such Lender (or an Affiliate of such Lender) designated for such Type of Loan in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or such

Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"Applicable Margin" shall mean, as of any date, with respect to all Loans outstanding on such date or the letter of credit fee, as the case may be, the percentage per annum determined by reference to the applicable Leverage Ratio in effect on such date as set forth in the pricing grid below (the "Pricing Grid"); provided that a change in the Applicable Margin resulting from a change in the Leverage Ratio shall be effective on the second Business Day after the Borrower delivers each of the financial statements required by Section 5.1(a) and (b) and the Compliance Certificate required by Section 5.1(c); provided, further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Applicable Margin shall be at Level I as set forth in the Pricing Grid until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Margin shall be determined as provided above. Notwithstanding the foregoing, the Applicable Margin from the Closing Date until the date by which the financial statements and Compliance Certificate for the Fiscal Year ending December 31, 2019 are required to be delivered shall be at Level IV as set forth in the Pricing Grid. In the event that any financial statement or Compliance Certificate delivered hereunder is shown to be inaccurate (regardless of whether this Agreement or the Commitments are in effect or any Loans are outstanding when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin based upon the Pricing Grid (the "Accurate Applicable Margin") for any period that such financial statement or Compliance Certificate covered, then (i) the Borrower shall promptly deliver to the Administrative Agent a correct financial statement or Compliance Certificate, as the case may be, for such period, (ii) the Applicable Margin shall be adjusted such that after giving effect to the corrected financial statement or Compliance Certificate, as the case may be, the Applicable Margin shall be reset to the Accurate Applicable Margin based upon the Pricing Grid for such period and (iii) the Borrower shall promptly pay to the Administrative Agent, for the account of the Lenders, the accrued additional interest owing as a result of such Accurate Applicable Margin for such period. The provisions of this definition shall not limit the rights of the Administrative Agent and the Lenders with respect to Section 2.13(c) or Article VIII.

### Pricing Grid

Pricing Level	Leverage Ratio	Applicable Margin for Eurodollar Loans	Applicable Margin for Base Rate Loans	Applicable Margin for Letter of Credit Fees	Applicable Percentage for Commitment Fees
1	Greater than or equal to 2.50:1.00	2.50% per annum	1.50% per annum	2.50% per annum	0.45% per annum
Ш	Less than 2.50:1.00 but greater than or equal to 2.00:1.00	2.25% per annum	1.25% per annum	2.25% per annum	0.40% per annum
111	Less than 2.00:1.00 but greater than or equal to 1.50:1.00	2.00% per annum	1.00% per annum	2.00% per annum	0.35% per annum
IV	Less than 1.50:1.00 but greater than or equal to 1.00:1.00	1.75% per annum	0.75% per annum	1.75% per annum	0.30% per annum

Pricing Level	Leverage Ratio	Applicable Margin for Eurodollar Loans	Applicable Margin for Base Rate Loans	Applicable Margin for Letter of Credit Fees	Applicable Percentage for Commitment Fees
V	Less than 1.00:1.00	1.50% per annum	0.50% per annum	1.50% per annum	0.25% per annum

"Applicable Percentage" shall mean, as of any date, with respect to the commitment fee as of such date, the percentage per annum determined by reference to the Leverage Ratio in effect on such date as set forth in the Pricing Grid; provided that a change in the Applicable Percentage resulting from a change in the Leverage Ratio shall be effective on the second Business Day after which the Borrower delivers each of the financial statements required by Section 5.1(a) and (b) and the Compliance Certificate required by Section 5.1(c); provided, further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Applicable Percentage shall be at Level I as set forth in the Pricing Grid until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Percentage shall be determined as provided above. Notwithstanding the foregoing, the Applicable Percentage for the commitment fee from the Closing Date until the date by which the financial statements and Compliance Certificate for the Fiscal Year ending December 31, 2019 are required to be delivered shall be at Level IV as set forth in the Pricing Grid. In the event that any financial statement or Compliance Certificate delivered hereunder is shown to be inaccurate (regardless of whether this Agreement or the Commitments are in effect or any Loans are outstanding when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Percentage based upon the Pricing Grid (the "Accurate Applicable Percentage") for any period that such financial statement or Compliance Certificate covered, then (i) the Borrower shall promptly deliver to the Administrative Agent a correct financial statement or Compliance Certificate, as the case may be, for such period, (ii) the Applicable Percentage shall be adjusted such that after giving effect to the corrected financial statement or Compliance Certificate, as the case may be, the Applicable Percentage shall be reset to the Accurate Applicable Percentage based upon the Pricing Grid for such period and (iii) the Borrower shall promptly pay to the Administrative Agent, for the account of the Lenders, the accrued additional commitment fee owing as a result of such Accurate Applicable Percentage for such period. The provisions of this definition shall not limit the rights of the Administrative Agent and the Lenders with respect to Section 2.13(c) or Article VIII.

"Approved Fund" shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.4(b)) and accepted by the Administrative Agent, in the form of Exhibit A attached hereto or any other form approved by the Administrative Agent.

"Available Amount" shall mean, on any date, an amount not less than zero, equal to:

(a) the aggregate amount of Equity Issuance Proceeds (including upon conversion or exchange of a debt instrument into or for any Capital Stock (other than Disqualified Capital Stock)) received by <u>BorrowerEnsign</u> from or in exchange for the issuance of Capital Stock (other than Disqualified Capital Stock and any issuance or distribution of Capital Stock in connection with the Spin-Off Transaction and/or the Pennant Transaction) after the Original Closing Date and on or prior to such date; plus

- (b) the aggregate fair market value (determined as of the date of purchase and/or acquisition) of the Capital Stock (other than Disqualified Capital Stock) of any Person that is acquired by the BorrowerEnsign in connection with a Permitted Acquisition or other Acquisition permitted hereunder (the "Target Capital Stock") in exchange for Capital Stock (other than Disqualified Capital Stock) of the BorrowerEnsign that is issued by the BorrowerEnsign to the seller(s) or issuer(s) of such Target Capital Stock after the Original Closing Date and on or prior to such date; plus
- (c) the aggregate fair market value of assets or Real Estate (determined as of the date of purchase and/or acquisition) acquired in exchange for Capital Stock (other than Disqualified Capital Stock) of <a href="mailto:the-BorrowerEnsign">the BorrowerEnsign</a> after the Original Closing Date and on or prior to such date; minus
- (d) the aggregate amount of any (i) Acquisition Consideration for all Permitted Acquisitions of Excluded Subsidiaries and other Investments in Excluded Subsidiaries utilizing the Acquisition Consideration Available Amount (as defined in the Existing Credit Agreement), in each case, pursuant to Section 7.4(h) on or after the Original Closing Date and on or prior to the Closing Date and (ii) Investments made pursuant to Section 7.4(e) and/or Section 7.4(h) (in each case, in reliance on the then-outstanding Available Amount) on or after the Closing Date and on or prior to such date; minus
- (e) the aggregate amount of any Restricted Payments made pursuant to <u>Section 7.5(viii)</u> (in each case, in reliance on the then-outstanding Available Amount) made since the Original Closing Date and on or prior to such date.
- "Availability Period" shall mean the period from the Closing Date to but excluding the applicable Revolving Commitment Termination Date.
- "Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.
- "<u>Bail-In Legislation</u>" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.
- "Bank Product Obligations" shall mean, collectively, all obligations and other liabilities of any Loan Party to any Bank Product Provider arising with respect to any Bank Products.
- "Bank Product Provider" shall mean any Person that (i) is a Lender or an Affiliate of a Lender that provides a Bank Product to a Loan Party and (ii) except when the Bank Product Provider is either (A) Wells Fargo Bank, National Association and its Affiliates with respect to Bank Products in existence on the Closing Date or (B) SunTrust Bank and its Affiliates, has provided prior written notice to the Administrative Agent which has been acknowledged by the Borrower of (x) the existence of such Bank Product, (y) the maximum dollar amount of obligations arising thereunder (the "Bank Product Amount") and (z) the methodology to be used by such parties in determining the obligations under such Bank Product from time to time; provided, the term "Bank Product Provider" shall include any Person that is the Administrative Agent, an Affiliate of the Administrative Agent, a Lender or an Affiliate of a Lender as of the Closing Date or as of the date that such Person provides any Bank Product to any Loan Party, but subsequently ceases to be the Administrative Agent, an Affiliate of the Administrative Agent, a Lender or an Affiliate of a Lender, as the case may be. In no event shall any Bank Product Provider

acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Bank Products except that each reference to the term "Lender" in <a href="Article IX">Article IX</a> and <a href="Section 10.3(b)</a> shall be deemed to include such Bank Product Provider and in no event shall the approval of any such person in its capacity as Bank Product Provider be required in connection with the release or termination of any security interest or Lien of the Administrative Agent. The Bank Product Amount may be changed from time to time upon written notice to the Administrative Agent by the applicable Bank Product Provider. No Bank Product Amount may be established at any time that a Default or Event of Default exists.

"Bank Products" shall mean any of the following services provided to any Loan Party by any Bank Product Provider: (a) any treasury or other cash management services, including deposit accounts, automated clearing house (ACH) origination and other funds transfer, depository (including cash vault and check deposit), zero balance accounts and sweeps, return items processing, controlled disbursement accounts, positive pay, lockboxes and lockbox accounts, account reconciliation and information reporting, payables outsourcing, payroll processing, trade finance services, investment accounts and securities accounts, and (b) card services, including credit cards (including purchasing cards and commercial cards), prepaid cards, including payroll, stored value and gift cards, merchant services processing, and debit card services.

"Base Rate" shall mean the highest of (i) the rate which the Wall Street Journal reports from time to time as the prime lending rate, as in effect from time to time, (ii) the Federal Funds Rate, as in effect from time to time, plus one-half of one percent (0.50%) per annum, (iii) Adjusted LIBOR determined on a daily basis for an Interest Period of one (1) month, plus one percent (1.00%) per annum and (iv) zero percent (0.00%). Any change in the Base Rate due to a change in the prime lending rate, the Federal Funds Rate or Adjusted LIBOR shall be effective as of the opening of business on the day of such change in the prime lending rate, the Federal Funds Rate or Adjusted LIBOR, respectively.

"<u>Beneficial Ownership Certification</u>" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

"Benefit Plan" shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party shall mean an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Borrower" shall have the meaning set forth in the introductory paragraph hereof.

"Borrowing" shall mean a borrowing consisting of (i) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (ii) a Swingline Loan.

"Business Day" shall mean any day other than (i) a Saturday, Sunday or other day on which commercial banks in Atlanta, Georgia are authorized or required by law to close and (ii) if such day relates to a Borrowing of, a payment or prepayment of principal or interest on, a conversion of or into, or an Interest Period for, a Eurodollar Loan or a notice with respect to any of the foregoing, any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Lease Obligations" of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) of real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that, (i) for the avoidance of doubt, any lease of a property operated as a healthcare facility shall be accounted for as an operating lease and not as a Capital Lease Obligation, and (ii) any lease that is accounted for by any Person as an operating lease as of the Original Closing Date and any lease entered into in the future that would have been accounted for as an operating lease if such lease had been in effect on the Original Closing Date shall be accounted for as an operating lease and not as a Capital Lease Obligation.

"Capital Stock" shall mean all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Exchange Act).

"Cash Collateralize" shall mean, in respect of any obligations, to provide and pledge (as a first priority perfected security interest) cash collateral for such obligations in Dollars with the Administrative Agent pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent (and "Cash Collateralized" and "Cash Collateralization" have the corresponding meanings).

"CFC" shall mean any Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"CHAMPVA" shall mean, collectively, the Civilian Health and Medical Program of the Department of Veterans Affairs, a program of medical benefits covering retirees and dependents of former members of the armed services administered by the United States Department of Veterans Affairs, and all laws, rules, regulations, manuals, orders or requirements pertaining to such program.

"Change in Control" shall mean the occurrence of one or more of the following events: (i) any sale, lease, exchange or other transfer (in a single transaction or a series of related transactions) of all or substantially all of the assets of the Borrower Ensign to any Person or "group" (within the meaning of the Exchange Act and the rules of the Securities and Exchange Commission thereunder in effect on the date hereof), (ii) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or "group" (within the meaning of the Exchange Act and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of 35% or more of the outstanding shares of the voting equity interests of the Borrower, or Ensign, (iii) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower Ensign cease to be composed of individuals who are Continuing Directors, or (iv) Ensign shall cease to own, directly or indirectly, beneficially or of record, less than 90% of the outstanding shares of the voting equity interests of Ensign REIT. It being understood and agreed that (x) the Pennant Transactions shall not constitute a Change in Control and (y) a Person shall not be deemed to have beneficial ownership of Capital Stock subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement so long as Payment in Full of the Obligations is a condition to the effectiveness of the acquisition contemplated by such stock purchase agreement, merger agreement or similar agreement.

"Change in Law" shall mean (i) the adoption of any applicable law, rule or regulation after the date of this Agreement, (ii) any change in any applicable law, rule or regulation, or any change

in the interpretation, implementation or application thereof, by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender (or its Applicable Lending Office) or any Issuing Bank (or, for purposes of Section 2.18(b), by the Parent Company of such Lender or such Issuing Bank, if applicable) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that for purposes of this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, implemented or issued.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or each of the Loans comprising such Borrowing, is a Revolving Loan, a Swingline Loan, an Incremental Term Loan, an Extended Term Loan or an Other Refinancing Term Loan and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, a Swingline Commitment, an Incremental Term Loan Commitment, an Extended Term Loan Commitment or an Other Refinancing Term Loan Commitment.

"Closing Date" shall mean the date on which the conditions precedent set forth in Section 3.1 and Section 3.2 have been satisfied or waived in accordance with Section 10.2.

"Closing Date Refinancing" shall mean (a) the payment in full of the Refinanced Indebtedness together with all accrued interest, fees and other amounts payable thereon and all accrued fees and other amounts payable in respect of all "Letters of Credit" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement and (b) the continuance of all "Letters of Credit" (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement as Letters of Credit under this Agreement.

- "Co-Documentation Agents" shall have the meaning set forth in Section 9.12.
- "Co-Syndication Agents" shall have the meaning set forth in Section 9.12.
- "Code" shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Collateral" shall mean all tangible and intangible property, real and personal, of any Loan Party that is or purports to be the subject of a Lien to the Administrative Agent to secure the whole or any part of the Obligations or any Guarantee thereof, and shall include, without limitation, all casualty insurance proceeds and condemnation awards with respect to any of the foregoing.

"Collateral Access Agreement" shall mean each landlord waiver or bailee agreement granted to, and in form and substance reasonably acceptable to, the Administrative Agent.

"Collateral Documents" shall mean, collectively, the Guaranty and Security Agreement, all Copyright Security Agreements, all Patent Security Agreements, all Trademark Security Agreements, all Collateral Access Agreements, all loss payee endorsements required by Section 5.8, and all other instruments and agreements now or hereafter securing or perfecting the Liens securing the whole or any part of the Obligations or any Guarantee thereof, all UCC financing statements and stock powers, and all other documents, instruments, agreements and certificates executed and delivered by any Loan Party to the Administrative Agent and the Lenders in connection with the foregoing.

"Commitment" shall mean a Revolving Commitment, a Swingline Commitment or a Term Loan Commitment or any combination thereof (as the context shall permit or require).

"Compliance Certificate" shall mean a certificate from the principal executive officer or the principal financial officer of the Borrower in the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit 5.1(c).

"Consolidated EBITDA" shall mean, for the BorrowerEnsign and its Subsidiaries for any period, an amount equal to the sum of (i) Consolidated Net Income for such period plus (ii) to the extent deducted in determining Consolidated Net Income for such period, and without duplication, (A) Consolidated Interest Expense, amortization or write-off of debt discount and debt issuance costs and commissions and discounts, premiums and other fees, expenses and charges associated with Indebtedness including underwriting, arrangement and commitment fees, letter of credit fees, and Bank Product fees and prepayment or related premiums, (B) income tax expense determined on a consolidated basis in accordance with GAAP, (C) depreciation and amortization determined on a consolidated basis in accordance with GAAP, (D) unusual, extraordinary or non-recurring charges or losses determined on a consolidated basis in accordance with GAAP, (E) severance, business integration, restructuring or optimization costs determined on a consolidated basis in accordance with GAAP, (F) costs and expenses in connection with equity or stock option plans or other employee benefit plans or stock subscriptions to the extent funded directly or indirectly with proceeds of an equity issuance by, or capital contribution to, the Borrower Ensign or constituting non-cash charges determined on a consolidated basis in accordance with GAAP, (G) any non-cash charges or expenses determined on a consolidated basis in accordance with GAAP; provided that to the extent any such non-cash charge or expense represents an accrual or reserve for a potential cash item in any future period, the Borrower may elect to either not add such item pursuant to this clause (G) (or to add such item in part), or to have the cash payment in respect thereof in such future period (to the extent previously added pursuant to this clause (G)) subtracted from Consolidated EBITDA to such extent in such future period in which such cash payment occurs, and excluding amortization of a prepaid cash item that was paid in a prior period, (H) expenses related to Permitted Acquisitions and other Acquisitions permitted hereunder or approved in writing by the Required Lenders (or attempted Permitted Acquisitions and attempted Acquisitions permitted hereunder or approved in writing by the Required Lenders), equity issuances (whether or not consummated) and the Related Transactions, in each case for such period, (I) costs, fees, expenses or charges related to this Agreement and the transactions related hereto, and (J) charges, costs, losses and expenses relating to any Development Facility solely during the first twelve (12) months following the opening of such Development Facility; provided that the amount added back in the determination of Consolidated EBITDA for such Test Period pursuant to this clause (J) shall not exceed 20.0% of Consolidated EBITDA (after giving effect to such addbacks) of the Borrower Ensign and its Subsidiaries for such period, minus (iii)(A) unusual, extraordinary or non-recurring gains determined on a consolidated basis in accordance with GAAP and (B) non-cash gains (excluding any non-cash gain to the extent it (x) represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period, (y) is in respect of cash received in a prior period and not included in Consolidated Net Income or Consolidated EBITDA in a prior period or (z) represents an accrual in the ordinary course); provided that if any non-cash gain represents an accrual or asset outside the ordinary course for potential cash items in any future period, the cash payment in respect thereof shall in such future period be added to Consolidated EBITDA for such period to the extent such non-cash gain was excluded from Consolidated EBITDA in any prior period; plus (iv) to the extent not included in the calculation of Consolidated Net Income or not added back to Consolidated Net Income pursuant to clause (ii) above, proceeds of business interruption insurance (to the extent actually received in cash); provided that for purposes of calculating compliance with the financial covenants set forth in Article VI, to the extent that during such period any Loan Party shall have consummated a Permitted Acquisition or other Acquisition permitted hereunder or approved in writing by the Required Lenders, or

any sale, transfer or other disposition of any Person, business, property or assets (other than the Pennant Transaction), Consolidated EBITDA shall be calculated on a Pro Forma Basis with respect to such Person, business, property or assets so acquired or disposed of. Notwithstanding the foregoing, the total amount of Consolidated EBITDA that is attributable to Excluded Subsidiaries (and their respective Subsidiaries) shall not exceed the applicable percentage (determined by reference to the applicable Leverage Ratio) set forth in the grid below (the "Maximum Attributable EBITDA Percentage") of Consolidated EBITDA (prior to inclusion of Consolidated EBITDA of any Excluded Subsidiary and its Subsidiaries) of the BorrowerEnsign and its Subsidiaries in any Test Period (determined on a consolidated basis, inclusive of intercompany transactions):

Level	Leverage Ratio	Maximum Attributable EBITDA Percentage
1	Greater than or equal to 2.75:1.00	50%
II	Less than 2.75:1.00	60%

The applicable Maximum Attributable EBITDA Percentage shall (i) be determined as of the end of each Test Period, on the date (each, a "Maximum Attributable EBITDA Percentage Determination Date") on which the Borrower delivers financial statements pursuant to Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c) for such Test Period or the last Fiscal Quarter of such Test Period, as applicable; provided that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Maximum Attributable EBITDA Percentage shall be set at Level I in the grid above until such time as such financial statements and Compliance Certificate are delivered, at which time the Maximum Attributable EBITDA Percentage shall be determined as provided above, and (ii) be determined with Consolidated EBITDA calculated based on the Maximum Attributable EBITDA Percentage in effect immediately prior to giving effect to any changes in the Maximum Attributable EBITDA Percentage on such Maximum Attributable EBITDA Percentage Determination Date. Any change in the Maximum Attributable EBITDA Percentage shall be effective from and after the first day of the Fiscal Quarter in which such Maximum Attributable EBITDA Percentage Determination Date occurs (which change, for the avoidance of doubt, (i) shall apply with respect to Consolidated EBITDA for the Test Period for which the Maximum Attributable EBITDA Percentage was determined and future Test Periods until a subsequent change in the Maximum Attributable EBITDA Percentage pursuant hereto and (ii) shall apply only prospectively (on and after the first day of such Fiscal Quarter) for all determinations based on Consolidated EBITDA made under this Agreement (including pricing and basket capacity). The Maximum Attributable EBITDA Percentage shall be set at Level I in the grid set forth above until the Maximum Attributable EBITDA Percentage Determination Date for the Test Period ending December 31, 2019 occurs. Notwithstanding the foregoing or anything to the contrary contained herein, (i) from and after the Closing Date, Consolidated EBITDA for each of the Fiscal Quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be deemed to be \$39,213,000, \$46,140,000, \$48,133,000 and \$47,903,000, respectively, in each case as may be subject to addbacks and adjustments (without duplication) pursuant to the second paragraph of Section 1.3 for the applicable Test Period and (ii) Consolidated EBITDA for the Fiscal Quarter ending September 30, 2019 shall be determined in accordance with the foregoing definition as if the Pennant Transaction had been consummated as of the first day of such Fiscal Quarter.

"Consolidated EBITDAR" shall mean, for the Borrower Ensign and its Subsidiaries for any Test Period, an amount equal to the sum of (i) Consolidated EBITDA for such Test Period plus the aggregate amount of Consolidated EBITDA attributable to Excluded Subsidiaries (and their respective Subsidiaries) for such Test Period, if any, that was excluded from the calculation of Consolidated

EBITDA for such Test Period as a result of the provision in the definition of Consolidated EBITDA limiting Consolidated EBITDA attributable to Excluded Subsidiaries (and their respective Subsidiaries) for such Test Period to the Maximum Attributable EBITDA Percentage of Consolidated EBITDA (prior to inclusion of Consolidated EBITDA of any Excluded Subsidiary and its Subsidiaries) of the Borrower Ensign and its Subsidiaries in such Test Period and (ii) Consolidated Lease Expense for such Test Period. Notwithstanding the foregoing or anything to the contrary contained herein, (i) from and after the Closing Date, Consolidated EBITDAR for each of the Fiscal Quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be deemed to be \$64,479,000, \$71,630,000, \$77,548,000 and \$78,322,000, respectively, and (ii) Consolidated EBITDAR for the Fiscal Quarter ending September 30, 2019 shall be determined in accordance with the foregoing definition as if the Pennant Transaction had been consummated as of the first day of such Fiscal Quarter.

"Consolidated Interest Expense" shall mean, for the Borrower Ensign and its Subsidiaries for any period, determined on a consolidated basis in accordance with GAAP, the sum of (i) total interest expense, including, without limitation, the interest component of any payments in respect of Capital Lease Obligations, expensed during such period (whether or not actually paid during such period) plus (ii) the net amount payable or expensed or deducted in calculating Consolidated Net Income (or minus the net amount receivable) with respect to Hedging Transactions during such period (whether or not actually paid or received during such period). Notwithstanding the foregoing or anything to the contrary contained herein, (i) from and after the Closing Date, Consolidated Interest Expense for each of the Fiscal Quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be deemed to be \$3,350,000, \$2,953,000, \$2,929,000, and \$3,200,000, respectively, and (ii) Consolidated Interest Expense for the Fiscal Quarter ending September 30, 2019 shall be determined in accordance with the foregoing definition as if the Pennant Transaction had been consummated as of the first day of such Fiscal Quarter.

"Consolidated Lease Expense" shall mean, for the Borrower Ensign and its Subsidiaries for any period, the aggregate amount of fixed and contingent rentals expensed with respect to leases of real and personal property (excluding Capital Lease Obligations) for such period (whether or not actually paid during such period) determined on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing or anything to the contrary contained herein, (i) from and after the Closing Date, Consolidated Lease Expense for each of the Fiscal Quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be deemed to be \$25,266,000, \$25,490,000, \$29,415,000, and \$30,419,000, respectively, and (ii) Consolidated Lease Expense for the Fiscal Quarter ending September 30, 2019 shall be determined in accordance with the foregoing definition as if the Pennant Transaction had been consummated as of the first day of such Fiscal Quarter.

"Consolidated Net Income" shall mean, for the Borrower Ensign and its Subsidiaries for any period, the net income (or loss) of the Borrower Ensign and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from Consolidated Net Income (to the extent otherwise included therein) (i) any extraordinary gains or losses, (ii) any gains attributable to write-ups of assets or the sale of assets (other than the sale of inventory in the ordinary course of business), (iii) any equity interest of the Borrower or any Subsidiary of the Borrower in the unremitted earnings of any Person that is not a Subsidiary, and (iv) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary or the date that such Person's assets are acquired by the Borrower or any Subsidiary. Notwithstanding the foregoing or anything to the contrary contained herein, (i) from and after the Closing Date, Consolidated Net Income for each of the Fiscal Quarters ended September 30, 2018, December 31, 2018, March 31, 2019 and June 30, 2019 shall be deemed to be \$18,609,000, \$23,863,000, \$24,964,000, and \$24,303,000, respectively, and (ii) Consolidated Net Income for the Fiscal Quarter

ending September 30, 2019 shall be determined in accordance with the foregoing definition as if the Pennant Transaction had been consummated as of the first day of such Fiscal Quarter.

"Consolidated Total Debt" shall mean, as of any date, all Indebtedness of the BorrowerEnsign and its Subsidiaries measured on a consolidated basis as of such date, but excluding Hedging Obligations.

"Consolidated Total Net Debt" shall mean, as of any date, (i) Consolidated Total Debt minus (ii) all cash and Permitted Investments of the Borrower and its Subsidiaries as of such date, except that the aggregate amount of cash and Permitted Investments deducted from Consolidated Total Debt at any time pursuant to this clause (ii) shall not exceed \$175,000,000.

"Continuing Director" shall mean, with respect to any period, any individuals (A) who were members of the board of directors or other equivalent governing body of the Borrower Ensign on the first day of such period, (B) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (C) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

"Contractual Obligation" of any Person shall mean any provision of any security issued by such Person or of any agreement, instrument or undertaking under which such Person is obligated or by which it or any of the property in which it has an interest is bound.

"Copyright" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Copyright Security Agreement" shall mean any Copyright Security Agreement executed by a Loan Party owning registered Copyrights or applications for Copyrights in favor of the Administrative Agent for the benefit of the Secured Parties, both on the Original Closing Date and thereafter.

### "Covered Entity" shall mean any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).
  - "Covered Party" shall have the meaning set forth in Section 10.20.
- "Credit Agreement Refinancing Indebtedness" shall mean any Indebtedness incurred pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Loans or Commitments (including any successive Credit Agreement Refinancing Indebtedness) ("Refinanced Debt"); provided that (a) such exchanging, extending, renewing, replacing or refinancing Indebtedness (including, if such Indebtedness includes any

Other Refinancing Revolving Commitments, the unused portion of such Other Refinancing Revolving Commitments) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (and, in the case of Refinanced Debt consisting, in whole or in part, of unused Revolving Commitments, Extended Revolving Commitments or Other Refinancing Revolving Commitments, the amount thereof) except by an amount equal to unpaid accrued interest and premium thereon plus reasonable upfront fees and original issue discount on such exchanging, extending, renewing, replacing or refinancing Indebtedness, plus other reasonable and customary fees and expenses in connection with such exchange, modification, refinancing, refunding, renewal, replacement or extension, (b) such Indebtedness has a maturity equal to or later than, and, except in the case of Other Refinancing Revolving Commitments, a Weighted Average Life to Maturity equal to or greater than, the Refinanced Debt, (c) the terms and conditions of such Indebtedness (except as otherwise provided in clause (b) above and with respect to pricing, premiums and optional prepayment or redemption terms) are substantially identical to, or (taken as a whole) are no more favorable to the lenders or holders providing such Indebtedness, than those applicable to the Loans or Commitments being refinanced (except for covenants or other provisions applicable only to periods after the latest Maturity Date at the time of incurrence of such Indebtedness) (provided that satisfaction of this clause (c) shall be evidenced by a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent at least three (3) Business Days prior to the incurrence of such Indebtedness, providing a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, and a certificate of a Responsible Officer of the Borrower stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (c) which shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent notifies the Borrower within such three (3) Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees)) and (d) such Refinanced Debt shall be repaid, or satisfied and discharged, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained.

"CTRI" shall mean CareTrust REIT, Inc., a Maryland corporation.

"<u>Debtor Relief Laws</u>" shall mean the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"<u>Default</u>" shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Default Interest" shall have the meaning set forth in Section 2.13(c).

"<u>Default Right</u>" shall have the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"<u>Defaulting Lender</u>" shall mean, subject to <u>Section 2.26(c)</u>, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good-faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the

Administrative Agent or any Issuing Bank or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good-faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal or foreign regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.26(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Bank, each Swingline Lender and each Lender.

"<u>Designated Non-Cash Consideration</u></u>" shall mean the fair market value of non-cash consideration received by Borrower or any of its Subsidiaries in connection with a sale or other disposition of assets that is so designated as "Designated Non-Cash Consideration" pursuant to a certificate from a Responsible Officer of the Borrower setting forth the basis of such valuation, minus the amount of cash or Permitted Investments received in connection with a subsequent sale of or collection on such Designated Non-Cash Consideration.

"<u>Development Facility</u>" means any newly constructed, rehabilitated or developed healthcare facility of the Borrower or any Subsidiary.

"<u>Disqualified Capital Stock</u>" shall mean, with respect to any Person, any Capital Stock of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable or redeemable at the sole option of the holder thereof (other than solely (x) for Qualified Capital Stock or upon a sale of assets, casualty event or a change of control, in each case, subject to the prior payment in full of the Obligations or (y) as a result of a redemption that by the terms of such Capital Stock is contingent upon such redemption not being prohibited by this Agreement), pursuant to a sinking fund obligation or otherwise (other than solely for Qualified Capital Stock) or exchangeable or convertible into debt securities of the issuer thereof at the sole option of the holder thereof, in whole or in part, on or prior to the date that is 181 days after the latest Maturity Date then in effect at the time of issuance thereof.

"<u>Disqualified Institutions</u>" shall mean those Persons who are direct competitors of the Borrower or any of its Subsidiaries and any Affiliate of such competitors that are, in each case, identified in writing to the Administrative Agent by the Borrower from time to time (the writings described herein,

collectively, the "<u>Disqualified Institutions List</u>"); <u>provided</u> that any update or supplement to the Disqualified Institutions List shall not apply retroactively to disqualify any parties that have previously acquired an assignment or a participation in any Commitment or Loan.

- "<u>Disqualified Institutions List</u>" shall have the meaning assigned to such term in the definition of Disqualified Institution.
  - "Dollar(s)" and the sign "\$" shall mean lawful money of the United States.
- "<u>Domestic Subsidiary</u>" shall mean each Subsidiary of the Borrower that is organized under the laws of the United States or any state or district thereof.
  - "Earlier LC Maturity Date" shall have the meaning set forth in Section 2.22(a).
  - "Earlier Swingline Maturity Date" shall have the meaning set forth in Section 2.4(f).
- "EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.
- "EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.
- "EEA Resolution Authority" shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.
- "Employee Matters Agreement" shall mean the Employee Matters Agreement, dated as of the Original Closing Date, by and between the Borrower Ensign and CTRI.
  - "Ensign" shall have the meaning set forth in the introductory paragraph hereof.
- "Ensign Guaranty" shall mean certain Guarantees of PropCo Master Leases entered into by <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> in favor of the PropCo Landlords, in each case in the form of such Guarantees in effect on the Closing Date or otherwise reasonably acceptable to the Administrative Agent.
- "Ensign REIT" shall have the meaning set forth in the introductory paragraph hereof.
- "Environmental Laws" shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.
- "Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (i) any actual or alleged violation of any

Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Issuance" shall mean (a) any issuance or sale after the Original Closing Date by <a href="the-BorrowerEnsign">the BorrowerEnsign</a> of any Capital Stock, or (b) the receipt by <a href="the-BorrowerEnsign">the BorrowerEnsign</a> after the Original Closing Date of any capital contribution (whether or not evidenced by any Capital Stock issued by the recipient of such contribution).

"Equity Issuance Proceeds" shall mean, with respect to any Equity Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Equity Issuance net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants' fees, underwriting discounts and commissions and other fees and expenses actually incurred in connection therewith.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time, and any successor statute thereto and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" shall mean any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a "single employer" or otherwise aggregated with the Borrower or any of its Subsidiaries under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

"ERISA Event" shall mean (i) any "reportable event" as defined in Section 4043 of ERISA with respect to a Plan (other than an event as to which the PBGC has waived under subsection .22, .23, .25, .27 or .28 of PBGC Regulation Section 4043 the requirement of Section 4043(a) of ERISA that it be notified of such event); (ii) any failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance, there being or arising any "unpaid minimum required contribution" or "accumulated funding deficiency" (as defined or otherwise set forth in Section 4971 of the Code or Part 3 of Subtitle B of Title 1 of ERISA), whether or not waived, or any filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code or Section 302 of ERISA with respect to any Plan or Multiemployer Plan, or that such filing may be made, or any determination that any Plan is, or is expected to be, in at-risk status under Title IV of ERISA; (iii) any incurrence by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to any Plan or Multiemployer Plan (other than for premiums due and not delinquent under Section 4007 of ERISA); (iv) any institution of proceedings, or the occurrence of an event or condition which would reasonably be expected to constitute grounds for the institution of proceedings by the PBGC, under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (v) any incurrence by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan, or the receipt by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice that a Multiemployer Plan is in endangered or critical status under Section 305 of ERISA; (vi) any receipt by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice, or any receipt by any Multiemployer Plan from the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA;

- (vii) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA; or (viii) any filing of a notice of intent to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, any filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan, or the termination of any Plan under Section 4041(c) of ERISA.
- "EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.
- "Eurodollar", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to Adjusted LIBOR.
  - "Event of Default" shall have the meaning set forth in Section 8.1.
- "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended and in effect from time to time.
- "Excluded Subsidiary" shall mean (i) each Subsidiary of the BorrowerEnsign that is designated by the Borrower as an "Excluded Subsidiary" on Schedule 4.14 on the Closing Date, (ii) each Insurance Subsidiary and (iii) each other Subsidiary of the BorrowerEnsign that is designated by the Borrower by written notice to the Administrative Agent as an "Excluded Subsidiary" pursuant to Section 5.18 subsequent to the Closing Date. Notwithstanding the foregoing, (a) in no event shall any tenant under any PropCo Master Lease be an Excluded Subsidiary and (b) in no event shall Ensign REIT or any Intermediate Entity be an Excluded Subsidiary.
  - "Excluded Subsidiary Designation" shall have the meaning set forth in Section 5.18.
- "Excluded Subsidiary Designation Amount" shall have the meaning set forth in Section 5.18.
  - "Excluded Subsidiary Revocation" shall have the meaning set forth in Section 5.18.
- "Excluded Taxes" shall mean, with respect to any Recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) the Recipient's net income by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Recipient is located, and (c) any U.S. federal withholding taxes that (i) are imposed on amounts payable to such Recipient pursuant to a law in effect at the time such Recipient becomes a Recipient under this Agreement or designates a new lending office, except in each case to the extent that amounts with respect to such taxes were payable either (A) to such Recipient's assignor immediately before such Recipient became a Recipient under this Agreement, or (B) to such Recipient immediately before it designated a new lending office, (ii) are attributable to such Recipient's failure to comply with Section 2.20(e), or (iii) are imposed under FATCA.
  - "Existing Credit Agreement" shall have the meaning set forth in the Recitals.
- "Existing Letters of Credit" shall mean those letters of credit issued under the Existing Credit Agreement which remain outstanding as of the Closing Date that are listed on Schedule II.

- "Extended Commitments" shall mean the Extended Term Loan Commitments and the Extended Revolving Commitments.
- "Extended Facility" shall mean any additional tranche established pursuant to <u>Section 2.27</u> reflecting an extension of the maturity date and, if applicable, amortization schedule of any existing tranche.
- "Extended Facility Agreement" shall mean an Extended Revolving Credit Facility Agreement or an Extended Term Facility Agreement, as the context may require.
- "Extended Facility Closing Date" shall mean, with regard to an Extended Facility, the first date all the conditions precedent set forth in the respective Extended Facility Agreement are satisfied or waived in accordance with Section 10.2.
- "Extended Facility Lender" shall mean, at any time, with regard to an Extended Facility, any Lender that holds Loans or Commitments under such Extended Facility at such time.
  - "Extended Revolving Commitments" shall have the meaning set forth in Section 2.27.
- "Extended Revolving Credit Facility" shall mean an Extended Facility designated as an "Extended Revolving Credit Facility" by the Borrower and established pursuant to an Extended Revolving Credit Facility Agreement.
- "Extended Revolving Credit Facility Agreement" shall mean an agreement setting forth the terms and conditions relating to an Extended Revolving Credit Facility.
- "Extended Term Facility" shall mean an Extended Facility designated as an "Extended Term Facility" by the Borrower and established pursuant to an Extended Term Facility Agreement.
- "Extended Term Facility Agreement" shall mean an agreement setting forth the terms and conditions relating to an Extended Term Facility.
  - "Extended Term Loan Commitment" shall have the meaning set forth in Section 2.27.
  - "Extended Term Loans" shall have the meaning set forth in Section 2.27.
  - "Extending Revolving Lender" shall have the meaning set forth in Section 2.27.
  - "Extending Term Loan Lender" shall have the meaning set forth in Section 2.27.
  - "Extension" shall have the meaning set forth in Section 2.27.
  - "Extension Offer" shall have the meaning set forth in Section 2.27.
- "FATCA" shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code or any intergovernmental agreements entered into in connection with the implementation of such Sections of the Code.
- "Federal Funds Rate" shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System, as published by the Federal Reserve

Bank of New York on the next succeeding Business Day or, if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upwards, if necessary, to the next 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent. For the avoidance of doubt, if the Federal Funds Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"Fee Letter" shall mean that certain fee letter, dated as of May 3, 2019, executed by SunTrust Robinson Humphrey, Inc. and SunTrust Bank and accepted by the Borrower Ensign, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"<u>First Amendment and Restatement Date</u>" shall have the meaning set forth in the Recitals.

"Fiscal Quarter" shall mean any fiscal quarter of the Borrower Ensign.

"Fiscal Year" shall mean any fiscal year of the Borrower Ensign.

"Foreign Person" shall mean any Person that is not a U.S. Person.

"Foreign Subsidiary" shall mean each Subsidiary of the Borrower that is organized under the laws of a jurisdiction other than one of the fifty states of the United States or the District of Columbia.

"GAAP" shall mean generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3.

"Governmental Authority" shall mean the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government. "Governmental Authority" shall include any agency, branch or other governmental body charged with the responsibility, or vested with the authority to administer or enforce, any Health Care Laws, including any Medicare or Medicaid contractors, intermediaries or carriers.

"Governmental Payor" shall mean Medicare, Medicaid, TRICARE, CHAMPVA, any state health plan adopted pursuant to Title XIX of the Social Security Act, any other state or federal health care program and any other Governmental Authority which presently or in the future maintains a Third Party Payor Program.

"Guarantee" of or by any Person (the "guarantor") shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (iv) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness; provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if

not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantor" shall mean each of the Subsidiary Loan Parties.

"Guaranty and Security Agreement" shall mean the Third Amended and Restated Guaranty and Security Agreement, dated as of the Closing Date and substantially in the form of <a href="Exhibit B">Exhibit B</a>, made by the Loan Parties in favor of the Administrative Agent for the benefit of the Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"<u>Hazardous Materials</u>" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Health Care Law" shall mean any Requirement of Law relating to (a) fraud and abuse (including, without limitation, the following statutes, as amended and in effect from time to time, and any successor statutes thereto and the regulations promulgated thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)); the Stark Law (42 U.S.C. § 1395nn and §1395(q)); the civil False Claims Act (31 U.S.C. § 3729 et seq.); Sections 1320a-7 and 1320a-7a and 1320a-7b of Title 42 of the United States Code; and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)); (b) Medicare, Medicaid, CHAMPVA, TRICARE or other Third Party Payor Programs; (c) the licensure or regulation of healthcare providers, suppliers, professionals, facilities or payors; (d) the provision of, or payment for, health care services, items or supplies; (e) patient health care; (f) quality, safety certification and accreditation standards and requirements; (g) the billing, coding or submission of claims or collection of accounts receivable or refund of overpayments; (h) HIPAA; (i) fee-splitting prohibitions; (j) health planning or rate-setting laws, including laws regarding certificates of need and certificates of exemption: (k) certificates of operations and authority: (l) laws regulating the provision of free or discounted care or services; and (m) any and all other applicable federal, state or local health care laws, rules, codes, statutes, regulations, manuals, orders, ordinances, statutes, policies, professional or ethical rules, administrative quidance and requirements, in each case as amended from time to time.

"<u>Health Care Permits</u>" shall mean, with respect to any Person, any permit, approval, consent, authorization, license, provisional license, registration, accreditation, certificate, certificate of need, qualification, operating authority, concession, grant, franchise, variance or permission from any Governmental Authority issued or required under applicable Health Care Laws.

"<u>Hedging Obligations</u>" of any Person shall mean any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"Hedging Transaction" of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending

transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"HIPAA" shall mean the (a) Health Insurance Portability and Accountability Act of 1996; (b) the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009); and (c) any state and local laws regulating the privacy and/or security of individually identifiable information, including state laws providing for notification of breach of privacy or security of individually identifiable information, in each case, with respect to the laws described in clauses (a), (b) and (c) of this definition, as amended and in effect from time to time, and any successor statutes thereto and the regulations promulgated thereunder.

"Immaterial Subsidiary" shall mean, as of any date of determination, any direct or indirect Subsidiary of <a href="the-BorrowerEnsign">the BorrowerEnsign</a> that is formed or acquired after the Closing Date having, when taken together with all other then-existing Immaterial Subsidiaries: (a) assets in an amount not in excess of 20.0% of the total assets of <a href="the-BorrowerEnsign">the BorrowerEnsign</a> and its Subsidiaries determined on a consolidated basis as of such date; or (b) revenues in an amount not in excess of 10.0% of the total revenues of <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> and its Subsidiaries on a consolidated basis for the most recently ended Test Period. Notwithstanding the foregoing, in no event shall Ensign REIT or any Intermediate Entity be an Immaterial Subsidiary.

- "Increasing Lender" shall have the meaning set forth in Section 2.23.
- "Incremental Commitment" shall have the meaning set forth in Section 2.23.
- "Incremental Commitment Joinder" shall have the meaning set forth in Section 2.23.
- "Incremental Revolving Commitment" shall have the meaning set forth in Section 2.23.
- "Incremental Term Loan" shall have the meaning set forth in Section 2.23.
- "Incremental Term Loan Commitment" shall have the meaning set forth in Section 2.23.

"Indebtedness" of any Person shall mean, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business and excluding earn-outs except to the extent required under GAAP to be reflected as a liability on the balance sheet of such Person), (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) all Capital Lease Obligations of such Person, (vi) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) all Guarantees of such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person (provided that if such Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the lesser of (A) the amount of such Indebtedness and (B) the fair market value of the property to which such Lien relates), (ix) all

obligations of such Person in respect of Disqualified Capital Stock, (x) all Off-Balance Sheet Liabilities and (xi) all Hedging Obligations. The Indebtedness of any Person shall include (1) the Indebtedness of any partnership in which such Person is a general partner, except to the extent that the terms of such Indebtedness or the terms of the partnership agreement of such partnership provide that such Person is not liable therefor and (2) the Indebtedness of any joint venture (other than to the extent covered by clause (1) above) in which such Person is joint venturer, solely to the extent that the terms of such Indebtedness or the terms of the operating agreement of such joint venture expressly provide that such Person is liable therefor, or such Person is otherwise liable therefor.

"Indemnified Taxes" shall mean Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

- "Insurance Subsidiary" shall mean Standardbearer Insurance Company, Inc., an Arizona corporation and a wholly-owned Subsidiary of the Borrower Ensign.
- "Interest/Rent Coverage Ratio" shall mean, as of the end of any Test Period, the ratio of (i) Consolidated EBITDAR for such Test Period to (ii) the sum of Consolidated Interest Expense and Consolidated Lease Expense for such Test Period.

"Interest Period" shall mean with respect to any Eurodollar Borrowing, a period of one, two, three or six months, or such other period that is twelve months or less than one month that is agreed to by all relevant Lenders; provided that:

- (i) the initial Interest Period for such Borrowing shall commence on the date of such Borrowing (including the date of any conversion from a Borrowing of another Type), and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;
- (ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;
- (iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month;
- (iv) each principal installment of the Term Loans shall have an Interest Period ending on or prior to each installment payment date and the remaining principal balance (if any) of the Term Loans shall have an Interest Period determined as set forth above; and
- (v) no Interest Period may extend beyond the applicable Revolving Commitment Termination Date, unless on such Revolving Commitment Termination Date the aggregate outstanding principal amount of Term Loans is equal to or greater than the aggregate principal amount of Eurodollar Loans with Interest Periods expiring after such date, and no Interest Period may extend beyond the final Maturity Date.

"Intermediate Entity" shall mean any Subsidiary of Ensign that is both a parent company of Ensign REIT and a Subsidiary of Ensign.

- "Investments" shall have the meaning set forth in Section 7.4.
- "Issuing Bank" shall mean (a) SunTrust Bank in its capacity as an issuer of Letters of Credit and (b) each other Lender with a Revolving Commitment selected by the Borrower and approved by the Administrative Agent that agrees to act as an issuer of Letters of Credit (it being understood that any other Lender that becomes an Issuing Bank may condition its agreement to act in such capacity on a lesser sublimit within the LC Commitment but that the Administrative Agent shall not have any responsibility for monitoring the usage of such lesser sublimit), in each case pursuant to Section 2.22.
  - "Joining Guarantor" shall have the meaning set forth in Section 5.12(a).
- "<u>LCA Election</u>" shall mean the Borrower's election to treat a specified Acquisition as a Limited Condition Acquisition in accordance with <u>Section 1.5</u>, effective upon delivery by the Borrower of the LCA Election Certificate required by Section 1.5.
  - "LCA Election Certificate" shall have the meaning set forth in Section 1.5.
  - "LCA Test Date" shall have the meaning set forth in Section 1.5.
- "LC Commitment" shall mean that portion of the Aggregate Revolving Commitments that may be used by the Borrower for the issuance of Letters of Credit in an aggregate face amount not to exceed \$50,000,000.
- "<u>LC Disbursement</u>" shall mean a payment made by an Issuing Bank pursuant to a Letter of Credit.
- "<u>LC Documents</u>" shall mean all applications, agreements and instruments relating to the Letters of Credit but excluding the Letters of Credit.
- "LC Exposure" shall mean, at any time, the sum of (i) the aggregate undrawn amount of all outstanding Letters of Credit at such time, <u>plus</u> (ii) the aggregate amount of all LC Disbursements that have not been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender shall be its Pro Rata Share (based on such Revolving Lender's Revolving Commitment or Revolving Credit Exposure, as applicable) of the total LC Exposure at such time.
- "<u>Lead Arrangers</u>" shall mean SunTrust Robinson Humphrey, Inc., BofA Securities, Inc. and Regions Securities LLC, each in its capacity as a joint lead arranger in connection with this Agreement.
- "Lender-Related Hedge Provider" shall mean any Person that, at the time it enters into a Hedging Transaction with any Loan Party, (i) is a Lender or an Affiliate of a Lender and (ii) except when the Lender-Related Hedge Provider is SunTrust Bank or any of its Affiliates, has provided prior written notice to the Administrative Agent which has been acknowledged by the Borrower of (x) the existence of such Hedging Transaction and (y) the methodology to be used by such parties in determining the obligations under such Hedging Transaction from time to time. In no event shall any Lender-Related Hedge Provider acting in such capacity be deemed a Lender for purposes hereof to the extent of and as to Hedging Obligations except that each reference to the term "Lender" in <a href="Article IX">Article IX</a> and <a href="Section 10.3(b)</a> shall be deemed to include such Lender-Related Hedge Provider. In no event shall the approval of any such Person in its capacity as Lender-Related Hedge Provider be required in connection with the release or termination of any security interest or Lien of the Administrative Agent.

"<u>Lenders</u>" shall have the meaning set forth in the introductory paragraph hereof and shall include, where appropriate, the Swingline Lender, each Increasing Lender, each Additional Lender that joins this Agreement pursuant to <u>Section 2.23</u>, each Extended Facility Lender and each Refinancing Lender.

"Letter of Credit" shall mean any stand-by letter of credit issued pursuant to Section 2.22 by an Issuing Bank for the account of the Borrower pursuant to the LC Commitment. For the avoidance of doubt, each Existing Letter of Credit shall be deemed to be a Letter of Credit issued pursuant to Section 2.22 by an Issuing Bank for the account of the Borrower pursuant to the LC Commitment effective from and after the Closing Date.

"Leverage Ratio" shall mean, as of any date of determination, the ratio of (i) Consolidated Total Net Debt as of such date to (ii) Consolidated EBITDA for the most recently ended Test Period.

"<u>Licensed Personnel</u>" shall mean any Person (including any physician) involved in the delivery of health care or medical items, services or supplies, employed or retained by the Borrower or any of its Subsidiaries.

"Lien" shall mean any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, or other arrangement having the practical effect of any of the foregoing or any preference, priority or other security agreement or preferential arrangement for security of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

"<u>Limited Condition Acquisition</u>" shall mean any Acquisition whose consummation is not conditioned on the availability of, or on obtaining, third party financing; <u>provided</u> that in the event the consummation of any such acquisition shall not have occurred on or prior to the date that is one hundred and fifty (150) days following the signing of the applicable Limited Condition Acquisition Agreement (or such longer period as is reasonably necessary to obtain regulatory approvals from any applicable Governmental Authority), such acquisition shall no longer constitute a Limited Condition Acquisition for any purpose hereunder.

"<u>Limited Condition Acquisition Agreement</u>" shall have the meaning set forth in <u>Section</u> <u>1.5</u>.

"Loan Documents" shall mean, collectively, this Agreement, the Collateral Documents, the LC Documents, the Fee Letter, all Notices of Borrowing, all Notices of Swingline Borrowing, all Notices of Conversion/Continuation, all Compliance Certificates, any promissory notes issued hereunder and each other instrument, agreement, document and writing executed in connection with any of the foregoing that is identified by its terms as a "Loan Document".

"<u>Loan Parties</u>" shall mean the Borrower Ensign, Ensign REIT and the Subsidiary Loan Parties.

"Loans" shall mean all Revolving Loans, Swingline Loans and Term Loans in the aggregate or any of them, as the context shall require, and shall include, where appropriate, any loan made pursuant to Section 2.23, 2.27 or 2.28.

"Master Leases" shall mean the PropCo Master Leases and each other Material Master Lease.

"Material Adverse Effect" shall mean, with respect to any event, act, condition or occurrence of whatever nature, whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, resulting in a material adverse change in, or a material adverse effect on, (i) the business, results of operations, financial condition, assets, liabilities or properties of the Borrower and its Subsidiaries taken as a whole and after giving effect to the Related Transactions, (ii) the ability of the Loan Parties, taken as a whole, to perform their respective obligations under the Loan Documents, (iii) the rights and remedies of the Administrative Agent, each Issuing Bank, the Swingline Lender or the Lenders under any of the Loan Documents or (iv) the legality, validity or enforceability of any of the Loan Documents.

"Material Agreements" shall mean (i) all agreements, indentures or notes governing the terms of any Material Indebtedness, (ii) each Master Lease and (iii) all other agreements, documents, contracts, indentures and instruments pursuant to which a default, breach or termination thereof could reasonably be expected to result in a Material Adverse Effect.

"Material Indebtedness" shall mean any Indebtedness (other than the Commitments, the Loans and the Letters of Credit) of the Borrower or any of its Subsidiaries individually or in an aggregate committed or outstanding principal amount exceeding \$35,000,000. For purposes of determining the amount of attributed Indebtedness from Hedging Obligations, the "principal amount" of any Hedging Obligations at any time shall be the Net Mark-to-Market Exposure of such Hedging Obligations.

"Material Master Lease" shall mean a master lease of multiple properties to the Borrower or its Subsidiaries pursuant to which a default, breach or termination thereof could reasonably be expected to result in a Material Adverse Effect.

"Material Subsidiary" shall mean, as of any date, any direct or indirect Subsidiary of the Borrower Ensign that is not an Immaterial Subsidiary.

"Maturity Date" shall mean, (a) with respect to any new tranche of Term Loans (including any Incremental Term Loans, Extended Term Loans or Other Refinancing Term Loans), the maturity dates specified therefor in the applicable Incremental Commitment Joinder, Extended Facility Agreement or Refinancing Amendment, as applicable and (b) with respect to the Revolving Commitments, the Revolving Commitment Termination Date.

"<u>Maximum Attributable EBITDA Percentage</u>" shall have the meaning assigned to such term in the definition of Consolidated EBITDA.

"Maximum Attributable EBITDA Percentage Determination Date" shall have the meaning assigned to such term in the definition of Consolidated EBITDA.

"Medicaid" shall mean, collectively, the health care assistance program established by Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or requirements pertaining to such program, including (a) all federal statutes affecting such program; (b) all state statutes and plans for medical assistance enacted in connection with such program and federal rules and regulations promulgated in connection with such program; and (c) all applicable provisions of all rules, regulations, manuals, orders and administrative, reimbursement, and requirements of all Government Authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended and in effect from time to time.

"Medicare" shall mean, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and any statutes

succeeding thereto, and all laws, rules, regulations, manuals, orders or requirements pertaining to such program including (a) all federal statutes (whether set forth in Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) or elsewhere) affecting such program; and (b) all applicable provisions of all rules, regulations, manuals, orders and administrative and reimbursement requirements of all Governmental Authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended and in effect from time to time.

"Moody's" shall mean Moody's Investors Service, Inc.

"Multiemployer Plan" shall mean any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or may be an obligation to contribute of) the Borrower, any of its Subsidiaries or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Borrower, any of its Subsidiaries or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

"Net Mark-to-Market Exposure" of any Person shall mean, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation. "Unrealized losses" shall mean the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date), and "unrealized profits" shall mean the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).

"Non-Defaulting Lender" shall mean, at any time, a Lender that is not a Defaulting Lender.

"Non-Public Information" shall mean any material non-public information (within the meaning of United States federal and state securities laws) with respect to the Borrower or any of its Subsidiaries or any of their respective securities.

"Non-U.S. Plan" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Borrower or one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement, or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Notice of Conversion/Continuation" shall have the meaning set forth in Section 2.7(b).

"Notice of Borrowing" shall have the meaning set forth in Section 2.3.

"Notice of Swingline Borrowing" shall have the meaning set forth in Section 2.4.

"Obligations" shall mean (a) all amounts owing by the Loan Parties to the Administrative Agent, any Issuing Bank, any Lender (including the Swingline Lender) or any Lead Arranger pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Commitment, Loan or Letter of Credit, including, without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement

obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses, whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, (b) all Hedging Obligations owed by any Loan Party to any Lender-Related Hedge Provider, and (c) all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing.

"OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

- "Off-Balance Sheet Liabilities" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any Synthetic Lease Obligation or (iii) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person other than, in the case of this clause (iii), any operating lease, including, for the avoidance of doubt, any other lease referred to in the provisos of the definition of "Capital Lease Obligations".
- "Opportunities Agreement" shall mean the Opportunities Agreement dated as of the Original Closing Date by and between the Borrower Ensign and CTRI.
  - "Original Closing Date" shall have the meaning set forth in the Recitals.
- "OSHA" shall mean the Occupational Safety and Health Act of 1970, as amended and in effect from time to time, and any successor statute thereto.
- "Other Refinancing Commitments" shall mean the Other Refinancing Revolving Commitments and the Other Refinancing Term Loan Commitments.
- "Other Refinancing Loans" shall mean the Other Refinancing Revolving Loans and the Other Refinancing Term Loans.
- "Other Refinancing Revolving Commitments" shall mean one or more classes of revolving commitments hereunder or extended Revolving Commitments that result from a Refinancing Amendment.
- "Other Refinancing Revolving Loans" shall mean the Revolving Loans made pursuant to any Other Refinancing Revolving Commitment.
- "Other Refinancing Term Loan Commitments" shall mean one or more classes of term loan commitments hereunder that result from a Refinancing Amendment.
- "Other Refinancing Term Loans" shall mean one or more classes of Term Loans that result from a Refinancing Amendment.
- "Other Taxes" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

- "<u>Parent Company</u>" shall mean, with respect to a Lender, the "bank holding company" as defined in Regulation Y, if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.
  - "Participant" shall have the meaning set forth in Section 10.4(d).
- "Pass-Through Foreign Holdco" shall mean (i) any Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary of the Borrower and (ii) any Domestic Subsidiary for which all or substantially all of its assets consist (directly or through Subsidiaries) of Capital Stock of one or more CFCs.
- "<u>Patent</u>" shall have the meaning assigned to such term in the Guaranty and Security Agreement.
- "<u>Patent Security Agreement</u>" shall mean any Patent Security Agreement executed by a Loan Party owning Patents or licenses of Patents in favor of the Administrative Agent for the benefit of the Secured Parties, both on the Original Closing Date and thereafter.
- "Patriot Act" shall mean the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177 (signed into law March 9, 2006)), as amended and in effect from time to time.
- "Payment in Full" and "Paid in Full" shall mean the termination of all Revolving Commitments and all other commitments of the Lenders to lend funds or extend financial accommodations to the Borrower under the Loan Documents and the payment in full, in immediately available funds, of all of the Obligations (other than (a) contingent indemnification and expense reimbursement Obligations, in each case, to the extent no claim giving rise thereto has been asserted, (b) Hedging Obligations and Bank Product Obligations to the extent arrangements satisfactory to the Lender-Related Hedge Provider or Bank Product Provider, as applicable, shall have been made and (c) contingent Obligations with respect to which the deposit of cash collateral (in the case of LC Exposure, which shall not exceed 103% of the face amount of the relevant Letters of Credit and in the case of other Obligations, which shall not exceed 100% of the amount thereof) (or, as an alternative to cash collateral in the case of any LC Exposure, receipt by the Administrative Agent of a back-up letter of credit reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank), in amounts and on terms and conditions and with parties reasonably satisfactory to the Administrative Agent and each Indemnitee that is, or may be, owed such Obligations has been provided).
- "<u>Payment Office</u>" shall mean the office of the Administrative Agent located at 303 Peachtree Street, N.E., Atlanta, Georgia 30308, or such other location as to which the Administrative Agent shall have given written notice to the Borrower and the other Lenders.
- "PBGC" shall mean the U.S. Pension Benefit Guaranty Corporation referred to and defined in ERISA, and any successor entity performing similar functions.
  - "Pennant" shall mean The Pennant Group, Inc., a Delaware corporation.
- "<u>Pennant Business Assets</u>" shall have the meaning assigned to such term in the definition of Pennant Transaction.
- "<u>Pennant Contribution Agreement</u>" shall mean that certain Distribution and Contribution Agreement, dated as of October 1, by and among Bridgestone Living, LLC, a Nevada limited liability company, the Borrower Ensign, and Pinnacle Senior Living, LLC, a Delaware limited liability company.

- "<u>Pennant Employee Matters Agreement</u>" shall mean that certain Employee Matters Agreement, dated as of October 1, by and between <a href="mailto:the-BorrowerEnsign">the BorrowerEnsign</a> and Pennant.
- "<u>Pennant Master Leases</u>" shall mean the master leases entered into by the BorrowerEnsign or any of its Subsidiaries with Pennant or any of its Subsidiaries.
- "<u>Pennant Master Separation Agreement</u>" shall mean that certain Separation and Distribution Agreement, dated as of October 1, by and between <a href="the BorrowerEnsign">the BorrowerEnsign</a> and Pennant.
- "<u>Pennant Preferred Provider Agreement</u>" shall mean that certain Preferred Provider Agreement, dated as of October 1, 2019, by and among the Borrower between Ensign and Pennant.
- "<u>Pennant Subsidiaries</u>" shall mean Pennant and each other subsidiary of the BorrowerEnsign identified on Schedule 4.4 as a "Pennant Subsidiary", the equity interests of which will be distributed to the Borrower's Ensign's shareholders in connection with the Pennant Transaction.
- "<u>Pennant Tax Matters Agreement</u>" shall mean that certain Tax Matters Agreement, dated as of October 1, <u>2019</u>, by and between <u>the Borrower Ensign</u>, by and on behalf of itself and each affiliate of <u>the Borrower Ensign</u>, and Pennant, by and behalf of itself and each affiliate of Pennant.
- "Pennant Transaction" shall mean (a) the transfer by the BorrowerEnsign of substantially all of the existing assets of the BorrowerEnsign and its Subsidiaries related to their home health, hospice and select senior living businesses (collectively, the "Pennant Business Assets") to Pennant and (b) the spin-off of Pennant and the Pennant Subsidiaries (which, immediately prior to such spin-off, will own the Pennant Business Assets) to the Borrower's Ensign's shareholders, in each case in accordance with the Pennant Transaction Documents.
- "Pennant Transaction Documents" shall mean the Pennant Master Separation Agreement, the Pennant Transition Services Agreement, the Pennant Employee Matters Agreement, the Pennant Tax Matters Agreement, the Pennant Preferred Provider Agreement, the Pennant Contribution Agreement, and the Pennant Master Leases.
- "Pennant Transition Services Agreement" shall mean that certain Transition Services Agreement, dated as of October 1, 2019, by and between the Borrower Ensign and Pennant.
- "Perfection Certificate" shall have the meaning assigned to such term in the Guaranty and Security Agreement.
- "<u>Permitted Acquisition</u>" shall mean any Acquisition by the Borrower or any of its Subsidiaries that occurs when the following conditions have been satisfied:
  - (i) subject, in the case of a Limited Condition Acquisition, to Section 1.5, before and after giving effect to such Acquisition, no Default or Event of Default has occurred and is continuing or would result therefrom; provided that (A) this clause (i) shall be limited to Events of Default referenced in Section 2.23(a)(iii) if an Incremental Commitment is being funded in connection with any such Permitted Acquisition and (B) if the Borrower makes an LCA Election pursuant to Section 1.5 and such condition is tested as of the applicable LCA Test Date, it shall also be a condition that no Event of Default under Section 8.1(a), (b), (g), (h) or (i) shall have occurred and be continuing or would result from such Acquisition and the transactions consummated in connection therewith (including the incurrence of any Indebtedness and the use proceeds thereof) on the date on which such Acquisition is consummated;

- (ii) subject, in the case of a Limited Condition Acquisition, to <u>Section 1.5</u>, before and after giving effect to such Acquisition, on a Pro Forma Basis (giving effect to such Acquisition and any related debt incurrences), the Borrower is in compliance with each of the covenants set forth in <u>Article VI</u>, measuring Consolidated Total Net Debt for purposes of <u>Section 6.1</u> as of the date of such Acquisition and otherwise recomputing the covenants set forth in <u>Article VI</u> as of the end of the most recently ended Test Period as if such Acquisition (and any other Acquisitions that have been consummated since the end of such Test Period and on or prior to the date of such Acquisition) had occurred, and any Indebtedness incurred in connection therewith was incurred, on the first day of the relevant period for testing compliance;
- (iii) at least five (5) days (or such shorter period of time as may be agreed to by the Administrative Agent) prior to the date of the consummation of any such Acquisition for which the aggregate consideration to be paid is at least \$50,000,000, the Borrower shall have delivered to the Administrative Agent notice of such Acquisition, together with, to the extent available and received by the Borrower in connection with such Acquisition (including after request by the Borrower to the applicable seller), historical financial information with respect to the Person whose stock or assets are being acquired, the acquisition agreement and such other information in the possession of the Borrower that is reasonably requested by the Administrative Agent, and which is not subject to confidentiality agreements restricting the Borrower from providing such information;
- (iv) such Acquisition is not opposed by the board of directors (or the equivalent thereof) of the Person whose stock or assets are being acquired;
- (v) the Person or assets being acquired is in the same type of business conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related thereto or ancillary or complementary thereto;
- (vi) such Acquisition is consummated in compliance in all material respects with all Requirements of Law, and all material consents and approvals from any Governmental Authority and all material consents and approvals from any other Person in each case required in connection with such Acquisition have been obtained; and
- (vii) at least five (5) days (or such shorter period of time as may be agreed to by the Administrative Agent) prior to the date of the consummation of any such Acquisition for which the aggregate consideration to be paid is at least \$50,000,000, the Borrower shall have delivered to the Administrative Agent a certificate executed by a Responsible Officer certifying that each of the conditions set forth above has been satisfied (or, with respect to the condition set forth in clause (iv), that such condition will be satisfied by the date of the consummation of such Acquisition); provided that, in the case of a Limited Condition Acquisition, the conditions set forth above that are tested as of the applicable LCA Test Date shall be certified in the applicable LCA Election Certificate instead of the certificate delivered pursuant to this clause (vii).

"<u>Permitted Alternative Investments</u>" shall mean any of the following, but excluding any Permitted Investment:

(i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States);

- (ii) commercial paper having the highest rating, at the time of acquisition thereof, of S&P or Moody's and in either case maturing within one year from the date of acquisition thereof;
- (iii) certificates of deposit, bankers' acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States or any state thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000 (determined at the time of such investment);
- (iv) other securities, including, without limitation, corporate debt, having the highest rating, at the time of acquisition thereof, of S&P or Moody's and in either case maturing within one year from the date of acquisition thereof; and
- (v) mutual funds investing primarily in any one or more of the Permitted Alternative Investments described in clauses (i) through (iv) above (determined at the time of such investment).

# "Permitted Encumbrances" shall mean:

- (i) Liens imposed by law for taxes not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP:
- (ii) Liens of landlords, carriers, warehousemen, mechanics, materialmen and other Liens imposed by law which arise in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;
- (iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;
- (iv) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (v) judgment and attachment liens not giving rise to an Event of Default or Liens created by or existing from any litigation or legal proceeding that are currently being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;
- (vi) customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code or common law of banks or other financial institutions where the Borrower or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;
- (vii) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially interfere with the ordinary conduct of business of the Borrower and its Subsidiaries taken as a whole;

- (viii) (x) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries and (y) restrictions on transfers of assets that are subject to sale or transfer pursuant to purchase and sale arrangements, in each case, in connection with any letter of intent or purchase and sale agreement permitted hereunder;
- (ix) in the case of any non-wholly owned Subsidiary or joint venture, any put and call arrangements or restrictions on disposition related to its Capital Stock set forth in its organizational documents or any related joint venture or similar agreement; and
- (x) licenses and sublicenses of intellectual property granted by any Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Loan Parties;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

## "Permitted Investments" shall mean:

- (i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;
- (ii) commercial paper having the highest rating, at the time of acquisition thereof, of S&P or Moody's and in either case maturing within six months from the date of acquisition thereof;
- (iii) certificates of deposit, bankers' acceptances and time deposits maturing within 180 days of the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States or any state thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000 (determined at the time of such investment);
- (iv) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (i) above and entered into with a financial institution satisfying the criteria described in clause (iii) above (determined at the time of such investment); and
- (v) mutual funds investing primarily in any one or more of the Permitted Investments described in clauses (i) through (iv) above (determined at the time of such investment).
- "<u>Person</u>" shall mean any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.
- "Plan" shall mean any "employee benefit plan" as defined in Section 3 of ERISA (other than a Multiemployer Plan) maintained or contributed to by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has or may have an obligation to contribute, and each such plan that is subject to Title IV of ERISA for the five-year period immediately following the latest date on which the Borrower or any ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.
- "Proceeding" shall mean any investigation, inquiry, litigation, review, hearing, suit, claim, audit, arbitration, proceeding or action (in each case, whether civil, criminal, administrative,

investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Pro Forma Basis" shall mean, (i) with respect to any Person, business, property or asset acquired in a Permitted Acquisition or other Acquisition permitted hereunder or approved in writing by the Required Lenders, the inclusion as "Consolidated EBITDA" of the Consolidated EBITDA (determined by reference to such Person, business, property or asset) for such Person, business, property or asset as if such Acquisition had been consummated on the first day of the applicable period, based on historical results accounted for in accordance with GAAP, adjusted by (A) any credit received for acquisition-related costs and savings to the extent expressly permitted pursuant to Article 11 of Securities and Exchange Commission Regulation S-X and (B) other reasonable adjustments consistent with the operation by the Borrower or any of its Subsidiaries of comparable businesses, properties or assets that are in the same or reasonably related line of business in the same or similar geographies for (1) insurance expense savings, (2) bad debt expense savings, (3) any other non-recurring or non-cash charges that have been deducted from the EBITDA of or attributable to such Person, business, property or asset prior to such Acquisition and (4) cost savings and synergies reasonably expected to be achieved by the Borrower relating to such Acquisition; provided that in each case (x) the cost savings or synergies associated with such adjustments are reasonably expected by the Borrower in good faith to be realized within twelve (12) months of the consummation of such Acquisition and (y) for any such adjustments included twelve (12) months after the consummation of such Acquisition, the Borrower and its Subsidiaries have achieved annualized run-rate savings consistent with such adjustments; and (ii) with respect to any Person. business, property or asset sold, transferred or otherwise disposed of, the exclusion from "Consolidated EBITDA" of the portion of Consolidated EBITDA for such Person, business, property or asset so disposed of during such period as if such disposition had been consummated on the first day of the applicable period, in accordance with GAAP.

"PropCo Landlord" shall mean CTRI and any Subsidiary of CTRI.

"PropCo Master Leases" shall mean the master leases entered into by the Borrower or any of its Subsidiaries with one or more PropCo Landlords, in each case, in substantially the form of such master leases delivered to the Administrative Agent on or prior to the Original Closing Date and any other master lease entered into by the Borrower or any of its Subsidiaries with a PropCo Landlord.

"Pro Rata Share" shall mean (i) with respect to any Class of Commitment or Loan of any Lender at any time, a percentage, the numerator of which shall be such Lender's Commitment of such Class (or, if such Commitment has been terminated or expired or the Loans have been declared to be due and payable, such Lender's Revolving Credit Exposure or Term Loan, as applicable), and the denominator of which shall be the sum of all Commitments of such Class of all Lenders (or, if such Commitments have been terminated or expired or the Loans have been declared to be due and payable, all Revolving Credit Exposure or Term Loans, as applicable, of all Lenders) and (ii) with respect to all Classes of Commitments and Loans of any Lender at any time, the numerator of which shall be the sum of such Lender's Revolving Commitment (or, if such Revolving Commitment has been terminated or expired or the Loans have been declared to be due and payable, such Lender's Revolving Credit Exposure) and Term Loan and the denominator of which shall be the sum of all Lenders' Revolving Commitments (or, if such Revolving Commitments have been terminated or expired or the Loans have been declared to be due and payable, all Revolving Credit Exposure of all Lenders funded under such Commitments) and Term Loans.

"PTE" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

- "<u>Public Lender</u>" shall mean any Lender who does not wish to receive Non-Public Information and who may be engaged in investment and other market related activities with respect to the Borrower, its Affiliates or any of their securities or loans.
- "QFC" shall have the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).
  - "QFC Credit Support" shall have the meaning set forth in Section 10.20.
- "Qualified Capital Stock" shall mean, with respect to any Person, any Capital Stock of such Person that is not Disqualified Capital Stock.
- "Real Estate" shall mean all real property owned or leased by the Borrower and its Subsidiaries.
- "Recipient" shall mean, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank.
- "Refinanced Indebtedness" shall mean all Loans (as defined in the Existing Credit Agreement) outstanding as of the Closing Date under the Existing Credit Agreement.
- "Refinancing Amendment" shall mean an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent, (c) each Issuing Bank (in the case of Other Refinancing Revolving Commitments or Other Refinancing Revolving Loans) and (d) each Refinancing Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.28.
- "Refinancing Lender" shall mean, at any time, any bank, other financial institution or institutional investor that agrees to provide any portion of any Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.28; provided that each Refinancing Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent and each Issuing Bank (in the case of Other Refinancing Revolving Commitments or Other Refinancing Revolving Loans) (such approval not to be unreasonably withheld or delayed), in each case to the extent any such consent would be required from the Administrative Agent and each Issuing Bank (in the case of Other Refinancing Revolving Commitments or Other Refinancing Revolving Loans) under Section 10.4(b) for an assignment of Loans or Commitments to such Refinancing Lender.
- "Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.
- "Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.
- "Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.
- "Regulation X" shall mean Regulation X of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

- "Regulation Y" shall mean Regulation Y of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.
- "<u>Related Parties</u>" shall mean, with respect to any specified Person, such Person's Affiliates and the respective managers, administrators, trustees, partners, directors, officers, employees, agents, advisors or other representatives of such Person and such Person's Affiliates.
- "<u>Related Transaction Documents</u>" shall mean the Loan Documents, the Pennant Transaction Documents and all other agreements or instruments executed in connection with the Related Transactions.
- "Related Transactions" shall mean, collectively, the Closing Date Refinancing, the making of the initial Loans on the Closing Date, the consummation of the Pennant Transaction, the payment of all fees, costs and expenses associated with all of the foregoing and the execution and delivery of all Related Transaction Documents.
- "Release" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.
- "Required Lenders" shall mean, at any time, Lenders holding more than 50% of the aggregate outstanding Revolving Commitments and Term Loans at such time or, if the Lenders have no Commitments outstanding, then Lenders holding more than 50% of the aggregate outstanding Revolving Credit Exposure and Term Loans of the Lenders at such time; provided that to the extent that any Lender is a Defaulting Lender, such Defaulting Lender and all of its Revolving Commitments, Revolving Credit Exposure and Term Loans shall be excluded for purposes of determining Required Lenders.
- "Required Revolving Lenders" shall mean, at any time, Lenders holding more than 50% of the aggregate outstanding Revolving Commitments at such time or, if the Lenders have no Revolving Commitments outstanding, then Lenders holding more than 50% of the aggregate outstanding Revolving Credit Exposure at such time; provided that to the extent that any Lender is a Defaulting Lender, such Defaulting Lender and all of its Revolving Commitments and Revolving Credit Exposure shall be excluded for purposes of determining Required Revolving Lenders.
- "Requirement of Law" for any Person shall mean the articles or certificate of incorporation, bylaws, partnership certificate and agreement, or limited liability company certificate of organization and agreement, as the case may be, and other organizational and governing documents of such Person, and any law, treaty, rule or regulation, or determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including, without limitation, all Health Care Laws.
- "Responsible Officer" shall mean (x) with respect to certifying compliance with the financial covenants set forth in Article VI, the chief financial officer or the treasurer of the Borrower and (y) with respect to all other provisions, any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the treasurer or a vice president of the Borrower or such other representative of the Borrower as may be designated in writing by any one of the foregoing with the consent of the Administrative Agent.
- "Restricted Payment" shall mean, for any Person, any dividend or distribution on any class of its Capital Stock, or any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance or other acquisition of any shares of

its Capital Stock, any Indebtedness subordinated to the Obligations or any Guarantee thereof or any options, warrants or other rights to purchase such Capital Stock or such Indebtedness, whether now or hereafter outstanding.

"Revolving Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrower and to acquire participations in Letters of Credit and Swingline Loans in an aggregate principal amount not exceeding the amount set forth with respect to such Lender on Schedule I, as such schedule may be amended pursuant to Section 2.23, Section 2.27 or Section 2.28, or, in the case of a Person becoming a Lender after the Closing Date, the amount of the assigned "Revolving Commitment" as provided in the Assignment and Acceptance executed by such Person as an assignee, or the amount provided in the Incremental Commitment Joinder or Refinancing Amendment executed by such Person, in each case as such commitment may subsequently be increased or decreased pursuant to the terms hereof. Unless the context shall otherwise require, the term "Revolving Commitment" shall include any Extended Revolving Commitment.

"Revolving Commitment Termination Date" shall mean the earliest of (a) (i) with respect to the Revolving Commitments (including any Incremental Revolving Commitments) of the Revolving Lenders (other than any portion constituting Extended Revolving Commitments or Other Refinancing Revolving Commitments), October 1, 2024, (ii) with respect to any Extended Revolving Commitments, the maturity date specified therefor in the applicable Extended Facility Agreement and (iii) with respect to any Other Refinancing Revolving Commitments, the maturity date specified therefor in the applicable Refinancing Amendment, (b) the date on which the Revolving Commitments are terminated pursuant to Section 2.8 and (c) the date on which all amounts outstanding under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise).

"Revolving Credit Exposure" shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans, LC Exposure and Swingline Exposure.

"Revolving Lender" shall mean each Lender with a Revolving Commitment (or if the Revolving Commitments have terminated, who hold Revolving Credit Exposure).

"Revolving Loan" shall mean a loan made by a Lender (other than the Swingline Lender) to the Borrower under its Revolving Commitment, which may either be a Base Rate Loan or a Eurodollar Loan.

"S&P" shall mean Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Sanctioned Country" shall mean, at any time, a country, region or territory that is, or whose government or an agency of whose government is, or an organization directly or indirectly controlled by a country or territory that is, the subject or target of any Sanctions.

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any EU member state or any other Governmental Authority, (b) any Person located, organized, operating or resident in a Sanctioned Country, (c) a Person or legal entity that is a target of Sanctions or (d) any Person directly or indirectly controlled (individually or in the aggregate) by or acting on behalf of any such Person described in the foregoing clauses (a) through (c).

"Sanctions" shall mean economic or financial sanctions or trade embargoes administered, imposed or enforced from time to time by (a) the U.S. government, including those

administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any EU member state, Her Majesty's Treasury of the United Kingdom or any other applicable Governmental Authority.

"Screen Rate" shall mean the rate specified in clause (i) of the definition of Adjusted LIBOR.

"Second Amendment and Restatement Date" shall have the meaning set forth in the Recitals.

"Secured Parties" shall mean the Administrative Agent, the Lenders, the Issuing Banks, the Lender-Related Hedge Providers and the Bank Product Providers.

"<u>Separation and Distribution Agreement</u>" shall mean the Separation and Distribution Agreement, dated as of the Original Closing Date, between the Borrower Ensign and CTRI.

"Solvent" shall mean, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including subordinated and contingent liabilities, of such Person; (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts and liabilities, including subordinated and contingent liabilities as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (d) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that would reasonably be expected to become an actual or matured liability.

"Specified Representations" shall mean the representations and warranties set forth in Sections 4.1(i) and (ii), 4.2, 4.3(a), 4.3(b), 4.7, 4.9, 4.15, 4.17(a), 4.20, 4.21, and 4.22.

"Specified Subsidiary" shall mean (i) any Pass-Through Foreign Holdco, (ii) any CFC and (iii) any Subsidiary that is prohibited by applicable law, rule or regulation or by agreement, instrument or other undertaking to which such Subsidiary is a party or by which it or any of its property or assets is bound from guaranteeing the Obligations; provided that any such agreement, instrument or other undertaking (x) is in existence on the Closing Date and listed on Schedule 1.2 (or, with respect to a Subsidiary acquired after the Closing Date, as of the date of such acquisition) and (y) in the case of a Subsidiary acquired after the Closing Date, was not entered into in connection with or in anticipation of such acquisition. Notwithstanding the foregoing, in no event shall any tenant under any PropCo Master Lease, Ensign REIT or any Intermediate Entity be a Specified Subsidiary.

"Specified Target Representations" shall have the meaning set forth in Section 2.23(a)(iii).

"Spin-Off Documents" shall mean the Separation and Distribution Agreement, the Ensign Guaranty, the PropCo Master Leases, the Opportunities Agreement, the Employee Matters Agreement, the Tax Matters Agreement and the Transition Services Agreement.

"Spin-Off Transaction" shall mean (a) the transfer by the BorrowerEnsign of (x) certain Real Estate assets of the BorrowerEnsign and its Subsidiaries and (y) certain independent living facilities to CTRI, (b) the spin-off of CTRI and its Subsidiaries to the Borrower's Ensign's shareholders

and (c) the series of corporate and other restructurings and other transactions entered into in connection with the foregoing, in each case that occurred within the first three (3) Business Days following the Original Closing Date.

"Subsidiary" shall mean, with respect to any Person (the "parent") at any date, any corporation, partnership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, partnership, joint venture, limited liability company, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise indicated, all references to "Subsidiary" hereunder shall mean a Subsidiary of the Borrower Ensign. Notwithstanding anything in this Agreement to the contrary, in no event shall any Pennant Subsidiary be deemed to be a Subsidiary of the Borrower Ensign or any of its Subsidiaries for any purposes hereof or any other Loan Document.

"Subsidiary Loan Party" shall mean any Subsidiary that executes or becomes a party to the Guaranty and Security Agreement, unless and until any such Subsidiary is released pursuant to Section 9.11.

"Supported QFC" shall have the meaning set forth in Section 10.20.

"Swingline Commitment" shall mean the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding not to exceed \$15,000,000.

"Swingline Exposure" shall mean, with respect to each Lender, the principal amount of the Swingline Loans in which such Lender is legally obligated either to make a Base Rate Loan or to purchase a participation in accordance with Section 2.4, which shall equal such Lender's Pro Rata Share of all outstanding Swingline Loans.

"Swingline Lender" shall mean SunTrust Bank in its capacity as such, together with any successor in such capacity.

"Swingline Loan" shall mean a loan made to the Borrower by the Swingline Lender under the Swingline Commitment.

"Synthetic Lease" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee pursuant to Accounting Standards Codification Sections 840-10 and 840-20, as amended, and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"Synthetic Lease Obligations" shall mean, with respect to any Person, the sum of (i) all remaining rental obligations of such Person as lessee under Synthetic Leases which are attributable to principal and, without duplication, plus (ii) all rental and purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the lease property at the end of the lease term.

- "<u>Taxes</u>" shall mean any and all present or future taxes, levies, imposts, duties, deductions, assessments, fees, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.
- "<u>Tax Matters Agreement</u>" shall mean the Tax Matters Agreement, dated as of the Original Closing Date, by and between the BorrowerEnsign and CTRI.
- "Term Loan" shall mean any term loan made hereunder pursuant to Section 2.23, Section 2.27, or Section 2.28.
- "Term Loan Commitment" shall mean, with respect to each Lender, such Lender's Incremental Term Loan Commitment, Extended Term Loan Commitment and/or Other Refinancing Term Loan Commitment, as the context may require.
  - "Term Lender" shall mean a Lender holding a Term Loan or a Term Loan Commitment.
- "Test Period" shall mean, for any date of determination under this Agreement, the four consecutive Fiscal Quarters most recently ended as of such date of determination for which financial statements have been or are required to have been delivered pursuant to Section 5.1(a) or (b), provided, that for Test Periods prior to the first such required delivery after the Closing Date, "Test Period" shall refer to the most recently ended period of four consecutive Fiscal Quarters for which financial statements are available; provided, further, that for the purposes of determining quarterly compliance with Sections 6.1 and 6.2, Test Period shall mean the four consecutive Fiscal Quarters ending on the applicable date of determination.
- "<u>Third Party Payor</u>" shall mean any Governmental Payor, private insurers, managed care plans, and any other person or entity which presently or in the future maintains Third Party Payor Programs.
- "Third Party Payor Authorizations" shall mean all participation agreements, provider or supplier agreements, enrollments, accreditations and billing numbers necessary to participate in and receive reimbursement from a Third Party Payor Program, including all Medicare and Medicaid participation agreements.
- "Third Party Payor Programs" shall mean all payment or reimbursement programs, sponsored or maintained by any Third Party Payor, in which the Borrower or any of its Subsidiaries participates.
  - "Threshold Amount" shall have the meaning set forth in Section 5.12(c).
- "Trademark" shall have the meaning assigned to such term in the Guaranty and Security Agreement.
- "Trademark Security Agreement" shall mean any Trademark Security Agreement executed by a Loan Party owning registered Trademarks or applications for Trademarks in favor of the Administrative Agent for the benefit of the Secured Parties, both on the Original Closing Date and thereafter.
- "Trading with the Enemy Act" shall mean the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended and in effect from time to time.

- "<u>Transition Services Agreement</u>" shall mean the Transition Services Agreement, dated as of the Original Closing Date, by and between the Borrower Ensign and CTRI.
- "TRICARE" shall mean, collectively, a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation, and all laws applicable to such programs.
- "Type", when used in reference to a Loan or a Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to Adjusted LIBOR or the Base Rate.
- "<u>Unfunded Pension Liability</u>" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).
- "<u>Uniform Commercial Code</u>" or "<u>UCC</u>" shall mean the Uniform Commercial Code as amended and in effect from time to time in the State of New York.
  - "United States" or "U.S." shall mean the United States of America.
- " $\underline{\text{U.S. Person}}$ " shall mean any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.
  - "U.S. Special Resolution Regimes" shall have the meaning set forth in Section 10.20.
- "U.S. Tax Compliance Certificate" shall have the meaning set forth in Section 2.20(e)(ii).
- "Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the sum of the products obtained by multiplying (x) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness.
- "<u>Withdrawal Liability</u>" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.
- "<u>Withholding Agent</u>" shall mean the Borrower, any other Loan Party or the Administrative Agent, as applicable.
- "<u>Write-Down and Conversion Powers</u>" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.
- Section 1.2. <u>Classifications of Loans and Borrowings</u>. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g. "Revolving Loan" or "Term Loan") or by Type

(e.g. "Eurodollar Loan" or "Base Rate Loan") or by Class and Type (e.g. "Revolving Eurodollar Loan"). Borrowings also may be classified and referred to by Class (e.g. "Revolving Borrowing") or by Type (e.g. "Eurodollar Borrowing") or by Class and Type (e.g. "Revolving Eurodollar Borrowing").

Section 1.3. Accounting Terms and Determination. Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied, except as otherwise indicated therein, on a basis consistent with the most recent audited consolidated financial statement of the Borrower Ensign delivered pursuant to Section 5.1(a); provided that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI to eliminate the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders (and each party hereto agrees to negotiate in good faith with respect to such amendment). Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Accounting Standards Codification Section 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary of any Loan Party at "fair value", as defined therein; and (ii) for purposes of this Agreement, any change in GAAP requiring leases which were previously classified as operating leases (or which, had they been entered into prior to the Original Closing Date, would have been treated as an operating lease on the Original Closing Date) to be treated as capitalized leases shall be disregarded and such leases shall continue to be, or shall be, treated as operating leases consistent with GAAP as in effect immediately before such change in GAAP became effective.

Notwithstanding anything to the contrary herein, all financial ratios and tests contained in this Agreement that are calculated with respect to any Test Period during which any Permitted Acquisition or other Acquisition permitted hereunder occurs shall be calculated with respect to such Test Period and such Permitted Acquisition or other Acquisition permitted hereunder on a Pro Forma Basis. Further, if since the beginning of any such Test Period and on or prior to the date of any required calculation of any financial ratio or test (other than for compliance with the definition of "Permitted Acquisition") any Permitted Acquisition or other Acquisition permitted hereunder shall have occurred then any applicable financial ratio or test shall be calculated on a Pro Forma Basis for such Test Period as if such Permitted Acquisition or other Acquisition permitted hereunder had occurred at the beginning of the applicable Test Period (it being understood, for the avoidance of doubt, that solely for purposes of calculating quarterly compliance with Sections 6.1 and 6.2, the date of the required calculation shall be the end of the Test Period, and no Permitted Acquisition or other Acquisition permitted hereunder occurring thereafter shall be taken into account).

Section 1.4. <u>Terms Generally</u>. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the word "to" means "to but excluding". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as it was originally executed or as it may from time to time be amended,

restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement and (v) all references to a specific time shall be construed to refer to the time in Atlanta, Georgia, unless otherwise indicated. Any reference herein or in any other Loan Document to an assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust, as if it were an assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person, and any reference herein to a merger, consolidation or amalgamation, or similar term, shall be deemed to apply to the unwinding of such a division or allocation, as if it were a merger, consolidation or amalgamation, or similar term, as applicable, with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, an Excluded Subsidiary, a joint venture or any other like term shall also constitute such a Person unless, in the case of a Subsidiary or an Excluded Subsidiary, it is otherwise designated in accordance with the terms of this Agreement).

Section 1.5. Limited Condition Acquisitions. Notwithstanding anything to the contrary herein, for purposes of (i) determining compliance with Sections 6.1 and 6.2 on a pro forma basis and capacity under baskets (including baskets measured as a percentage of Consolidated EBITDA or based on a ratio test) with respect to the making of any Permitted Acquisitions or other Acquisitions permitted hereunder and the incurrence of any Indebtedness permitted hereunder in connection therewith (other than Indebtedness under or other use of the Revolving Commitment or the establishment of any Incremental Revolving Commitment) or (ii) determining compliance with representations and warranties or any Default or Event of Default test with respect to the making of any Permitted Acquisitions or other Acquisitions permitted hereunder and the incurrence of any Indebtedness permitted hereunder in connection therewith (other than Indebtedness under or other use of the Revolving Commitment or the establishment of any Incremental Revolving Commitment), in the case of clauses (i) and (ii), in connection with a Limited Condition Acquisition, if the Borrower has made an LCA Election with respect to such Limited Condition Acquisition, the date of determination of whether any such action is permitted hereunder (including, in the case of calculating Consolidated EBITDA, the reference date for determining the most recently ended period of four consecutive fiscal quarters) shall be deemed to be the date the definitive agreement for such Limited Condition Acquisition (a "Limited Condition Acquisition Agreement") is entered into (the "LCA Test Date"), and if, after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including the incurrence of any Indebtedness and the use of proceeds thereof) on a proforma basis, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such financial covenant, basket, representation and warranty or Default or Event of Default test, such financial covenant, basket, representation and warranty or Default or Event of Default test shall be deemed to have been complied with. Upon making an LCA Election with respect to any Limited Condition Acquisition, the Borrower shall deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent (a) notifying the Administrative Agent of such LCA Election and (b) certifying that each of the conditions for such Limited Condition Acquisition and any related transactions that are tested as of the LCA Test Date have been satisfied (which shall include calculations in reasonable detail for any conditions requiring compliance on a proforma basis with the covenants set forth in Article VI or with any relevant ratio tests) (such certificate, an "LCA Election Certificate"). For the avoidance of doubt, if the Borrower has made an LCA Election and any of the financial covenant, basket, representation and warranty or Default or Event of Default tests for which compliance was determined or tested as of the LCA Test Date would thereafter have failed to have been satisfied as a result of fluctuations in any such financial covenant or basket, including due to fluctuations in Consolidated EBITDA, or changes in compliance with such representation and warranty or Default or Event of Default test at or prior to the consummation of the relevant Limited Condition Acquisition, such financial covenant, basket, representation and warranty and Default or Event of Default tests will not be deemed to have failed to have been satisfied as a result of such fluctuations or changes. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio (other than testing of actual compliance with the covenants set forth in Article VI and determination of the Leverage Ratio for purposes of determining the Applicable Margin or the Maximum Attributable EBITDA Percentage) or basket on or following the relevant LCA Test Date and prior to the earlier of (i) the date on which such Limited Condition Acquisition is consummated or (ii) the date that the Limited Condition Acquisition Agreement therefor is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated (x) on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (y) with respect to Restricted Payments only, also on a standalone basis without giving effect to such Limited Condition Acquisition and the other transactions in connection therewith.

#### ARTICLE II

## AMOUNT AND TERMS OF THE COMMITMENTS

Section 2.1. <u>General Description of Facilities</u>. Subject to and upon the terms and conditions herein set forth, (i) the Revolving Lenders hereby establish in favor of the Borrower a revolving credit facility pursuant to which each Revolving Lender severally agrees (to the extent of such Revolving Lender's Revolving Commitment) to make Revolving Loans to the Borrower in accordance with <u>Section 2.2</u>; (ii) each Issuing Bank may issue Letters of Credit in accordance with <u>Section 2.22</u>; (iii) the Swingline Lender may make Swingline Loans in accordance with <u>Section 2.4</u>; and (iv) each Revolving Lender agrees to purchase a participation interest in the Letters of Credit and the Swingline Loans pursuant to the terms and conditions hereof; <u>provided</u> that in no event shall the aggregate principal amount of all outstanding Revolving Loans, Swingline Loans and outstanding LC Exposure exceed the Aggregate Revolving Commitment Amount in effect from time to time.

Section 2.2. <u>Revolving Loans</u>. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make Revolving Loans, ratably in proportion to its Pro Rata Share of the Aggregate Revolving Commitments, to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time that will not result in (a) such Revolving Lender's Revolving Commitment or (b) the aggregate Revolving Credit Exposure exceeding such Revolving Lenders exceeding the Aggregate Revolving Commitment Amount. During the Availability Period, the Borrower shall be entitled to borrow, prepay and reborrow Revolving Loans in accordance with the terms and conditions of this Agreement; provided that the Borrower may not borrow or reborrow should there exist a Default or Event of Default.

Section 2.3. <u>Procedure for Revolving Borrowings</u>. The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Revolving Borrowing, substantially in the form of <u>Exhibit 2.3</u> attached hereto (a "<u>Notice of Borrowing</u>"), (x) prior to 1:00 p.m. one (1) Business Day prior to the requested date of each Base Rate Borrowing and (y) prior to 1:00 p.m. three (3) Business Days prior to the requested date of each Eurodollar Borrowing; <u>provided</u> that in the case of any Base Rate Borrowings on the Closing Date, such Notice of Borrowing may be provided on the Closing Date. Each Notice of Borrowing shall be irrevocable and shall specify (i) the aggregate principal amount of such Borrowing, (ii) the date of such Borrowing (which shall be a

Business Day), (iii) the Class and Type of Loan comprising such Borrowing and (iv) in the case of a Eurodollar Borrowing, the duration of the initial Interest Period applicable thereto (subject to the provisions of the definition of Interest Period). Each Revolving Borrowing shall consist entirely of Base Rate Loans or Eurodollar Loans, as the Borrower may request. The aggregate principal amount of each Eurodollar Borrowing shall not be less than \$5,000,000 or a larger multiple of \$250,000, and the aggregate principal amount of each Base Rate Borrowing shall not be less than \$1,000,000 or a larger multiple of \$100,000; provided that Base Rate Loans made pursuant to Section 2.4 or Section 2.22(d) may be made in lesser amounts as provided therein. At no time shall the total number of Eurodollar Borrowings outstanding at any time exceed eight (8). Promptly following the receipt of a Notice of Borrowing in accordance herewith, the Administrative Agent shall advise each applicable Lender of the details thereof and the amount of such Lender's Loan to be made as part of the requested Borrowing.

# Section 2.4. Swingline Commitment.

- (a) Subject to the terms and conditions set forth herein, the Swingline Lender may, in its sole discretion, make Swingline Loans to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time not to exceed the lesser of (i) the Swingline Commitment then in effect and (ii) the difference between the Aggregate Revolving Commitment Amount and the aggregate Revolving Credit Exposures of all Lenders; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. The Borrower shall be entitled to borrow, repay and reborrow Swingline Loans in accordance with the terms and conditions of this Agreement.
- (b) The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Swingline Borrowing, substantially in the form of Exhibit 2.4 attached hereto (a "Notice of Swingline Borrowing"), prior to 1:00 p.m. on the requested date of each Swingline Borrowing. Each Notice of Swingline Borrowing shall be irrevocable and shall specify (i) the principal amount of such Swingline Borrowing, (ii) the date of such Swingline Borrowing (which shall be a Business Day) and (iii) the account of the Borrower to which the proceeds of such Swingline Borrowing should be credited. The Administrative Agent will promptly advise the Swingline Lender of each Notice of Swingline Borrowing. The aggregate principal amount of each Swingline Loan shall not be less than \$100,000 or a larger multiple of \$50,000, or such other minimum amounts agreed to by the Swingline Lender and the Borrower. The Swingline Lender will make the proceeds of each Swingline Loan available to the Borrower in Dollars in immediately available funds at the account specified by the Borrower in the applicable Notice of Swingline Borrowing not later than 3:00 p.m. on the requested date of such Swingline Borrowing.
- (c) The Swingline Lender, at any time and from time to time in its sole discretion, may, but in no event no less frequently than once each calendar week shall, on behalf of the Borrower (which hereby irrevocably authorizes and directs the Swingline Lender to act on its behalf), give a Notice of Borrowing to the Administrative Agent requesting the Revolving Lenders (including the Swingline Lender) to make Base Rate Loans in an amount equal to the unpaid principal amount of any Swingline Loan. Each Revolving Lender will make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of the Swingline Lender in accordance with Section 2.6, which will be used solely for the repayment of such Swingline Loan.
- (d) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Revolving Lender (other than the Swingline Lender) shall purchase an undivided participating interest in such Swingline Loan in an amount equal to its Pro Rata Share thereof on the date that such Base Rate Borrowing should have occurred. On the date of such required purchase, each Revolving

Lender shall promptly transfer, in immediately available funds, the amount of its participating interest to the Administrative Agent for the account of the Swingline Lender.

- Each Revolving Lender's obligation to make a Base Rate Loan pursuant to subsection (c) of this Section or to purchase participating interests pursuant to subsection (d) of this Section shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right that such Revolving Lender or any other Person may have or claim against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of any Revolving Lender's Revolving Commitment, (iii) the existence (or alleged existence) of any event or condition which has had or could reasonably be expected to have a Material Adverse Effect, (iv) any breach of this Agreement or any other Loan Document by any Loan Party, the Administrative Agent or any Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to the Swingline Lender by any Revolving Lender, the Swingline Lender shall be entitled to recover such amount on demand from such Revolving Lender, together with accrued interest thereon for each day from the date of demand thereof (x) at the Federal Funds Rate until the second Business Day after such demand and (y) at the Base Rate at all times thereafter. Until such time as such Revolving Lender makes its required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of the unpaid participation for all purposes of the Loan Documents. In addition, such Revolving Lender shall be deemed to have assigned any and all payments made of principal and interest on its Loans and any other amounts due to it hereunder to the Swingline Lender to fund the amount of such Revolving Lender's participation interest in such Swingline Loans that such Revolving Lender failed to fund pursuant to this Section, until such amount has been purchased in full.
- If a Revolving Commitment Termination Date (the "Earlier Swingline Maturity Date") shall have occurred at a time when another tranche or tranches of Revolving Commitments is or are in effect with a longer Maturity Date, then, on the Earlier Swingline Maturity Date, all then outstanding Swingline Loans shall be repaid in full (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of the Earlier Swingline Maturity Date); provided, however, that if on the occurrence of the Earlier Swingline Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.22(a)), there shall exist sufficient unutilized Extended Revolving Commitments which will remain in effect after the occurrence of the Earlier Swingline Maturity Date so that the respective outstanding Swingline Loans could be incurred pursuant to such Extended Revolving Commitments, then (1) there shall be an automatic adjustment on the Earlier Swingline Maturity Date of the risk participations of the Revolving Lenders under such Extended Revolving Commitments pro rata according to such Revolving Lender's Pro Rata Share of the existing Extended Revolving Commitments and such outstanding Swingline Loans shall be deemed to have been incurred solely pursuant to such Extended Revolving Commitments and (2) such Swingline Loans shall not be required to be repaid in full on the Earlier Swingline Maturity Date.

# Section 2.5. [Reserved] Borrower Representative; Co-Borrowers.

(a) Ensign REIT hereby appoints Ensign to act as its agent, attorney-in-fact and representative for the purposes of issuing notices, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents, executing Loan Documents on its behalf, delivering all documents, reports, financial statements and written materials required to be delivered by the Borrower under this Agreement or any of the other Loan Documents, taking all other actions (including in respect of compliance with covenants and

amendments to the Loan Documents) on behalf of the Borrower under the Loan Documents, and all other purposes incidental to any of the foregoing. Ensign hereby accepts the foregoing appointment as Borrower Representative.

- (b) Each Agent, the Swingline Lender, each Issuing Bank and each Lender may regard any notice or other communication pursuant to any Loan Document from Ensign as a notice or communication from the Borrower, and may give any notice or communication required or permitted to be given to the Borrower hereunder to Ensign. Ensign REIT agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by Ensign shall be deemed for all purposes to have been made by Ensign REIT and shall be binding upon and enforceable against Ensign REIT to the same extent as if the same had been made directly by Ensign REIT.
- All Obligations of Ensign and Ensign REIT (the "Companies" and, each, a "Company") under this Agreement and the other Loan Documents shall be joint and several Obligations of each Company. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Obligations of each Company hereunder, solely to the extent that such Company did not receive proceeds of Loans from any borrowing hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations subject to avoidance as a fraudulent transfer or conveyance under any applicable fraudulent transfer laws, in each case, after giving effect to all other liabilities of such Company, contingent or otherwise, that are relevant under such fraudulent transfer laws (specifically excluding, however, any liabilities of such Company in respect of intercompany Indebtedness to any other Loan Party or Affiliates of any other Loan Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Loan Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of applicable fraudulent transfer laws) of any rights to subrogation or contribution of such Company pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Company and other Affiliates of any Loan Party of Obligations arising under Guarantees by such parties.
- (d) Until the Obligations shall have been Paid in Full, each Company shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy that it now has or may hereafter have against the other Company or any Guarantor of the Obligations. Each Company further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Company may have against the other Company, any collateral or security or any Guarantor shall be junior and subordinate to any rights Administrative Agent may have against the other Company, any such collateral or security and any Guarantor. The Companies together desire to allocate among themselves, in a fair and equitable manner, their respective Obligations arising under this Agreement and the other Loan Documents. Accordingly, in the event any payment or distribution is made on any date by any Company under this Agreement and the other Loan Documents (a "Funding Company") such that its Obligation Aggregate Payments exceed its Obligation Fair Share as of such date, that Funding Company shall be entitled to a contribution from the other Company in the amount of the other Company's Obligation Fair Share Shortfall as of such date, with the result that all such contributions will cause each Company's Obligation Aggregate Payments to equal its Obligation Fair Share as of such date. "Obligation Fair Share" means, with respect to any Company as of any date of determination, an amount equal to (i) the ratio of (x) the Obligation Fair Share Contribution Amount with respect to such Company to (y) the aggregate of the Obligation Fair Share Contribution Amounts with respect to both Companies, multiplied by (ii) the aggregate amount paid or distributed on or before such date by both Funding Companies under this

Agreement and the other Loan Documents in respect of the Obligations. "Obligation Fair Share Shortfall" means, with respect to any Company as of any date of determination, the excess, if any, of the Obligation Fair Share of such Company over the Obligation Aggregate Payments of such Company, "Obligation Fair Share Contribution Amount" means, with respect to any Company as of any date of determination, the maximum aggregate amount of the Obligations of such Company under this Agreement and the other Loan Documents that would not render its Obligations subject to avoidance as a fraudulent transfer or conveyance under any applicable fraudulent transfer laws; provided, solely for purposes of calculating the Obligation Fair Share Contribution Amount with respect to any Company for purposes of this Section 2.5, any assets or liabilities of such Company arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Company. "Obligation Aggregate Payments" means, with respect to any Company as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Company in respect of this Agreement and the other Loan Documents (including in respect of this Section 2.5), minus (ii) the aggregate amount of all payments received on or before such date by such Company from the other Company as contributions under this Section 2.5. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Company. The allocation among the Companies of their respective Obligations as set forth in this Section 2.5 shall not be construed in any way to limit the liability of any Company hereunder or under any other Loan Document.

Each Company hereby waives, for the benefit of the Secured Parties, (i) any (e) right to require any Secured Party, as a condition of payment or performance by such Company, to (A) proceed against the other Company, any Guarantor or any other Person, (B) proceed against or exhaust any security held from the other Company, any Guarantor or any other Person, (C) proceed against or have resort to any balance of any deposit account, securities account, or any other credit on the books of any Secured Party in favor of the other Company, any Guarantor or any other Person, or (D) pursue any other remedy in the power of any Secured Party whatsoever; (ii) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the other Company or any Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the other Company or any Guarantor from any cause, other than Payment in Full of all Obligations; (iii) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (iv) any defense based upon any Secured Party's errors or omissions in the administration of the Obligations, except behavior that amounts to willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction; (v) (A) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms hereof and any legal or equitable discharge of such Company's Obligations, (B) the benefit of any statute of limitations affecting such Company's liability hereunder or the enforcement hereof, (C) any rights to set offs, recoupments and counterclaims, and (D) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or ensure any security interest or lien or any property subject thereto; (vi) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or under any Hedging Transaction with a Lender-Related Hedge Provider or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to any Company;

and (vii) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

# Section 2.6. Funding of Borrowings.

- (a) Each Lender will make available each Loan to be made by it hereunder on the proposed date thereof by wire transfer in immediately available funds by 11:00 a.m. to the Administrative Agent at the Payment Office; provided that the Swingline Loans will be made as set forth in Section 2.4. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts that it receives, in like funds by the close of business on such proposed date, to an account maintained by the Borrower with the Administrative Agent or, at the Borrower's option, by effecting a wire transfer of such amounts to an account designated by the Borrower to the Administrative Agent.
- Unless the Administrative Agent shall have been notified by any Lender prior to 5:00 p.m. one (1) Business Day prior to the date of a Borrowing in which such Lender is to participate that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent, in reliance on such assumption, may make available to the Borrower on such date a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender on the date of such Borrowing, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest (x) at the Federal Funds Rate until the second Business Day after such demand and (y) at the Base Rate at all times thereafter. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest at the rate specified for such Borrowing. Nothing in this subsection shall be deemed to relieve any Lender from its obligation to fund its Pro Rata Share of any Borrowing hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any default by such Lender hereunder.
- (c) All Revolving Borrowings shall be made by the Revolving Lenders on the basis of their respective Pro Rata Shares of the Revolving Commitments. No Lender shall be responsible for any default by any other Lender in its obligations hereunder, and each Lender shall be obligated to make its Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

## Section 2.7. Interest Elections.

- (a) Each Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing. Thereafter, the Borrower may elect to convert such Borrowing into a different Type or to continue such Borrowing, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.
- (b) To make an election pursuant to this Section, the Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Borrowing that is to be converted or continued, as the case may be, substantially in the form of <a href="Exhibit 2.7">Exhibit 2.7</a> attached hereto (a "Notice of Conversion/Continuation") (x) prior to 1:00 p.m. one (1) Business Day prior to the requested date of a conversion into a Base Rate Borrowing and (y) prior to 1:00 p.m. three (3) Business Days prior to a continuation of or conversion into a Eurodollar Borrowing. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the Borrowing to which such Notice of

Conversion/Continuation applies and, if different options are being elected with respect to different portions thereof, the portions thereof that are to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) shall be specified for each resulting Borrowing), (ii) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day, (iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing, and (iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of "Interest Period". If any such Notice of Conversion/Continuation requests a Eurodollar Borrowing but does not specify an Interest Period, the Borrower shall be deemed to have selected an Interest Period of one month. The principal amount of any resulting Borrowing shall satisfy the minimum borrowing amount for Eurodollar Borrowings and Base Rate Borrowings set forth in Section 2.3.

- (c) If, on the expiration of any Interest Period in respect of any Eurodollar Borrowing, the Borrower shall have failed to deliver a Notice of Conversion/Continuation, then, unless such Borrowing is repaid as provided herein, the Borrower shall be deemed to have elected to convert such Borrowing to a Base Rate Borrowing. No Borrowing may be converted into, or continued as, a Eurodollar Borrowing if a Default or an Event of Default exists, unless the Administrative Agent and each of the Lenders holding Loans comprising such Borrowing shall have otherwise consented in writing. No conversion of any Eurodollar Loan shall be permitted except on the last day of the Interest Period in respect thereof.
- (d) Upon receipt of any Notice of Conversion/Continuation, the Administrative Agent shall promptly notify each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

### Section 2.8. Optional Reduction and Termination of Commitments.

- (a) Unless previously terminated, all Revolving Commitments, Swingline Commitments and LC Commitments shall terminate on the Revolving Commitment Termination Date.
- (b) Upon at least three (3) Business Days' prior written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent (which notice shall be irrevocable unless the Borrower provides in such notice (in connection with a termination in whole) that it is conditional on the occurrence of another financing or transaction, in which case such notice may be revoked if such financing or transaction does not occur on a timely basis; provided that the Borrower shall pay all amounts required to be paid pursuant to Section 2.19 as a result of such revocation), the Borrower may reduce the Aggregate Revolving Commitments in part or terminate the Aggregate Revolving Commitments in whole; provided that (i) any partial reduction shall apply to reduce proportionately and permanently the Revolving Commitment of each Lender, (ii) any partial reduction pursuant to this Section shall be in an amount of at least \$5,000,000 and any larger multiple of \$1,000,000, and (iii) no such reduction shall be permitted which would reduce the Aggregate Revolving Commitment Amount to an amount less than the aggregate outstanding Revolving Credit Exposure of all Lenders. Any such reduction in the Aggregate Revolving Commitment Amount below the principal amount of the Swingline Commitment and the LC Commitment shall result in a dollar-for-dollar reduction in the Swingline Commitment and the LC Commitment, as applicable.
- (c) With the written approval of the Administrative Agent, the Borrower may terminate (on a non-ratable basis) the unused amount of the Revolving Commitment of a Defaulting Lender, and in such event the provisions of <u>Section 2.26</u> will apply to all amounts thereafter paid by the Borrower for the account of any such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); <u>provided</u> that such termination will not be deemed

to be a waiver or release of any claim that the Borrower, the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender may have against such Defaulting Lender.

# Section 2.9. Repayment of Loans.

- (a) The outstanding principal amount of all Revolving Loans and Swingline Loans shall be due and payable (together with accrued and unpaid interest thereon) on the Revolving Commitment Termination Date.
- (b) The Borrower unconditionally promises to repay any Incremental Term Loan on the applicable Maturity Date and on the applicable dates scheduled for the repayment of principal of any Incremental Term Loan and in the amounts set forth in the applicable Incremental Commitment Joinder. The Borrower unconditionally promises to repay any Extended Term Loan on the applicable Maturity Date and on the applicable dates scheduled for the repayment of principal of any Extended Term Loan and in the amounts set forth in the applicable Extended Facility Agreement. The Borrower promises to repay any Other Refinancing Term Loans on the applicable Maturity Date and on the applicable dates scheduled for the repayment of principal of any Other Refinancing Term Loan and in the amounts set forth in the applicable Refinancing Amendment.

## Section 2.10. Evidence of Indebtedness.

- Each Lender shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain appropriate records in which shall be recorded (i) the Revolving Commitment and the Term Loan Commitment of each Lender, (ii) the amount of each Loan made hereunder by each Lender, the Class and Type thereof and, in the case of each Eurodollar Loan, the Interest Period applicable thereto, (iii) the date of any continuation of any Loan pursuant to Section 2.7, (iv) the date of any conversion of all or a portion of any Loan to another Type pursuant to Section 2.7, (v) the date and amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder in respect of the Loans and (vi) both the date and amount of any sum received by the Administrative Agent hereunder from the Borrower in respect of the Loans and each Lender's Pro Rata Share thereof. The entries made in such records shall be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided that the failure or delay of any Lender or the Administrative Agent in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans (both principal and unpaid accrued interest) of such Lender in accordance with the terms of this Agreement.
- (b) This Agreement evidences the obligation of the Borrower to repay the Loans and is being executed as a "noteless" credit agreement. However, at the request of any Lender (including the Swingline Lender) at any time, the Borrower agrees that it will prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment permitted hereunder) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).
- Section 2.11. Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, without premium or penalty, by giving written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent no later than (i) in the case of any prepayment of any Eurodollar Borrowing, 1:00 p.m. not less than three (3) Business

Days prior to the date of such prepayment, (ii) in the case of any prepayment of any Base Rate Borrowing, 1:00 p.m. not less than one (1) Business Day prior to the date of such prepayment, and (iii) in the case of any prepayment of any Swingline Borrowing, prior to 1:00 p.m. on the date of such prepayment. Each such notice shall be irrevocable (provided that (x) any such notice in connection with the repayment of all Loans may be conditioned on the occurrence of another financing or transaction, in which case such notice may be revoked if such financing or transaction does not occur on a timely basis and (y) the Borrower shall pay all amounts required to be paid pursuant to Section 2.19 as a result of such revocation) and shall specify the proposed date of such prepayment and the principal amount of each Borrowing or portion thereof to be prepaid. Upon receipt of any such notice, the Administrative Agent shall promptly notify each affected Lender of the contents thereof and of such Lender's Pro Rata Share of any such prepayment. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice (unless revoked as provided above), together with accrued interest to such date on the amount so prepaid in accordance with Section 2.13(d); provided that if a Eurodollar Borrowing is prepaid on a date other than the last day of an Interest Period applicable thereto, the Borrower shall also pay all amounts required pursuant to Section 2.19. Each partial prepayment of (i) each Eurodollar Borrowing shall not be less than \$5,000,000 or a larger multiple of \$250,000, (ii) each Base Rate Borrowing (other than a Base Rate Borrowing of Swingline Loans) shall not be less than \$1,000,000 or a larger multiple of \$100,000 and (iii) each Base Rate Borrowing of Swingline Loans shall not be less than \$100,000 or a larger multiple of \$50,000. Each prepayment of a Borrowing shall be applied ratably to the Loans comprising such Borrowing and, in the case of a prepayment of a Term Loan Borrowing, to principal installments in the manner directed by the Borrower.

# Section 2.12. Mandatory Prepayments.

- (a) Immediately upon receipt by the Borrower or any of its Subsidiaries of any proceeds of any sale or disposition by the Borrower or any of its Subsidiaries of any of its assets, or any proceeds from any casualty insurance policies or eminent domain, condemnation or similar proceedings, the Borrower shall prepay the Obligations in an amount equal to all such proceeds, net of commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower in connection therewith (in each case, paid to non-Affiliates); provided that the Borrower shall not be required to prepay the Obligations with respect to (i) proceeds from the sales of inventory in the ordinary course of business, (ii) proceeds from the sales of assets securing Indebtedness permitted under Section 7.1(c) to the extent such proceeds are used to repay such Indebtedness, (iii) proceeds from other asset sales permitted under Section 7.6 in an aggregate amount less than (x) in any Fiscal Year, 10% of the total assets of the Borrower and its Subsidiaries determined on a consolidated basis as of the date of any such asset sale and (y) \$150,000,000 in the aggregate after the Closing Date and (iv) proceeds that are reinvested in assets then used or usable in the business of the Borrower and its Subsidiaries within 180 days following receipt thereof. Any such prepayment shall be applied in accordance with subsection (c) of this Section.
- (b) In the event that the Borrower or any of its Subsidiaries receives proceeds from the issuance or incurrence of Indebtedness by the Borrower or any of its Subsidiaries that is not permitted under Section 7.1, the Borrower shall, substantially simultaneously with (and in any event not later than the fifth succeeding Business Day) the receipt of such proceeds by the Borrower or its applicable Subsidiary, apply an amount equal to 100% of such proceeds, net of all fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith, to prepay the Obligations in accordance with subsection (c) of this Section. In the event that the Borrower or any of its Subsidiaries receives proceeds from the issuance or incurrence of Indebtedness that constitutes (i) Incremental Term Loans or Revolving Loans in respect of Incremental Revolving Commitments, in each case incurred to refinance all or any portion of the Term Loans, (ii) Extended Term Loans or Revolving Loans in respect of Extended Revolving Commitments, in each case incurred to refinance all or any

portion of the Term Loans or (iii) Other Refinancing Loans incurred to refinance all or any portion of the Term Loans, the Borrower shall, substantially simultaneously with (and in any event not later than the fifth succeeding Business Day) the receipt of such proceeds by the Borrower or its applicable Subsidiary, apply an amount equal to 100% of such proceeds, net of all fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith, to prepay the outstanding principal amount of the relevant Term Loans and, thereafter, to prepay the Obligations in accordance with subsection (c) of this Section.

- Any prepayments made by the Borrower pursuant to subsection (a) or (b) of this Section shall be applied as follows: first, to the Administrative Agent's fees and reimbursable expenses then due and payable pursuant to any of the Loan Documents; second, to all reimbursable expenses of the Lenders and all fees and reimbursable expenses of the Issuing Bank then due and payable pursuant to any of the Loan Documents, pro rata to the Lenders and the Issuing Bank based on their respective pro rata shares of such fees and expenses; third, to interest and fees then due and payable hereunder, pro rata to the Lenders based on their respective pro rata shares of such interest and fees; fourth, unless otherwise provided in the applicable Incremental Commitment Joinder, Extended Facility Agreement or Refinancing Amendment, as applicable, to the principal balance of any then outstanding Term Loans, until the same shall have been paid in full, pro rata to the Lenders based on their Pro Rata Shares of such Term Loans, and applied to installments of such Term Loans on a pro rata basis (including, without limitation, the final payment due on the Maturity Date); fifth, to the principal balance of the Swingline Loans, until the same shall have been paid in full, to the Swingline Lender; sixth, to the principal balance of the Revolving Loans, until the same shall have been paid in full, pro rata to the Lenders based on their respective Revolving Commitments; and seventh, to Cash Collateralize the Letters of Credit in an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid fees thereon.
- (d) If at any time the aggregate Revolving Credit Exposure of all Lenders exceeds the Aggregate Revolving Commitment Amount, as reduced pursuant to <a href="Section 2.8">Section 2.8</a> or otherwise increased pursuant to <a href="Section 2.23">Section 2.23</a>, the Borrower shall immediately repay the Swingline Loans and the Revolving Loans in an amount equal to such excess, together with all accrued and unpaid interest on such excess amount and any amounts due under <a href="Section 2.19">Section 2.19</a>. Each prepayment shall be applied as follows: <a href="first">first</a>, to the Swingline Loans to the full extent thereof; <a href="second">second</a>, to the Revolving Loans that are Base Rate Loans to the full extent thereof; and <a href="third">third</a>, to the Revolving Loans that are Eurodollar Loans to the full extent thereof. If, after giving effect to prepayment of all Swingline Loans and Revolving Loans, the aggregate Revolving Credit Exposure of all Lenders exceeds the Aggregate Revolving Commitment Amount, the Borrower shall Cash Collateralize its reimbursement obligations with respect to all Letters of Credit in an amount equal to such excess plus any accrued and unpaid fees thereon.

#### Section 2.13. Interest on Loans.

- (a) The Borrower shall pay interest on (i) each Base Rate Loan at the Base Rate <u>plus</u> the Applicable Margin in effect from time to time and (ii) each Eurodollar Loan at Adjusted LIBOR for the applicable Interest Period in effect for such Loan <u>plus</u> the Applicable Margin in effect from time to time.
- (b) The Borrower shall pay interest on each Swingline Loan at the Base Rate <u>plus</u> the Applicable Margin in effect from time to time.
- (c) Notwithstanding subsections (a) and (b) of this Section, automatically upon the occurrence and during the continuance of an Event of Default, the Borrower shall pay interest ("<u>Default Interest</u>") with respect to all overdue principal and interest and all other Obligations not paid when due at the rate per annum equal to 200 basis points above the otherwise applicable interest rate with respect thereto (i.e., for Eurodollar Loans at the rate per annum equal to 200 basis points above the otherwise

applicable interest rate for such Eurodollar Loans for the then-current Interest Period until the last day of such Interest Period, and thereafter, and with respect to all Base Rate Loans and all other Obligations hereunder (other than Loans), at the rate per annum equal to 200 basis points above the otherwise applicable interest rate for Base Rate Loans). Notwithstanding the foregoing, automatically upon the occurrence and during the continuance of an Event of Default under Sections 8.1(g), (h) or (i) with respect to the Borrower, the Borrower shall pay Default Interest in accordance with the preceding sentence with respect to all Obligations whether or not overdue.

- (d) Interest on the principal amount of all Loans shall accrue from and including the date such Loans are made to but excluding the date of any repayment thereof. Interest on all outstanding Base Rate Loans and Swingline Loans shall be payable quarterly in arrears on the last day of each March, June, September and December and on the applicable Maturity Date. Interest on all outstanding Eurodollar Loans shall be payable on the last day of each Interest Period applicable thereto, and, in the case of any Eurodollar Loans having an Interest Period in excess of three months, on each day which occurs every three months after the initial date of such Interest Period, and on the applicable Maturity Date. Interest on any Loan which is converted into a Loan of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof. All Default Interest shall be payable on demand.
- (e) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder and shall promptly notify the Borrower and the Lenders of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

### Section 2.14. Fees.

- (a) The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times previously agreed upon in writing by the Borrower and the Administrative Agent.
- (b) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee, which shall accrue at the Applicable Percentage per annum (determined daily in accordance with the Pricing Grid) on the daily amount of the unused Revolving Commitment of such Revolving Lender during the Availability Period. For purposes of computing the commitment fee, the Revolving Commitment of each Revolving Lender shall be deemed used to the extent of the outstanding Revolving Loans and LC Exposure, but not Swingline Exposure, of such Revolving Lender.
- (c) The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Revolving Lender, a letter of credit fee with respect to its participation in each Letter of Credit, which shall accrue at a rate per annum equal to the Applicable Margin for letter of credit fees then in effect on the average daily amount of such Revolving Lender's LC Exposure attributable to such Letter of Credit during the period from and including the date of issuance of such Letter of Credit to but excluding the date on which such Letter of Credit expires or is drawn in full (including, without limitation, any LC Exposure that remains outstanding after the Revolving Commitment Termination Date) and (ii) to each Issuing Bank for its own account a facing fee, which shall accrue at the rate separately agreed to by the Borrower and such Issuing Bank on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the Availability Period (or until the date that such Letter of Credit is irrevocably cancelled, whichever is later), as well as such Issuing Bank's standard fees with respect to issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Notwithstanding the foregoing, if the Borrower, in accordance with Section 2.13(c), is obligated to pay Default Interest with respect to

the Obligations whether or not overdue, the fee payable pursuant to this <u>subsection (c)</u> shall increase by two percent (2.00%) per annum.

- (d) [Intentionally Omitted].
- (e) The Borrower shall pay on the Closing Date to the Administrative Agent and its Affiliates all fees in the Fee Letter that are due and payable on the Closing Date. The Borrower shall pay on the Closing Date to the Lenders all upfront fees previously agreed in writing.
- (f) Accrued fees under subsections (b) and (c) of this Section shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing on December 31, 2019, and on the Revolving Commitment Termination Date (and, if later, the date the Revolving Loans and LC Exposure shall be repaid in their entirety); provided that any such fees accruing after the Revolving Commitment Termination Date shall be payable on demand.
- (g) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to commitment fees accruing with respect to its Revolving Commitment during such period pursuant to subsection (b) of this Section or letter of credit fees accruing during such period pursuant to subsection (c) of this Section (without prejudice to the rights of the Lenders other than Defaulting Lenders in respect of such fees), provided that (x) to the extent that a portion of the LC Exposure of such Defaulting Lender is reallocated to the Non-Defaulting Lenders pursuant to Section 2.26, such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, pro rata in accordance with their respective Revolving Commitments, and (y) to the extent any portion of such LC Exposure cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the applicable Issuing Bank (unless such LC exposure has been Cash Collateralized). The pro rata payment provisions of Section 2.21 shall automatically be deemed adjusted to reflect the provisions of this subsection.

# Section 2.15. Computation of Interest and Fees.

Interest hereunder based on the prime lending rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed (including the first day but excluding the last day). All other interest and all fees hereunder shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day). Each determination by the Administrative Agent of an interest rate or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

# Section 2.16. Inability to Determine Interest Rates.

- (a) If, prior to the commencement of any Interest Period for any Eurodollar Borrowing:
  - (i) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant interbank market, adequate means do not exist for ascertaining Adjusted LIBOR (including, without limitation, because the Screen Rate is not available or published on a current basis) for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that Adjusted LIBOR does not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their Eurodollar Loans for such Interest Period,

the Administrative Agent shall give written notice (or telephonic notice, promptly confirmed in writing) to the Borrower and to the Lenders as soon as practicable thereafter. Until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) the obligations of the Lenders to make Eurodollar Loans or to continue or convert outstanding Loans as or into Eurodollar Loans shall be suspended and (ii) all such affected Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto unless the Borrower prepays such Loans in accordance with this Agreement. Unless the Borrower notifies the Administrative Agent at least one (1) Business Day before the date of any Eurodollar Borrowing for which a Notice of Borrowing or a Notice of Conversion/ Continuation has previously been given that it elects not to borrow, continue or convert to a Eurodollar Borrowing on such date, then such Borrowing shall be made as, continued as or converted into a Base Rate Borrowing.

If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) above have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) above have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Screen Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin). Notwithstanding anything to the contrary in Section 10.2, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.16(b), only to the extent the Screen Rate for the applicable currency and/or such Interest Period is not available or published at such time on a current basis), (x) any Notice of Conversion/Continuation that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (y) if any Notice of Borrowing requests a Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing; provided, that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 2.17. Illegality. If any Change in Law shall make it unlawful or impossible for any Lender to make, maintain or fund any Eurodollar Loan and such Lender shall so notify the Administrative Agent, the Administrative Agent shall promptly give notice thereof to the Borrower and the other Lenders, whereupon until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended. In the case of the making of a Eurodollar Borrowing, such Lender's Loan shall be made as a Base Rate Loan as part of the same Borrowing for the same Interest Period and, if the affected Eurodollar Loan is then outstanding, such Loan shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan if such Lender may lawfully continue

to maintain such Loan to such date or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain such Eurodollar Loan to such date. Notwithstanding the foregoing, the affected Lender shall, prior to giving such notice to the Administrative Agent, designate a different Applicable Lending Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Lender in the good faith exercise of its discretion.

### Section 2.18. Increased Costs.

# (a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of Adjusted LIBOR hereunder against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in Adjusted LIBOR) or any Issuing Bank;
- (ii) impose on any Lender, any Issuing Bank or the eurodollar interbank market any other condition affecting this Agreement or any Eurodollar Loans made by such Lender or any Letter of Credit or any participation therein; or
- (iii) subject any Recipient to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining a Eurodollar Loan or to increase the cost to such Lender or such Issuing Bank of participating in or issuing any Letter of Credit or to reduce the amount received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount), then, from time to time, such Lender or such Issuing Bank may provide the Borrower (with a copy thereof to the Administrative Agent) with written notice and demand with respect to such increased costs or reduced amounts and within five (5) Business Days after receipt of the certificate required under subsection (c) below, the Borrower shall pay to such Lender or such Issuing Bank, as the case may be, such additional amounts as will compensate such Lender or such Issuing Bank for any such increased costs incurred or reduction suffered.

- (b) If any Lender or any Issuing Bank shall have determined that on or after the date of this Agreement any Change in Law regarding capital and liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or assets (or on the capital or assets of the Parent Company of such Lender or such Issuing Bank) as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender, such Issuing Bank or such Parent Company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies or the policies of such Parent Company with respect to capital adequacy and liquidity), then, from time to time, such Lender or such Issuing Bank may provide the Borrower (with a copy thereof to the Administrative Agent) with written notice and demand with respect to such reduced amounts, and within five (5) Business Days after receipt of the certificate required under subsection (c) below, the Borrower shall pay to such Lender or such Issuing Bank, as the case may be, such additional amounts as will compensate such Lender, such Issuing Bank or such Parent Company for any such reduction suffered.
- (c) A certificate of such Lender or such Issuing Bank setting forth (x) the amount or amounts necessary to compensate such Lender, such Issuing Bank or the Parent Company of such Lender or such Issuing Bank, as the case may be, specified in subsection (a) or (b) of this Section and (y) a

reasonably detailed explanation of the applicable Change in Law, shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive, absent manifest error.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; <a href="mailto:provided">provided</a> that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.19. Funding Indemnity. In the event of (a) the payment of any principal of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure by the Borrower to borrow, prepay, convert or continue any Eurodollar Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Borrower shall compensate each Lender, within five (5) Business Days after written demand from such Lender, for any loss, cost or expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense shall be deemed to include an amount determined by such Lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Eurodollar Loan if such event had not occurred at Adjusted LIBOR applicable to such Eurodollar Loan for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Eurodollar Loan) over (B) the amount of interest that would accrue on the principal amount of such Eurodollar Loan for the same period if Adjusted LIBOR were set on the date such Eurodollar Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such Eurodollar Loan. A certificate as to any additional amount payable under this Section submitted to the Borrower by any Lender (with a copy to the Administrative Agent) shall be conclusive, absent manifest error.

### Section 2.20. Taxes.

- (a) Any and all payments by or on account of any obligation of the Borrower or any other Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; provided that if any applicable law requires the deduction or withholding of any Tax from any such payment, then the applicable Withholding Agent shall make such deduction and timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Borrower or other Loan Party, as applicable, shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient shall receive an amount equal to the sum it would have received had no such deductions or withholdings been made.
- (b) In addition, without limiting the provisions of subsection (a) of this Section, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (c) The Borrower shall indemnify each Recipient, within five (5) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid or

payable by such Recipient (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the applicable Recipient shall be conclusive, absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any other Loan Party to a Governmental Authority, the Borrower or other Loan Party, as applicable, shall deliver to the Administrative Agent an original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

## (e) <u>Tax Forms</u>.

- (i) Any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent, on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), duly executed copies of IRS Form W-9 certifying, to the extent such Lender is legally entitled to do so, that such Lender is exempt from U.S. federal backup withholding tax.
- (ii) Any Lender that is a Foreign Person and that is entitled to an exemption from or reduction of withholding tax under the Code or any treaty to which the United States is a party with respect to payments under this Agreement shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. Without limiting the generality of the foregoing, each Lender that is a Foreign Person shall, to the extent it is legally entitled to do so, (w) on or prior to the date such Lender becomes a Lender under this Agreement, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this subsection, and (z) from time to time upon the reasonable request by the Borrower or the Administrative Agent, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the Borrower or the Administrative Agent), whichever of the following is applicable:
  - (A) if such Lender is claiming eligibility for benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, duly executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or any successor form thereto, establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty, and (y) with respect to any other applicable payments under any Loan Document, duly executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or any successor form thereto, establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

- (B) duly executed copies of IRS Form W-8ECI, or any successor form thereto, certifying that the payments received by such Lender are effectively connected with such Lender's conduct of a trade or business in the United States;
- (C) if such Lender is claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, duly executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or any successor form thereto, together with a certificate (a "<u>U.S. Tax Compliance Certificate</u>") upon which such Lender certifies that (1) such Lender is not a bank for purposes of Section 881(c)(3)(A) of the Code, or the obligation of the Borrower hereunder is not, with respect to such Lender, a loan agreement entered into in the ordinary course of its trade or business, within the meaning of that Section, (2) such Lender is not a 10% shareholder of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code, (3) such Lender is not a controlled foreign corporation that is related to the Borrower within the meaning of Section 881(c)(3)(C) of the Code, and (4) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Lender; or
- (D) if such Lender is not the beneficial owner (for example, a partnership or a participating Lender granting a typical participation), duly executed copies of IRS Form W-8IMY, or any successor form thereto, accompanied by IRS Form W-9, IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, and/or other certification documents from each beneficial owner, as applicable.
- (iii) Each Lender agrees that if any form or certification it previously delivered under this Section expires or becomes obsolete or inaccurate in any respect and such Lender is not legally entitled to provide an updated form or certification, it shall promptly notify the Borrower and the Administrative Agent of its inability to update such form or certification.
- (f) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.
- (g) <u>Treatment of Certain Refunds</u>. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this <u>Section 2.20</u> (including by the payment of additional amounts pursuant to this <u>Section 2.20</u>), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this <u>Section 2.20</u> with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by

the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g) in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) <u>Survival</u>. Each party's obligations under this <u>Section 2.20</u> shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

# Section 2.21. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

- (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.18, 2.19 or 2.20, or otherwise) prior to 12:00 noon on the date when due, in immediately available funds, free and clear of any defenses, rights of set-off, counterclaim, or withholding or deduction of taxes. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.18, 2.19, 2.20 and 10.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments hereunder shall be made in Dollars.
- (b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied as follows: <a href="first">first</a>, to all fees and reimbursable expenses of the Administrative Agent then due and payable pursuant to any of the Loan Documents; <a href="second">second</a>, to all reimbursable expenses of the Lenders and all fees and reimbursable expenses of the Issuing Banks then due and payable pursuant to any of the Loan Documents, pro rata to the Lenders and the Issuing Banks based on their respective pro rata shares of such fees and expenses; <a href="third">third</a>, to all interest and fees then due and payable hereunder, pro rata to the Lenders based on their respective pro rata shares of such interest and fees; and <a href="fourth">fourth</a>, to all principal of the Loans and unreimbursed LC Disbursements then due and payable hereunder, pro rata to the parties entitled thereto based on their respective pro rata shares of such principal and unreimbursed LC Disbursements.
- (c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans then due that would result in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Credit Exposure, Term Loans and accrued interest and fees thereon (as applicable) than the proportion received by any other Lender with respect to

its Revolving Credit Exposure or Term Loans (as applicable), then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Credit Exposure and Term Loans (as applicable) of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Credit Exposure and Term Loans (as applicable); provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this subsection shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Exposure or Term Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this subsection shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount or amounts due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

# Section 2.22. Letters of Credit.

During the Availability Period, each Issuing Bank, in reliance upon the agreements of the other Revolving Lenders pursuant to subsections (d) and (e) of this Section, shall issue, at the request of the Borrower, Letters of Credit for the account of the Borrower on the terms and conditions hereinafter set forth; provided that (i) each Letter of Credit shall expire on the earlier of (A) the date one year after the date of issuance of such Letter of Credit (or, in the case of any renewal or extension thereof (which may be an automatically renewing or extending Letter of Credit), one year after such renewal or extension) and (B) the date that is five (5) Business Days prior to the latest Revolving Commitment Termination Date: (ii) each Letter of Credit shall be in a stated amount of at least \$50,000: and (iii) the Borrower may not request any Letter of Credit if, after giving effect to such issuance, (A) the aggregate LC Exposure would exceed the LC Commitment or (B) the aggregate Revolving Credit Exposure of all Lenders would exceed the Aggregate Revolving Commitment Amount. Each Lender with a Revolving Commitment shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable Issuing Bank without recourse a participation in each Letter of Credit equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit on the date of issuance. Each issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Lender by an amount equal to the amount of such participation. If the Maturity Date in respect of any tranche of Revolving Commitments occurs prior to the expiration of any Letter of Credit (such maturity date, the "Earlier LC Maturity Date"), then (i) on such Earlier LC Maturity Date, if one or more other tranches of Revolving Commitments in respect of which the Maturity

Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to this Section) under (and ratably participated in by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the immediately preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders in any Letter of Credit issued before such Maturity Date.

- (b) To request the issuance of a Letter of Credit (or any amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall give the applicable Issuing Bank and the Administrative Agent irrevocable written notice prior to 1:00 p.m. at least three (3) Business Days prior to the requested date of such issuance specifying the date (which shall be a Business Day) such Letter of Credit is to be issued (or amended, renewed or extended, as the case may be), the expiration date of such Letter of Credit, the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. In addition to the satisfaction of the conditions in Section 3.2, the issuance of such Letter of Credit (or any amendment which increases the amount of such Letter of Credit) will be subject to the further conditions that such Letter of Credit shall be in such form and contain such terms as the applicable Issuing Bank shall approve and that the Borrower shall have executed and delivered any additional applications, agreements and instruments relating to such Letter of Credit as such Issuing Bank shall reasonably require; provided that in the event of any conflict between such applications, agreements or instruments and this Agreement, the terms of this Agreement shall control.
- (c) At least two (2) Business Days prior to the issuance of any Letter of Credit, the applicable Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received such notice, and, if not, such Issuing Bank will provide the Administrative Agent with a copy thereof. Unless such Issuing Bank has received notice from the Administrative Agent, on or before the Business Day immediately preceding the date such Issuing Bank is to issue the requested Letter of Credit, directing such Issuing Bank not to issue the Letter of Credit because such issuance is not then permitted hereunder because of the limitations set forth in subsection (a) of this Section or that one or more conditions specified in Section 3.2 are not then satisfied, then, subject to the terms and conditions hereof, such Issuing Bank shall, on the requested date, issue such Letter of Credit in accordance with such Issuing Bank's usual and customary business practices.
- (d) Each Issuing Bank shall examine all documents purporting to represent a demand for payment under a Letter of Credit promptly following its receipt thereof. The applicable Issuing Bank shall notify the Borrower and the Administrative Agent of such demand for payment and whether such Issuing Bank has made or will make a LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to such LC Disbursement. The Borrower shall be irrevocably and unconditionally obligated to reimburse such Issuing Bank for any LC Disbursements paid by such Issuing Bank in respect of such drawing, without presentment, demand or other formalities of any kind. Unless the Borrower shall have notified the applicable Issuing Bank and the Administrative Agent prior to 11:00 a.m. on the Business Day immediately following the date on which such drawing is honored that the Borrower intends to reimburse such Issuing Bank for the amount

of such drawing in funds other than from the proceeds of Revolving Loans, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting the Revolving Lenders to make a Base Rate Borrowing on such date in an exact amount due to such Issuing Bank; provided that for purposes solely of such Borrowing, the conditions precedent set forth in Section 3.2 hereof shall not be applicable. The Administrative Agent shall notify the Revolving Lenders of such Borrowing in accordance with Section 2.3, and each Revolving Lender shall make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of such Issuing Bank in accordance with Section 2.6. The proceeds of such Borrowing shall be applied directly by the Administrative Agent to reimburse such Issuing Bank for such LC Disbursement.

- If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Revolving Lender (other than the applicable Issuing Bank) shall be obligated to fund the participation that such Revolving Lender purchased pursuant to subsection (a) of this Section in an amount equal to its Pro Rata Share of such LC Disbursement on and as of the date which such Base Rate Borrowing should have occurred. Each Revolving Lender's obligation to fund its participation shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right that such Revolving Lender or any other Person may have against the applicable Issuing Bank or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of the Aggregate Revolving Commitments, (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any of its Subsidiaries, (iv) any breach of this Agreement by the Borrower or any other Lender, (v) any amendment, renewal or extension of any Letter of Credit or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. On the date that such participation is required to be funded, each Revolving Lender shall promptly transfer, in immediately available funds, the amount of its participation to the Administrative Agent for the account of the applicable Issuing Bank. Whenever, at any time after the applicable Issuing Bank has received from any such Revolving Lender the funds for its participation in a LC Disbursement, such Issuing Bank (or the Administrative Agent on its behalf) receives any payment on account thereof, the Administrative Agent or such Issuing Bank, as the case may be, will distribute to such Revolving Lender its Pro Rata Share of such payment; provided that if such payment is required to be returned for any reason to the Borrower or to a trustee, receiver, liquidator, custodian or similar official in any bankruptcy proceeding, such Revolving Lender will return to the Administrative Agent or such Issuing Bank any portion thereof previously distributed by the Administrative Agent or such Issuing Bank to it.
- (f) To the extent that any Revolving Lender shall fail to pay any amount required to be paid pursuant to subsection (d) or (e) of this Section on the due date therefor, such Revolving Lender shall pay interest to the applicable Issuing Bank (through the Administrative Agent) on such amount from such due date to the date such payment is made at a rate per annum equal to the Federal Funds Rate; <a href="mailto:provided">provided</a> that if such Revolving Lender shall fail to make such payment to the applicable Issuing Bank within three (3) Business Days of such due date, then, retroactively to the due date, such Revolving Lender shall be obligated to pay interest on such amount at the rate set forth in <a href="mailto:Section 2.13(c)">Section 2.13(c)</a>.
- (g) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders demanding that its reimbursement obligations with respect to the Letters of Credit be Cash Collateralized pursuant to this subsection, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of each Issuing Bank and the Revolving Lenders, an amount in cash equal to 103% of the aggregate LC Exposure of all Lenders as of such date plus any accrued and unpaid fees thereon; provided that such obligation to Cash Collateralize the reimbursement obligations of the Borrower with respect to the Letters of Credit shall become effective immediately, and such deposit

shall become immediately due and payable, without demand or notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.1(h) or (i). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. The Borrower agrees to execute any documents and/or certificates to effectuate the intent of this subsection. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it had not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, with the consent of the Required Lenders, be applied to satisfy other obligations of the Borrower under this Agreement and the other Loan Documents. If the Borrower is required to Cash Collateralize its reimbursement obligations with respect to the Letters of Credit as a result of the occurrence of an Event of Default, such cash collateral so posted (to the extent not so applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

- (h) Upon the request of any Revolving Lender, but no more frequently than quarterly, each Issuing Bank shall deliver (through the Administrative Agent) to each Revolving Lender and the Borrower a report describing the aggregate Letters of Credit issued by such Issuing Bank and then outstanding. Upon the request of any Revolving Lender from time to time, each Issuing Bank shall deliver to such Revolving Lender any other information reasonably requested by such Revolving Lender with respect to each Letter of Credit issued by such Issuing Bank and then outstanding.
- (i) The Borrower's obligation to reimburse LC Disbursements hereunder shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever and irrespective of any of the following circumstances:
  - (i) any lack of validity or enforceability of any Letter of Credit or this Agreement;
  - (ii) the existence of any claim, set-off, defense or other right which the Borrower or any Subsidiary or Affiliate of the Borrower may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such beneficiary or transferee may be acting), any Lender (including any Issuing Bank) or any other Person, whether in connection with this Agreement or the Letter of Credit or any document related hereto or thereto or any unrelated transaction;
  - (iii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
  - (iv) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document to such Issuing Bank that does not comply with the terms of such Letter of Credit;
  - (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or

equitable discharge of, or provide a right of set-off against, the Borrower's obligations hereunder; or

(vi) the existence of a Default or an Event of Default.

Neither the Administrative Agent, any Issuing Bank, any Lender nor any Related Party of any of the foregoing shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to above), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any actual direct damages (as opposed to special, indirect (including claims for lost profits or other consequential damages), or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise due care when determining whether drafts or other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised due care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may. in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

- (j) Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a Letter of Credit is issued and subject to applicable laws, (i) each standby Letter of Credit shall be governed by the "International Standby Practices 1998" (ISP98) (or such later revision as may be published by the Institute of International Banking Law & Practice on any date any Letter of Credit may be issued), (ii) each documentary Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (or such later revision as may be published by the International Chamber of Commerce on any date any Letter of Credit may be issued) and (iii) the Borrower shall specify the foregoing in each letter of credit application submitted for the issuance of a Letter of Credit.
- (k) The parties hereto agree that the Existing Letters of Credit shall constitute Letters of Credit for all purposes hereunder as if such letters of credit were issued by an Issuing Bank under this Agreement.

## Section 2.23. Increase of Commitments; Additional Lenders.

(a) From time to time after the Closing Date and in accordance with this Section, the Borrower and one or more Increasing Lenders or Additional Lenders (each as defined below) may enter into an agreement to (i) increase the aggregate principal amount of the Revolving Commitments and/or (ii) establish one or more tranches of Incremental Term Loan Commitments hereunder (each such increase or additional tranche, an "Incremental Commitment" and the principal amount thereof, the "Incremental Commitment Amount") so long as the following conditions are satisfied:

- (i) subject, in the case of an Incremental Term Loan (and related Incremental Term Loan Commitments) used to finance a Limited Condition Acquisition, to Section 1.5, the aggregate principal amount of all such Incremental Commitments made pursuant to this Section shall not exceed the sum of (A) \$175,000,000 plus (B) additional amounts so long as the Leverage Ratio, calculated on a pro forma basis (giving pro forma effect to the incurrence of such Incremental Commitments (and treating any unfunded Incremental Commitments as fully drawn) and any transactions entered into in connection therewith, including the incurrence or repayment of any Indebtedness and any Acquisitions (on a Pro Forma Basis)) without netting the cash proceeds of the Incremental Term Loans or Revolving Loans made under such Incremental Commitments or the proceeds of any other Indebtedness incurred substantially concurrently therewith, does not exceed 1.75:1.00;
- (ii) the Borrower shall execute and deliver such documents and instruments and take such other actions as may be reasonably required by the Administrative Agent in connection with and at the time of any such proposed increase;
- subject, in the case of an Incremental Term Loan (and related Incremental Term Loan Commitments) used to finance a Limited Condition Acquisition, to Section 1.5, at the time of and immediately after giving effect to any such Incremental Commitment, (x) no Event of Default shall exist; provided that (A) in the case of any Incremental Commitment obtained for the purposes of financing an Acquisition not prohibited by this Agreement, the Lenders providing such Incremental Commitment and the Administrative Agent may agree that such condition shall be limited to an absence of an Event of Default under Section 8.1(a), (b), (q), (h) or (i) and (B) if the Borrower makes an LCA Election pursuant to Section 1.5 and such condition is tested as of the applicable LCA Test Date, it shall also be a condition that no Event of Default under Section 8.1(a), (b), (g), (h) or (i) shall have occurred and be continuing or would result from the incurrence of such Incremental Term Loan (and related Term Loan Commitments) and the transactions consummated in connection therewith (including the incurrence of any Indebtedness and the use proceeds thereof) on the date on which such Incremental Term Loan (and related Incremental Term Loan Commitments) is incurred and the applicable Limited Condition Acquisition is consummated, and (y) all representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects) as of the date of the establishment of such Incremental Commitment (or, if such representation or warranty relates to an earlier date, as of such earlier date); provided that in the case of any Incremental Commitment obtained for the purposes of financing an Acquisition or other Investment not prohibited by this Agreement, the Lenders providing such Incremental Commitment may agree that the only representations and warranties the accuracy of which shall be a condition to such Incremental Commitment (and the Incremental Term Loans or Revolving Loans provided thereunder) shall be (I) the Specified Representations and (II) the representations and warranties made by or on behalf of the applicable target in the purchase, acquisition or similar agreement governing such Acquisition or other Investment as are material to the interests of the Lenders, but only to the extent that the Borrower (or the Borrower's applicable Affiliates or Subsidiaries) has the right (determined without regard to any notice requirement) not to consummate or the right to terminate (or cause the termination of) the Borrower's (or such Affiliates' or Subsidiaries') obligations under such purchase, acquisition or other agreement as a result of a breach of such representations or warranties in such purchase, acquisition or other agreement (or the failure of such representations or warranties to be accurate or to satisfy the closing conditions in such purchase, acquisition or other agreement applicable to

such representations or warranties) (such representations and warranties, the "Specified Target Representations");

- (x) any incremental term loans made pursuant to this Section (the "Incremental Term Loans" and, the commitments with respect thereto, the "Incremental Term Loan Commitments") shall have a maturity date no earlier than the latest Maturity Date in effect at the time such Incremental Term Loans are incurred, shall have a Weighted Average Life to Maturity no shorter than that of any then-outstanding Term Loans (without giving effect to previous reductions in and previously made amortization payments on such Term Loans) and shall otherwise have terms (other than pricing and any representations, warranties, covenants and other provisions applicable only to periods after the latest Maturity Date hereunder at such time) that either are consistent with the applicable terms of the existing Loans and Commitments hereunder or are reasonably satisfactory to the Administrative Agent (it being understood and agreed that to the extent that any more restrictive terms are added for the benefit of any Incremental Term Loan Commitments and related Incremental Term Loans, no consent shall be required from the Administrative Agent or any Lender to the extent that such terms are also added for the benefit of the existing Loans and Commitments (to the extent applicable)), and (y) any incremental Revolving Commitments provided pursuant to this Section (the "Incremental Revolving Commitments") shall have identical terms (including pricing and termination date; provided that upfront fees for any Incremental Revolving Commitments will be permitted and shall be determined by the Borrower and the Lenders providing such Incremental Revolving Commitments) to the Revolving Commitments and be treated as the same Class as the Revolving Commitments and the Borrower shall, after the establishment of any Incremental Revolving Commitments pursuant to this Section, repay and incur Revolving Loans ratably as between the Incremental Revolving Commitments and the Revolving Commitments outstanding immediately prior to such increase (provided that such repayment and incurrence may, with the Administrative Agent's consent, be effectuated through assignments among Lenders with Revolving Commitments, which shall not require an Assignment and Acceptance and may be effectuated by the Administrative Agent through changes in the Register and fundings from such Lenders providing Incremental Commitments); provided, further, that Interest Periods applicable to Incremental Term Loans or Revolving Loans advanced pursuant to Incremental Revolving Commitments may, at the election of the Administrative Agent and the Borrower, be made with Interest Period(s) identical to the then remaining Interest Period(s) applicable to any existing Term Loans of the relevant Class or existing Revolving Loans of the applicable Class (and allocated to such Interest Period(s) on a proportional basis);
- (v) subject, in the case of an Incremental Term Loan (and related Incremental Term Loan Commitments) used to finance a Limited Condition Acquisition, to Section 1.5, the Borrower and its Subsidiaries shall be in proforma compliance with each of the financial covenants set forth in Article VI as of the most recently ended Test Period, calculated as if all such Incremental Term Loans had been made and all such Incremental Revolving Commitments had been established (and fully funded) as of the first day of the relevant period for testing compliance (including giving effect to any Acquisitions on a Pro Forma Basis that are contemplated to be funded with such Incremental Term Loans or Incremental Revolving Commitments); and
- (vi) any collateral securing any such Incremental Commitments shall also secure all other Obligations on a pari passu basis.
- (b) The Borrower shall provide at least ten (10) days' (or such shorter period of time as may be agreed to by the Administrative Agent in its sole discretion) written notice to the

Administrative Agent (who shall promptly provide a copy of such notice to each Lender) of any proposal to establish an Incremental Commitment. The Borrower may also, but is not required to, specify any fees offered to those Lenders (the "Increasing Lenders") that agree to increase the principal amount of their Revolving Commitments and/or provide Incremental Term Loan Commitments, which fees may be variable based upon the amount by which any such Lender is willing to increase the principal amount of its Revolving Commitment and/or the principal amount of the Incremental Term Loan Commitment such Lender is willing to provide, as applicable. No Lender (or any successor thereto) shall have any obligation, express or implied, to offer to increase the aggregate principal amount of its Revolving Commitment and/or provide an Incremental Term Loan Commitment, and any decision by a Lender to increase its Revolving Commitment and/or provide an Incremental Term Loan Commitment shall be made in its sole discretion independently from any other Lender. Only the consent of each Increasing Lender shall be required for Incremental Commitments pursuant to this Section. No Lender which declines to increase the principal amount of its Revolving Commitment and/or provide an Incremental Term Loan Commitment may be replaced with respect to its existing Revolving Commitment, its existing Term Loan Commitment (if any) and/or its existing Term Loans (if any), as applicable, as a result thereof without such Lender's consent. The Borrower may accept some or all of the offered amounts from existing Lenders or designate new lenders that are acceptable to the Administrative Agent (any such consent to be required only to the extent required under Section 10.4(b) for an assignment of Loans or Commitments of such Type to such new lender), the Borrower and, in the case of any Incremental Revolving Commitments, each Issuing Bank (such approvals of the Administrative Agent, the Borrower and the Issuing Banks not to be unreasonably withheld) as additional Lenders hereunder in accordance with this Section (the "Additional Lenders"), which Additional Lenders may assume all or a portion of such Incremental Commitment. The Borrower shall have discretion to adjust the allocation of such Incremental Revolving Commitments and/or such Incremental Term Loans among the then-existing Lenders and the Additional Lenders (as it may elect). The sum of the increase in the principal amount of the Revolving Commitments and the aggregate principal amount of the Incremental Term Loan Commitments of the Increasing Lenders plus the principal amount of the Revolving Commitments and the aggregate principal amount of the Term Loan Commitments of the Additional Lenders shall not in the aggregate exceed the unsubscribed amount of the Incremental Commitment Amount.

- (c) Subject to subsections (a) and (b) of this Section, any increase requested by the Borrower shall be effective upon delivery to the Administrative Agent of each of the following documents:
  - (i) an originally executed copy of an instrument of joinder (each, an "Incremental Commitment Joinder"), in form and substance reasonably acceptable to the Administrative Agent, executed by the Administrative Agent, by the Borrower, by each Additional Lender and by each Increasing Lender, setting forth the Incremental Revolving Commitments and/or Incremental Term Loan Commitments, as applicable, of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all of the terms and provisions hereof;
  - (ii) such evidence of appropriate corporate authorization on the part of the Borrower with respect to such Incremental Commitment and such opinions of counsel for the Borrower with respect to such Incremental Commitment as the Administrative Agent may reasonably request;
  - (iii) a certificate of the Borrower signed by a Responsible Officer, in form and substance reasonably acceptable to the Administrative Agent, certifying that each of the conditions in subsection (a) of this Section has been satisfied; <a href="mailto:provided">provided</a> that, in the case of an Incremental Term Loan (and related Incremental Term Loan Commitments) used to finance a

Limited Condition Acquisition, the conditions set forth in subsection (a) of this Section that are tested as of the applicable LCA Test Date shall be certified in the applicable LCA Election Certificate instead of the certificate delivered pursuant to this subsection (iii);

- (iv) to the extent requested by any Additional Lender or any Increasing Lender, executed promissory notes evidencing such Incremental Revolving Commitments and/or such Incremental Term Loans, issued by the Borrower in accordance with Section 2.10; and
- (v) any other certificates or documents that the Administrative Agent shall reasonably request, in form and substance reasonably satisfactory to the Administrative Agent.

Upon the effectiveness of any such Incremental Commitment, the Commitments and Pro Rata Share of each Lender will be adjusted to give effect to the Incremental Commitments and/or the Incremental Term Loans, as applicable, and <a href="Schedule I">Schedule I</a> shall automatically be deemed amended accordingly.

- (d) If any Incremental Term Loan Commitments are to be established pursuant to this Section, other than as set forth herein, all terms with respect thereto shall be as set forth in the applicable Incremental Commitment Joinder, the execution and delivery of which agreement shall be a condition to the effectiveness of the establishment of the Incremental Term Loan Commitments. Notwithstanding anything to the contrary in <a href="Section 10.2">Section 10.2</a>, the Administrative Agent is expressly permitted to amend the Loan Documents to the extent necessary to give effect to any increase in Commitments and/or establishment of a new Incremental Term Loan Commitment pursuant to this Section and mechanical changes necessary or advisable in connection therewith (including amendments to implement the requirements in the preceding sentence or the foregoing <a href="clause (a)(iv)">clause (a)(iv)</a> of this Section, amendments to ensure pro rata allocations of Eurodollar Loans and Base Rate Loans between Loans incurred pursuant to this Section and Loans outstanding immediately prior to any such incurrence and amendments to implement ratable participation in Letters of Credit between the Incremental Revolving Commitments and the Revolving Commitments outstanding immediately prior to any such incurrence).
- (e) This Section 2.23 shall supersede any provisions in Section 2.21 or  $\underline{10.2}$  to the contrary.

Section 2.24. <u>Mitigation of Obligations</u>. If any Lender requests compensation under <u>Section 2.18</u>, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to <u>Section 2.20</u>, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under <u>Section 2.18</u> or <u>Section 2.20</u>, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all costs and expenses incurred by any Lender in connection with such designation or assignment.

Section 2.25. Replacement of Lenders. If (a) any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.20 or any Lender has failed to approve an amendment or waiver that requires the consent of all Lenders or all Lenders of a particular Class or all affected Lenders (and such amendment or waiver has been approved by Requisite Lenders or Lenders with a majority of the Commitments or Loans of a particular Class or a majority of affected Lenders), or (b) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate,

without recourse (in accordance with and subject to the restrictions set forth in Section 10.4(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.18 or 2.20, as applicable) and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender) (a "Replacement Lender"); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of all Loans owed to it, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (in the case of such outstanding principal and accrued interest) and from the Borrower (in the case of all other amounts), and (iii) in the case of a claim for compensation under Section 2.18 or payments required to be made pursuant to Section 2.20, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. If a Lender fails to execute an Assignment and Assumption Acceptance giving effect to the assignment contemplated under this Section 2.25, such Assignment and Acceptance may be executed by the Borrower, the Administrative Agent and any Replacement Lender and become effective without the consent of such replaced Lender.

## Section 2.26. Defaulting Lenders.

## (a) Cash Collateral

- (i) At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize each Issuing Bank's LC Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.26(b)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than 103% of such Issuing Bank's LC Exposure with respect to such Defaulting Lender.
- (ii) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (iii) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the minimum amount required pursuant to clause (i) above, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).
- (iii) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this <u>Section 2.26(a)</u> or <u>Section 2.26(b)</u> in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit or LC Disbursements (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.
- (iv) Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's LC Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.26(a) following (A) the elimination of the applicable LC Exposure

(including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each Issuing Bank that there exists excess Cash Collateral; provided that, subject to Section 2.26(b) through (d), the Person providing Cash Collateral and each Issuing Bank may agree that Cash Collateral shall be held to support future anticipated LC Exposure or other obligations and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

- (b) <u>Defaulting Lender Adjustments</u>. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:
  - (i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 10.2.
  - Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.7 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to each Issuing Bank or the Swingline Lender hereunder; third, to Cash Collateralize the Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with Section 2.26(a); fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.26(a); sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in respect of Letters of Credit and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to sub-section (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts

owed by a Defaulting Lender or to post Cash Collateral pursuant to this <u>Section 2.26(b)(ii)</u> shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

- (iii) (A) No Defaulting Lender shall be entitled to receive any commitment fees pursuant to <u>Section 2.14(b)</u> for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).
- (B) Each Defaulting Lender shall be entitled to receive letter of credit fees pursuant to <u>Section 2.14(c)</u> for any period during which that Lender is a Defaulting Lender only to the extent allocable to that portion of its LC Exposure for which it has provided Cash Collateral pursuant to <u>Section 2.26(a)</u>.
- (C) With respect to any letter of credit fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's LC Exposure or Swingline Lender's Swingline Exposure with respect to such Defaulting Lender that has not been Cash Collateralized, and (z) not be required to pay the remaining amount of any such fee.
- (iv) All or any part of such Defaulting Lender's participation in Letters of Credit and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares of the Revolving Commitments (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in Section 3.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.
- (v) If the reallocation described in <u>clause (iv)</u> above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Swingline Exposure with respect to such Defaulting Lender and (y) second, Cash Collateralize the Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with the procedures set forth in <u>Section 2.26(a)</u>.
- (c) <u>Defaulting Lender Cure</u>. If the Borrower, the Administrative Agent, Swingline Lender and Issuing Banks agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may

determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to Section 2.26(b)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(d) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Swingline Exposure after giving effect to such Swingline Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no LC Exposure after giving effect thereto.

Section 2.27. Request for Extended Facilities. Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to all Lenders of Term Loans with a like Maturity Date or all Lenders with Revolving Commitments of the same Class, in each case on a pro rata basis (based on the outstanding amount of the respective Loans or the aggregate amount of the Revolving Commitments, as the case may be, with the same Maturity Date) and on the same terms to each such Lender, the Borrower may from time to time offer (but no Lender is obligated to accept such offer) to extend the maturity date, modify the interest rate or fees payable in respect of such Term Loans and/or Revolving Commitments (and related outstandings) and/or modify the amortization schedule in respect of such Term Loans (each, an "Extension", and each group of Term Loans or Revolving Commitments, as applicable, in each case as so extended, as well as the original Term Loans and Revolving Commitments (in each case not so extended), being a tranche; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted, and any Extended Revolving Commitments shall constitute a separate tranche of Revolving Commitments from the tranche of Revolving Commitments from which they were converted), all as set forth in greater detail in an Extended Facility Agreement so long as the terms set forth below are satisfied:

- (i) (A) no Event of Default shall have occurred and be continuing at the time an Extension Offer is delivered to the Lenders or at the time of the Extended Facility Closing Date and (B) all representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects) as of the Extended Facility Closing Date (or, if such representation or warranty relates to an earlier date, as of such earlier date);
- (ii) except as to interest rates, fees and final maturity, the Revolving Commitment of any Lender (an "Extending Revolving Lender") extended pursuant to an Extension (an "Extended Revolving Commitment"), and the related outstandings, shall be a Revolving Commitment (or related Revolving Loan outstandings, as the case may be) with the same terms as the original Revolving Commitments (and related Revolving Loan outstandings); provided that (x) subject to the provisions of Sections 2.22(a) and 2.4(f) to the extent dealing with Letters of Credit and Swingline Loans which mature or expire after a Maturity Date when there exist Extended Revolving Commitments with a longer Maturity Date, all Letters of Credit and Swingline Loans shall be participated in on a pro rata basis by all Lenders with Revolving Commitments in accordance with their Pro Rata Share of the Aggregate Revolving Commitment

Amount (and except as provided in <u>Sections 2.22(a)</u> and <u>2.4(f)</u>, without giving effect to changes thereto on an earlier Maturity Date with respect to Swingline Loans and Letters of Credit theretofore incurred or issued) and all Borrowings under Revolving Commitments and repayments thereunder shall be made on a pro rata basis (except for (A) payments of interest and fees at different rates on Extended Revolving Commitments (and related outstandings) and (B) repayments required upon the Maturity Date for the non-extending Revolving Commitments) and (y) at no time shall there be Revolving Commitments hereunder (including Extended Revolving Commitments and any original Revolving Commitments) which have more than five (5) different Maturity Dates;

- (iii) except as to interest rates, fees, amortization schedule, final maturity date, premium, required prepayment dates and participation in prepayments, the Term Loans of any Lender (an "Extending Term Loan Lender") extended pursuant to any Extension ("Extended Term Loans") shall have the same terms as the tranche of Term Loans subject to such Extension Offer except to the extent that such terms are less favorable to the Extending Term Loan Lenders than to the Lenders of the non-extended Term Loans or apply solely to periods after the Maturity Date of the non-extended Term Loans;
- (iv) the final maturity date for any Extended Term Loans shall be no earlier than the then latest Maturity Date hereunder or under any existing Extended Facility Agreement and the amortization schedule applicable to such Extended Term Loans for periods prior to the maturity date of the Term Loans extended thereby may not be increased from any then existing amortization schedule applicable to Term Loans;
- (v) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby;
- (vi) any Extended Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any voluntary or mandatory repayments or prepayments hereunder, in each case as specified in the respective Extended Facility Agreement;
- (vii) if the aggregate principal amount of applicable Term Loans (calculated on the face amount thereof) or Revolving Commitments, as the case may be, in respect of which applicable Lenders holding Term Loans or Lenders holding Revolving Commitments, as the case may be, shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of applicable Term Loans or Revolving Commitments, as the case may be, offered to be extended by Borrower pursuant to such Extension Offer, then the applicable Term Loans or Revolving Commitments, as the case may be, of the applicable Lenders holding Term Loans or Lenders holding Revolving Commitments, as the case may be, shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders holding Term Loans or Lenders holding Revolving Commitments, as the case may be, have accepted such Extension Offer;
- (viii) all documentation in respect of such Extension shall be consistent with the foregoing;
- (ix) any Extended Facility requested by the Borrower shall be in a minimum amount of \$20,000,000; and

(x) the Administrative Agent and the lenders party thereto shall enter into an Extended Revolving Credit Facility Agreement or an Extended Term Facility Agreement, as the case may be, and the conditions precedent set forth therein shall have been satisfied or waived in accordance with its terms.

Subject to compliance with the terms of this <u>Section 2.27</u>, the Administrative Agent, each Issuing Bank and the Lenders hereby consent to the Extensions and the other transactions contemplated by this <u>Section 2.27</u> (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Commitments on such terms as may be set forth in the relevant Extended Facility Agreement) and hereby waive the requirements of any provision of this Agreement (including, without limitation, <u>Sections 2.21</u>, <u>10.2</u>, or any other provisions regarding the sharing of payments) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this <u>Section 2.27</u>. The Lenders hereto agree that the Extended Facility Lenders party to any Extended Facility Agreement may, from time to time, make amendments to such Extended Facility Agreement or to this Agreement and the other Loan Documents to give effect to the Extended Facility Agreement without the consent of any other Lenders so long as such Extended Facility Agreement, as amended, complies with the terms set forth in this <u>Section 2.27</u>.

Section 2.28. Refinancing Amendment. At any time after the Closing Date, the Borrower may obtain, from any Lender or any Refinancing Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Loans or Revolving Commitments then outstanding under this Agreement (which for purposes of this Section 2.28 will be deemed to include any then outstanding Other Refinancing Term Loans, Other Refinancing Revolving Commitments, Incremental Term Loans, Incremental Revolving Commitments, Extended Term Loans or Extended Revolving Commitments), in the form of Other Refinancing Loans or Other Refinancing Commitments in each case pursuant to a Refinancing Amendment; provided that such Credit Agreement Refinancing Indebtedness (i) will rank pari passu or junior in right of payment and of security with the other Loans and Commitments hereunder and (ii) will have such pricing, premiums and optional prepayment or redemption terms as may be agreed by the Borrower and the Lenders thereof. Any Other Refinancing Loans or Other Refinancing Commitments, as applicable, may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder, as specified in the applicable Refinancing Amendment. The effectiveness of any Refinancing Amendment shall be subject to the satisfaction or waiver on the date thereof of each of the conditions set forth in Section 3.2 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (a) board resolutions, officers' certificates and/or reaffirmation agreements consistent with those delivered on the Closing Date under Section 3.1 and (b) customary legal opinions reasonably acceptable to the Administrative Agent. Each issuance of Credit Agreement Refinancing Indebtedness incurred under this Section 2.28 shall be in an aggregate principal amount that is not less than \$25,000,000. Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary or advisable to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Refinancing Loans and/or Other Refinancing Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.28. This Section 2.28 shall supersede any provisions in Sections 2.21 or 10.2 to the contrary.

#### ARTICLE III

#### CONDITIONS PRECEDENT TO LOANS AND LETTERS OF CREDIT

- Section 3.1. <u>Conditions to Effectiveness</u>. The obligations of the Lenders (including the Swingline Lender) to make Loans and the obligation of each Issuing Bank to issue any Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with <u>Section 10.2</u> or otherwise permitted to be satisfied after the Closing Date pursuant to <u>Section 5.16</u>):
- (a) The Administrative Agent shall have received payment of all fees, expenses and other amounts due and payable on or prior to the Closing Date, including, without limitation, reimbursement or payment of all out-of-pocket expenses of the Administrative Agent, the Lead Arrangers and their Affiliates (including reasonable fees, charges and disbursements of one primary counsel to the Administrative Agent, one local counsel in each applicable jurisdiction and any special regulatory counsel) required to be reimbursed or paid by the Borrower hereunder, under any other Loan Document and under any agreement with the Administrative Agent or the Lead Arrangers.
- (b) The Administrative Agent (or its counsel) shall have received the following, each to be in form and substance satisfactory to the Administrative Agent:
  - (i) a counterpart of this Agreement signed by or on behalf of each party hereto or written evidence satisfactory to the Administrative Agent (which may include telecopy or email transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement;
  - a certificate of the Secretary or Assistant Secretary of each Loan Party in the form of Exhibit 3.1(b)(ii), attaching and certifying copies of (A) such Loan Party's articles or certificate of incorporation, formation, organization or limited partnership, or other registered organizational documents, which shall, if a recently certified copy thereof has been received by the Loan Parties from such Secretary of State prior to the Closing Date, be certified as of a recent date by the Secretary of State of the jurisdiction of organization of such Loan Party, or certifying that there have been no changes to such Loan Party's articles or certificate of incorporation, formation, organization or limited partnership, or other registered organizational documents, as applicable, certified by the Secretary of State of the jurisdiction of organization of such Loan Party and delivered to the Administrative Agent on the Original Closing Date, the First Amendment and Restatement Date, the Second Amendment and Restatement Date or the date of such Loan Party's joinder as a Loan Party, as applicable, (B) such Loan Party's bylaws, limited liability company agreement or partnership agreement, as applicable, or certifying that there have been no changes to such Loan Party's bylaws, limited liability company agreement or partnership agreement, as applicable, delivered to the Administrative Agent on the Original Closing Date, the First Amendment and Restatement Date, the Second Amendment and Restatement Date or the date of such Loan Party's joinder as a Loan Party, as applicable, (C) the resolutions of such Loan Party's board of directors, managers, members, general partner or other equivalent governing body, authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (D) certificates of good standing or existence, as applicable, from the Secretary of State of the jurisdiction of incorporation or organization of such Loan Party and each other jurisdiction where the failure of such Loan Party to be qualified to do business as a foreign company would have a Material Adverse Effect, in each case as of a recent date, and (E) a certificate of incumbency containing the name, title and true signature of each officer of such Loan Party executing the Loan Documents to which such Loan Party is a party;

- (iii) favorable written opinions of Kirkland & Ellis LLP, counsel to the Loan Parties, and Snell & Wilmer L.L.P., Nevada counsel to the Loan Parties, in each case, addressed to the Administrative Agent, each Issuing Bank and each of the Lenders, and covering such matters relating to the Loan Parties, the Loan Documents and the transactions contemplated therein as the Administrative Agent or the Required Lenders shall reasonably request;
- (iv) a certificate in the form of Exhibit 3.1(b)(iv), dated the Closing Date and signed by a Responsible Officer, certifying that after giving effect to the Related Transactions, (A) no Default or Event of Default has occurred and is continuing on the Closing Date, (B) all representations and warranties of each Loan Party set forth in the Loan Documents are true and correct in all material respects (other than those representations and warranties that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects), (C) since the date of the financial statements of the Borrower described in Section 4.4(i), there has been no change which has had or could reasonably be expected to have a Material Adverse Effect and (D) the conditions set forth in clause (b)(vii) and (xiii) below have been satisfied;
- (v) a duly executed Notice of Borrowing for each Borrowing on the Closing Date;
  - (vi) a report setting forth the sources and uses of the proceeds hereof;
- (vii) all consents, approvals, authorizations, registrations and filings and orders required to be made or obtained under any Requirement of Law, or by any Contractual Obligation of any Loan Party, in connection with the execution, delivery, performance, validity and enforceability of the Loan Documents, the other Related Transaction Documents or any of the transactions contemplated thereby, and such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired, and no investigation or inquiry by any governmental authority regarding the Commitments or any transaction being financed with the proceeds thereof shall be ongoing;
- copies of (A) the quarterly financial statements of the Borrower Ensign and its Subsidiaries (and the Pennant Subsidiaries) on a consolidated basis for the Fiscal Quarter ended March 31, 2019 and the Fiscal Quarter ended June 30, 2019, including, in each case, the related statements of income and cash flows, (B) the audited consolidated financial statements for the Borrower Ensign and its Subsidiaries (and the Pennant Subsidiaries) for the Fiscal Year ended December 31, 2018, including in each case the related statements of income, shareholders' equity and cash flows, (C) a pro forma balance sheet and related pro forma statements of income and cash flows of the Borrower Ensign and its Subsidiaries (for the avoidance of doubt, excluding the Pennant Subsidiaries) as of and for (x) the twelve-month period ending on December 31, 2018 and (y) the twelve-month period ending on the last day of each Fiscal Quarter ending after December 31, 2018 and at least 60 days prior to the Closing Date, in each case, prepared so as to give effect to the Related Transactions as if the Related Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such other financial statements) and (D) financial projections of the Borrower Ensign and its Subsidiaries (for the avoidance of doubt, excluding the Pennant Subsidiaries) on an annual basis through December 31, 2024;
- (ix) a duly completed and executed Compliance Certificate, including calculations of the financial covenants set forth in <u>Article VI</u> hereof as of June 30, 2019, calculated on a pro forma basis as if the initial Borrowing(s) had been funded and the Pennant Transaction and the other Related Transactions had occurred, in each case, as of the first day of

the relevant period for testing compliance (and setting forth in reasonable detail such calculations);

- (x) a certificate, dated the Closing Date and signed by the chief financial officer of the Borrower, confirming that the Borrower is, and the Borrower and its Subsidiaries, on a consolidated basis, are, Solvent before and after giving effect to the funding of the initial Borrowing(s) and the consummation of the Pennant Transaction and the other Related Transactions contemplated to occur on the Closing Date;
- the Guaranty and Security Agreement, duly executed by the Borrower (xi) and each of its Domestic Subsidiaries (other than the Excluded Subsidiaries), together with (A) UCC financing statements and other applicable documents under the laws of all necessary or appropriate jurisdictions with respect to the perfection of the Liens granted under the Guaranty and Security Agreement, as requested by the Administrative Agent in order to perfect such Liens, duly authorized by the Loan Parties, (B) copies of favorable UCC, tax and judgment lien search reports in all necessary or appropriate jurisdictions, as requested by the Administrative Agent, indicating that there are no prior Liens on any of the Collateral other than Permitted Encumbrances and other Liens permitted under Section 7.2 and Liens to be released on the Closing Date, (C) a Perfection Certificate, duly completed and executed by the Borrower, (D) duly executed Patent Security Agreements, Trademark Security Agreements and Copyright Security Agreements, (E) original certificates evidencing all issued and outstanding shares of Capital Stock of all Subsidiaries (other than the Excluded Subsidiaries) owned directly by any Loan Party; provided that, in the case of Capital Stock of any Foreign Subsidiary that is a CFC and Capital Stock of any Pass-Through Foreign Holdco, such original certificates shall be limited to 65% of the issued and outstanding voting Capital Stock and 100% of the issued and outstanding non-voting Capital Stock of such Foreign Subsidiary or such Pass-Through Foreign Holdco, as applicable, (F) stock or membership interest powers or other appropriate instruments of transfer executed in blank and (G) a master intercompany promissory note duly executed by the Borrower and its Subsidiaries:
- (xii) certificates of insurance, in form and detail acceptable to the Administrative Agent, describing the types and amounts of insurance (property and liability) maintained by any of the Loan Parties, in each case naming the Administrative Agent as loss payee or additional insured, as the case may be, together with endorsements in form and substance reasonably satisfactory to the Administrative Agent;
- (xiii) evidence that (A) the Borrower has declared the dividend or distribution constituting the Pennant Transaction and (B) the Pennant Transaction has been consummated or will be consummated substantially concurrently with the effectiveness of this Agreement on the Closing Date, in each case, in form and substance satisfactory to the Administrative Agent;
- (xiv) at least three (3) days prior to the Closing Date, (A) all documentation and other information with respect to the Borrower and each other Loan Party that the Administrative Agent or any Lender reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation, to the extent reasonably requested by the Administrative Agent at least ten (10) days before the Closing Date, and (B) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower; and

(xv) the Closing Date Refinancing shall have occurred or shall occur substantially concurrently with the effectiveness of this Agreement.

Without limiting the generality of the provisions of this Section, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved of, accepted or been satisfied with each document or other matter required thereunder to be consented to, approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

- Section 3.2. <u>Conditions to Each Credit Event</u>. The obligation of each Lender to make a Loan on the occasion of any Borrowing and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit is subject to Section 2.26(c) and the satisfaction of the following conditions:
- (a) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall exist;
- (b) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, all representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects, unless such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (other than those representations and warranties that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects); and
  - (c) the Borrower shall have delivered the required Notice of Borrowing.

Each Borrowing and each issuance, amendment, renewal or extension of any Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in subsections (a) and (b) of this Section. Notwithstanding the foregoing, the incurrence of Incremental Commitments and the initial borrowing of Incremental Term Loans (but not Revolving Loans) thereunder shall be subject solely to the conditions set forth in Section 2.23.

- Section 3.3. <u>Delivery of Documents</u>. All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in <u>Section 3.1</u>, unless otherwise specified, shall be delivered to the Administrative Agent for the account of each of the Lenders and, if requested by a Lender, in sufficient counterparts or copies for each such Lender.
- Section 3.4. Effect on Existing Credit Facility. Upon this Agreement becoming effective, all commitments of the lenders under the Existing Credit Agreement to fund additional advances shall terminate automatically and be replaced by the Commitments set forth in Schedule I, and all amounts outstanding under the Existing Credit Agreement, together with all accrued and unpaid interest, fees and other amounts shall be paid in full by the initial Borrowing(s) hereunder (including through deemed repayment of any Revolving Loans (as defined in the Existing Credit Agreement) of a Lender (as defined in the Existing Credit Agreement) that are continued as Revolving Loans hereunder in lieu of being repaid to such Lender in cash and funded again in cash by such Lender on the Closing Date) (other than with respect to the Existing Letters of Credit which shall, from and after the Closing Date, be deemed to be Letters of Credit issued pursuant to this Agreement). Notwithstanding the foregoing, the parties hereto agree that the Liens granted to the Administrative Agent under or in connection with the Existing Credit Agreement, the Guaranty and Security Agreement (as defined in the Existing Credit Agreement) and any

other Loan Document (as defined in the Existing Credit Agreement) shall continue in full force and effect and secure the Secured Obligations (as defined in the Guaranty and Security Agreement (for the avoidance of doubt, as defined herein)) upon the effectiveness of this Agreement. Each Lender party to this Agreement that was also a Lender under and as defined in the Existing Credit Agreement hereby waives any amounts due and owing to such Lender pursuant to Section 2.19 of the Existing Credit Agreement as a result of the repayment of loans under the Existing Credit Agreement on the Closing Date in connection with the effectiveness hereof.

#### ARTICLE IV

## REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants, both before and after giving effect to the Related Transactions, to the Administrative Agent, each Lender and each Issuing Bank as follows:

- Section 4.1. Existence; Power. The Borrower and each of its Subsidiaries (i) is duly organized, validly existing and in good standing as a corporation, partnership or limited liability company under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.
- Section 4.2. Organizational Power; Authorization. The execution, delivery and performance by each Loan Party of the Loan Documents and the other Related Transaction Documents to which it is a party are within such Loan Party's organizational powers and have been duly authorized by all necessary organizational and, if required, shareholder, partner or member action. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document and Related Transaction Document to which any Loan Party is a party, when executed and delivered by such Loan Party, will constitute, valid and binding obligations of the Borrower or such Loan Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.
- Section 4.3. Governmental Approvals; No Conflicts. The execution, delivery and performance by each Loan Party of the Loan Documents and the other Related Transaction Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect and except for filings necessary to perfect or maintain perfection of the Liens created under the Loan Documents, (b) will not violate any Requirement of Law applicable to the Borrower or any of its Subsidiaries or any judgment, order or ruling of any Governmental Authority, (c) will not violate or result in a default under any Contractual Obligation of the Borrower or any of its Subsidiaries or any of its assets or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries, except Liens (if any) created under the Loan Documents, and (e) do not affect the Borrower's or any Subsidiary's right to receive, or reduce the amount of, payments and reimbursements from Third Party Payors, or materially adversely affect any Health Care Permit.
- Section 4.4. <u>Financial Statements</u>. The Borrower has furnished to each Lender (i) the audited consolidated balance sheet of the Borrower Ensign and its Subsidiaries (and the Pennant Subsidiaries) as as of December 31, 2018, and the related audited consolidated statements of income, shareholders' equity and cash flows for the Fiscal Year then ended, audited by Deloitte & Touche, LLP

and (ii) the unaudited consolidated balance sheet of <a href="the-BorrowerEnsign">the BorrowerEnsign</a> and its Subsidiaries (and the Pennant Subsidiaries) as of June 30, 2019, and the related unaudited consolidated statements of income and cash flows for the Fiscal Quarter and year-to-date period then ended, certified by a Responsible Officer. Such financial statements fairly present the consolidated financial condition of the Borrower and its Subsidiaries (and the Pennant Subsidiaries) as of such dates and the consolidated results of operations for such periods in conformity with GAAP consistently applied, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii). Since December 31, 2018, there have been no changes with respect to the Borrower and its Subsidiaries which have had or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

# Section 4.5. Litigation and Environmental Matters.

- (a) No litigation, investigation or proceeding of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which could reasonably be expected to result in the invalidity or unenforceability of this Agreement or any other Loan Document or any other Related Transaction Document.
- (b) Neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, in the case of each of clauses (i), (ii), (iii) and (iv) which have had or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.
- Section 4.6. Compliance with Laws and Agreements. The Borrower and each of its Subsidiaries is in compliance with (a) all Requirements of Law and all judgments, decrees and orders of any Governmental Authority and (b) all indentures, agreements or other instruments binding upon it or its properties, except where non-compliance, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.
- Section 4.7. <u>Investment Company Act</u>. Neither the Borrower nor any of its Subsidiaries is (a) an "investment company" or is "controlled" by an "investment company", as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended and in effect from time to time, or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt or requiring any approval or consent from, or registration or filing with, any Governmental Authority in connection therewith.
- Section 4.8. <u>Taxes</u>. The Borrower and its Subsidiaries and each other Person for whose Taxes the Borrower or any of its Subsidiaries could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all Taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves in accordance with GAAP.
- Section 4.9. <u>Use of Proceeds; Margin Regulations</u>. None of the proceeds of any of the Loans or Letters of Credit will be used, directly or indirectly, for "purchasing" or "carrying" any "margin

stock" within the respective meanings of each of such terms under Regulation U or for any purpose that violates the provisions of Regulation T, Regulation U or Regulation X. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock". The Borrower will use the Revolving Loans and the Swingline Loans for working capital, capital expenditures, dividends, distributions and Permitted Acquisitions not prohibited by this Agreement, for other general corporate purposes of the Borrower and its Subsidiaries and for any other purpose not prohibited by this Agreement. The Borrower will use the proceeds of any Incremental Term Loans or Other Refinancing Term Loans for the purposes set forth in any Incremental Commitment Joinder or Refinancing Amendment.

Section 4.10. ERISA. Except as would not reasonably be expected to have a Material Adverse Effect, each Plan is in substantial compliance in form and operation with its terms and with ERISA and the Code (including, without limitation, the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes, or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service, and, except as would not reasonably be expected to have a Material Adverse Effect, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no determination, nothing has occurred that would adversely affect the issuance of a favorable determination letter or otherwise adversely affect such qualification). No ERISA Event has occurred or is reasonably expected to occur. There exists no Unfunded Pension Liability with respect to any Plan. None of the Borrower, any of its Subsidiaries or any ERISA Affiliate is making or accruing an obligation to make contributions, or has, within any of the five calendar years immediately preceding the date this assurance is given or deemed given, made, or accrued an obligation to make, contributions to any Multiemployer Plan. There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Borrower, any of its Subsidiaries or any ERISA Affiliate, threatened in writing, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to result in a Material Adverse Effect. Except as would not reasonably be expected either individually or in the aggregate to have a Material Adverse Effect, the Borrower, each of its Subsidiaries and each ERISA Affiliate have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, by the terms of such Plan or Multiemployer Plan, respectively, or by any contract or agreement requiring contributions to a Plan or Multiemployer Plan. No Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period within the meaning of Section 412 of the Code or Section 303 or 304 of ERISA. None of the Borrower, any of its Subsidiaries or any ERISA Affiliate have ceased operations at a facility so as to become subject to the provisions of Section 4068(a) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Plan subject to Section 4064(a) of ERISA to which it made contributions. None of the Borrower or any of its Subsidiaries has established, contributes to or maintains any Non-U.S. Plan.

## Section 4.11. Ownership of Property; Insurance.

(a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in or other right to occupy, all of its real and personal property material to the operation of its business, including all such properties reflected in the most recent audited consolidated balance sheet of <a href="mailto:the-BorrowerEnsign">the-BorrowerEnsign</a> referred to in <a href="mailto:Section 4.4">Section 4.4</a> or purported to have been acquired by the Borrower or any of its Subsidiaries after said date (except as sold or otherwise disposed of in the ordinary course of

business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are material to the business or operations of the Borrower and its Subsidiaries taken as a whole are valid and subsisting and are in full force. The Borrower has delivered to Administrative Agent a true, complete and correct copy of each Master Lease.

- (b) Each of the Borrower and its Subsidiaries owns, or is licensed or otherwise has the right to use, all patents, trademarks, service marks, trade names, copyrights and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe on the rights of any other Person, except in any manner to the extent that such failure to do so or such infringement would not reasonably be expected to result in a Material Adverse Effect.
- (c) The properties of the Borrower and its Subsidiaries are insured (i) with financially sound and reputable insurance companies which are not Affiliates of the Borrower, in such amounts with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or any applicable Subsidiary operates or (ii) as determined in the Borrower's reasonable business judgment, through the Borrower's self-insured retention program maintained through the Insurance Subsidiaries.
- Section 4.12. <u>Disclosure</u>. None of the reports (including, without limitation, all reports that the Borrower is required to file with the Securities and Exchange Commission), financial statements (including, for the avoidance of doubt, the pro forma financial statements referred to in Section 3.1(b)(viii)(C)), certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation or syndication of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole in light of the circumstances under which they were made, not materially misleading; <u>provided</u> that, with respect to projected financial information, the Borrower represents only that such projected information was prepared in good faith based upon assumptions believed to be reasonable at the time, it being understood and agreed that such projected information is subject to contingencies and assumptions, many of which are not within the control of the Borrower, and no assurances can be given that any projections will be realized, and any divergences from projected results may be material. As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.
- Section 4.13. <u>Labor Relations</u>. There are no strikes, lockouts or other labor disputes or grievances against the Borrower or any of its Subsidiaries, or, to the Borrower's knowledge, threatened in writing against or affecting the Borrower or any of its Subsidiaries, and no unfair labor practice charges or grievances are pending against the Borrower or any of its Subsidiaries, or, to the Borrower's knowledge, threatened in writing against any of them before any Governmental Authority, in each case, that would, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All payments due from the Borrower or any of its Subsidiaries pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of the Borrower or any such Subsidiary, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.
- Section 4.14. <u>Subsidiaries</u>. As of the Closing Date and (other than with respect to the Pennant Subsidiaries) as of each date on which such schedule is subsequently updated pursuant to the terms of this Agreement, <u>Schedule 4.14</u> sets forth the name of, the ownership interest of the applicable owner in, the jurisdiction of incorporation or organization of, and the type of each Subsidiary of the Borrower and the other Loan Parties and identifies each Subsidiary that is a Subsidiary Loan Party, each Subsidiary that is an Excluded Subsidiary and each Pennant Subsidiary.

Section 4.15. <u>Solvency</u>. After giving effect to the execution and delivery of the Loan Documents and the other Related Transaction Documents and the making of the Loans under this Agreement and the consummation of the other Related Transactions, the Borrower is, and the Borrower and its Subsidiaries, on a consolidated basis, are, Solvent.

# Section 4.16. [Reserved].

### Section 4.17. Collateral Documents.

- (a) The Guaranty and Security Agreement is effective to create in favor of the Administrative Agent for the ratable benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral (as defined therein), and when UCC financing statements in appropriate form are filed in the offices specified on Schedule 3 to the Guaranty and Security Agreement, the Guaranty and Security Agreement shall constitute a fully perfected Lien (to the extent that such Lien may be perfected by the filing of a UCC financing statement) on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral, in each case prior and superior in right to any other Person, other than with respect to Liens expressly permitted by Section 7.2. When the certificates evidencing all Capital Stock pledged pursuant to the Guaranty and Security Agreement are delivered to the Administrative Agent, together with appropriate stock powers or other similar instruments of transfer duly executed in blank, the Liens in such Capital Stock shall be fully perfected first priority security interests, perfected by "control" as defined in the UCC.
- (b) When the filings in subsection (a) of this Section are made and when, if applicable, the Patent Security Agreements and the Trademark Security Agreements are filed in the United States Patent and Trademark Office and the Copyright Security Agreements are filed in the United States Copyright Office, the Guaranty and Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Patents, Trademarks and Copyrights, if any, in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person, subject to inchoate Liens permitted hereunder that do not secure Indebtedness.

#### Section 4.18. [Reserved].

## Section 4.19. Healthcare Matters.

- (a) <u>Compliance with Health Care Laws</u>. The Borrower and each of its Subsidiaries is, and at all times during the four calendar years immediately preceding the Closing Date has been, in compliance with all Health Care Laws and requirements of Third Party Payor Programs applicable to it, its assets, business or operations, except where the failure to do so has not had or could not reasonably be expected to have, in the aggregate, a Material Adverse Effect. No circumstance exists or event has occurred which could result in a violation of any Health Care Law or any requirement of any Third Party Payor Program that could reasonably be expected to result in a Material Adverse Effect.
- (b) <u>Health Care Permits</u>. The Borrower and each of its Subsidiaries holds, and at all times during the four calendar years immediately preceding the Closing Date has held, all Health Care Permits necessary for it to own, lease, sublease or operate its assets or to conduct its business or operations for the period covered by such Health Care Permit. All such Health Care Permits are, and at all times during the four calendar years immediately preceding the Closing Date have been, in full force and effect and there is and has been no material default under, violation of, or other noncompliance with the terms and conditions of any such Health Care Permit. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, has resulted or would result in the

suspension, revocation, termination, restriction, limitation, modification or non-renewal of any Health Care Permit that could reasonably be expected to have, in the aggregate, a Material Adverse Effect. Other than as set forth on Schedule 4.19, no Governmental Authority has taken, or to the knowledge of the Borrower or any of its Subsidiaries intends to take, action to suspend, revoke, terminate, place on probation, restrict, limit, modify or not renew any Health Care Permit of the Borrower or any of its Subsidiaries. As of the Closing Date, Schedule 4.19 sets forth an accurate, complete and current list of all material Health Care Permits, and all Third Party Payor Authorizations for Third Party Payor Programs in which the Borrower or any of its Subsidiaries participates.

- (c) Third Party Payor Authorizations. The Borrower and each of its Subsidiaries holds, and at all times during the four calendar years immediately preceding the Closing Date has held, in full force and effect, all Third Party Payor Authorizations necessary to participate in and be reimbursed by all Third Party Payor Programs in which the Borrower or any of its Subsidiaries participates, except where the failure to do so has not had or could not reasonably be expected to have, in the aggregate, a Material Adverse Effect. There is no investigation, audit, claim review, or other action pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened in writing, which could result in a suspension, revocation, termination, restriction, limitation, modification or non-renewal of any Third Party Payor Authorization or result in the exclusion of the Borrower or any of its Subsidiaries from any Third Party Payor Program that could reasonably be expected to have, in the aggregate, a Material Adverse Effect.
- (d) <u>Licensed Personnel</u>. The Licensed Personnel have complied and currently are in compliance with all applicable Health Care Laws and hold, and, at all times that such Persons have been Licensed Personnel of the Borrower or any of its Subsidiaries, have held, all professional licenses and other Health Care Permits and all Third Party Payor Authorizations required in the performance of such Licensed Personnel's duties for the Borrower or any of its Subsidiaries, and each such Health Care Permit and Third Party Payor Authorization is in full force and effect and, to the knowledge of the Borrower and its Subsidiaries, no suspension, revocation, termination, impairment, modification or non-renewal of any such Health Care Permit or Third Party Payor Authorization is pending or threatened in writing, except where the failure to do so has not had or could not reasonably be expected to have, in the aggregate, a Material Adverse Effect.
- (e) <u>Accreditation</u>. The Borrower and each of its Subsidiaries has obtained and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent prudent and customary in the industry in which it is engaged or required by law (including any foreign law or equivalent regulation), except where the failure to have or maintain such accreditation in good standing or imposition of limitation or impairment would not have, in the aggregate, a Material Adverse Effect.
- (f) Proceedings; Audits. There are no pending (or, to the knowledge of the Borrower or any of its Subsidiaries, threatened) Proceedings against or affecting the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower or any of its Subsidiaries, any Licensed Personnel, relating to any actual or alleged non-compliance with any Health Care Law or requirement of any Third Party Payor Program, in each case, that could reasonably be expected to have, in the aggregate, a Material Adverse Effect. There are no facts, circumstances or conditions that would reasonably be expected to form the basis for any such Proceeding against or affecting any Loan Party or, to the knowledge of the Borrower or any of its Subsidiaries, any Licensed Personnel that could reasonably be expected to have, in the aggregate, a Material Adverse Effect. There currently exist no restrictions, deficiencies, required plans of correction or other such remedial measures with respect to any Health Care Permit of the Borrower or any of its Subsidiaries, or the participation by the Borrower or any of its Subsidiaries in any Third Party Payor Program, in each case, that could reasonably be expected to have.

in the aggregate, a Material Adverse Effect. Without limiting the foregoing, no validation review, program integrity review, audit or other investigation related to the Borrower or any of its Subsidiaries or its operations, or the consummation of the transactions contemplated in the Loan Documents or related to the Collateral, (i) has been conducted by or on behalf of any Governmental Authority, or (ii) is scheduled, pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened in writing, in each case that could reasonably be expected to have, in the aggregate, a Material Adverse Effect.

- (g) Overpayments. Neither the Borrower nor any of its Subsidiaries (i) has knowingly retained an overpayment received from, or failed to refund any amount due to, any Third Party Payor in material violation of any Health Care Law or contract; or (ii) except as set forth on Schedule 4.19, has received written notice of, or has knowledge of, any material overpayment or refunds due to any Third Party Payor.
- (h) <u>Material Statements.</u> Neither the Borrower nor any of its Subsidiaries, nor any officer, Affiliate, employee or agent of the Borrower or any of its Subsidiaries, has made an untrue statement of a material fact or fraudulent statement to any Governmental Authority, failed to disclose a material fact that must be disclosed to any Governmental Authority, or committed an act, made a statement or failed to make a statement that, at the time such statement, disclosure or failure to disclose occurred, in each case, that could reasonably be expected to have, in the aggregate, a Material Adverse Effect.
- Prohibited Transactions. Except as where any of the following could not be (i) reasonably expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries, nor any officer, Affiliate or managing employee of the Borrower or any of its Subsidiaries, directly or indirectly, has (i) offered or paid or solicited or received any remuneration, in cash or in kind, or made any financial arrangements, in violation of any Health Care Law; (ii) given or agreed to give, or is aware that there has been made or that there is any agreement to make, any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) in violation of any Health Care Law; (iii) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) established or maintained any unrecorded fund or asset for any purpose or made any misleading, false or artificial entries on any of its books or records for any reason; or (v) made, or agreed to make, or is aware that there has been made or that there is any agreement to make, any payment to any person with the intention or understanding that any part of such payment would be in violation of any Health Care Law or used or was given for any purpose other than that described in the documents supporting such payment. To the knowledge of the Borrower and its Subsidiaries, no Person has filed or has threatened in writing to file against the Borrower, any of its Subsidiaries or any of their Affiliates an action under any federal or state whistleblower statute, including, without limitation, under the False Claims Act of 1863 (31 U.S.C. § 3729 et seg.), to the extent such a filing, if adversely determined, would reasonably be expected to result in a Material Adverse Effect.
- (j) <u>Exclusion</u>. Except as where any of the following could not be reasonably expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries, nor any owner, officer, director, partner, agent, managing employee or Person with a "direct or indirect ownership interest" (as that phrase is defined in 42 C.F.R. § 420.201) in the Borrower or any of its Subsidiaries, nor any Licensed Personnel of the Borrower or any of its Subsidiaries, has been (or has been threatened to be) (i) excluded from any Third Party Payor Program pursuant to 42 U.S.C. § 1320a-7 and related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or

its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other applicable laws or regulations, (iii) debarred, disqualified, suspended or excluded from participation in any Third Party Payor Program or is listed on the General Services Administration list of excluded parties, nor is any such debarment, disqualification, suspension or exclusion threatened or pending, or (iv) made a party to any other action by any Governmental Authority that may prohibit it from selling products or providing services to any governmental or other purchaser pursuant to any federal, state or local laws or regulations.

Section 4.20. <u>Sanctions</u>. Neither any Loan Party nor any of its Subsidiaries or Affiliates or, to the knowledge of any Loan Party, any of their respective directors, officers, employees or agents, is an individual or entity that is, or is owned or controlled by any individual or entity that is, (i) currently the subject or target of any Sanctions, (ii) a Sanctioned Person or (iii) located, organized or resident in a Sanctioned Country. Each of the Loan Parties and their Subsidiaries, and to the knowledge of the Loan Parties, each of their respective directors, officers, employees, agents and Affiliates is in compliance with all applicable Sanctions and has instituted and maintained policies and procedures designed to promote and achieve compliance with all applicable Sanctions.

Section 4.21. <u>Anti-Corruption Laws</u>. The Loan Parties and their Subsidiaries and Affiliates have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and other applicable legislation or laws and regulations concerning or relating to bribery, money laundering or corruption in other jurisdictions (collectively, the "<u>Anti-Corruption Laws</u>") and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Anti-Corruption Laws.

Section 4.22. <u>Patriot Act</u>. Neither any Loan Party nor any of its Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act or any enabling legislation or executive order relating thereto. Neither any Loan Party nor any or its Subsidiaries is in violation of (a) the Trading with the Enemy Act, (b) any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. None of the Loan Parties (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

Section 4.23. <u>EEA Financial Institutions</u>. Neither the Borrower nor any Subsidiary is an EEA Financial Institution.

#### **ARTICLE V**

## AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that until Payment in Full of the Obligations:

Section 5.1. <u>Financial Statements and Other Information</u>. The Borrower will deliver to the Administrative Agent:

(a) as soon as available and in any event within 90 days after the end of each Fiscal Year of the Borrower Ensign (or if the Borrower Ensign is no longer required to file periodic reports under Section 13(a) or Section 15(d) of the Exchange Act, then 120 days after the end of each Fiscal Year), a copy of the annual audited report for such Fiscal Year for the Borrower Ensign and its

Subsidiaries, containing a consolidated balance sheet of <a href="the-BorrowerEnsign">the BorrowerEnsign</a> and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of <a href="the-BorrowerEnsign">the BorrowerEnsign</a> and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and reported on by Deloitte & Touche, LLP or other independent public accountants of nationally recognized standing (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to the scope of such audit (other than any "going concern" or similar qualification or exception related to the maturity or refinancing of the Obligations)) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of the Borrower and its Subsidiaries for such Fiscal Year on a consolidated basis in accordance with GAAP, and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

- (b) as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> (or if <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> is no longer required to file periodic reports under Section 13(a) or Section 15(d) of the Exchange Act, then 60 days after the end of each Fiscal Quarter) (including, for the avoidance of doubt, the Fiscal Quarter of <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> ended September 30, 2019), an unaudited consolidated balance sheet of <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> and its Subsidiaries as of the end of such Fiscal Quarter and the related unaudited consolidated statements of income and cash flows of <a href="the-BorrowerEnsign">the-BorrowerEnsign</a> and its Subsidiaries for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter and the corresponding portion of <a href="the-Borrower'sEnsign">the-Borrower'sEnsign</a>'s previous Fiscal Year;
- concurrently with the delivery of the financial statements referred to in subsections (a) and (b) of this Section, a Compliance Certificate signed by the principal executive officer or the principal financial officer of the Borrower (i) certifying that such financial statements fairly present the financial condition, results of operations, shareholders' equity and cash flows of the Borrower Ensign and its Subsidiaries on a consolidated basis in accordance with GAAP, in the case of quarterly financial statements subject only to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether there exists a Default or Event of Default on the date of such certificate and, if a Default or an Event of Default then exists, specifying the details thereof and the action which the Borrower has taken or proposes to take with respect thereto, (iii) setting forth in reasonable detail calculations demonstrating compliance with the financial covenants set forth in Article VI (beginning with the Fiscal Quarter ended September 30, 2019), (iv) specifying any change in the identity of the Borrower or any of its Subsidiaries as of the end of such Fiscal Year or Fiscal Quarter from the Borrower or any of its Subsidiaries identified to the Lenders on the Closing Date or as of the most recent Fiscal Year or Fiscal Quarter, as the case may be, (v) stating whether any change in GAAP or the application thereof has occurred since the date of the mostly recently delivered audited financial statements of the Borrower Ensign and its Subsidiaries, and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate, (vi) setting forth a list of all Subsidiaries of the Borrower (other than Excluded Subsidiaries and Specified Subsidiaries) that are not Subsidiary Loan Parties as of such date and setting forth in reasonable detail calculations of total assets of such Subsidiaries as of such date and the total revenue of such Subsidiaries for the Test Period then ended and (vii) setting forth a list of all Excluded Subsidiaries as of such date and setting forth in reasonable detail calculations of (w) Indebtedness of such Excluded Subsidiaries incurred pursuant to Section 7.1(h) that remains outstanding as of such date, (x) the total amount of Investments made in Excluded Subsidiaries pursuant to Section 7.4(h) as of such date, (y) the Maximum Attributable EBITDA Percentage (beginning with the Fiscal Year ending December 31, 2019) and (z)

that portion of Consolidated EBITDA that is attributable to such Excluded Subsidiaries (and their respective Subsidiaries) with respect to the applicable Fiscal Year or Fiscal Quarter end;

- (d) as soon as available and in any event within 60 days after the end of the calendar year, a budget for the succeeding Fiscal Year, containing an income statement, balance sheet and statement of cash flow;
- (e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all functions of said Commission, or with any national securities exchange, or distributed by <a href="mailto:the BorrowerEnsign">the BorrowerEnsign</a> to its shareholders generally, as the case may be; and
- (f) promptly following any request therefor, such other information regarding the results of operations, business affairs and financial condition of the Borrower or any of its Subsidiaries (including information and documentation for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation) as the Administrative Agent may reasonably request (provided that no such information shall be required to be provided if providing such information would violate confidentiality agreements or result in a loss of attorney-client privilege or a claim of attorney work product with respect to such information so long as the Borrower notifies the Administrative Agent that such information is being withheld and the reason therefor).

So long as the Borrower Ensign is required to file periodic reports under Section 13(a) or Section 15(d) of the Exchange Act, the Borrower shall be deemed to have satisfied its obligation to deliver the financial statements referred to in clauses (a), (b) and (e) upon the filing of such reports with the Securities and Exchange Commission.

- Section 5.2. <u>Notices of Material Events</u>. The Borrower will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of the following:
  - (a) the occurrence of any Default or Event of Default;
- (b) the filing or commencement of, or any material development in, any action, suit, proceeding, audit, claim, demand, order or dispute with, by or before any arbitrator or Governmental Authority against or, to the knowledge of the Borrower, affecting the Borrower or any of its Subsidiaries that (i) seeks injunctive or similar relief, (ii) alleges potential or actual violations of any Health Care Law by the Borrower or any of its Subsidiaries or any of its Licensed Personnel and (iii) would, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any event or any other development by which the Borrower or any of its Subsidiaries (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability, in each case which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;
- (d) promptly and in any event within 15 days after (i) the Borrower, any of its Subsidiaries or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a certificate of the chief financial officer of the Borrower describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by the Borrower, such

Subsidiary or such ERISA Affiliate from the PBGC or any other governmental agency with respect thereto, and (ii) becoming aware (1) that there has been a material increase in Unfunded Pension Liabilities (not taking into account Plans with negative Unfunded Pension Liabilities) since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, (2) of the existence of any material Withdrawal Liability, (3) of the adoption of, or the commencement of contributions to, any Plan subject to Section 412 of the Code by the Borrower, any of its Subsidiaries or any ERISA Affiliate, or (4) of the adoption of any amendment to a Plan subject to Section 412 of the Code which results in a material increase in contribution obligations of the Borrower, any of its Subsidiaries or any ERISA Affiliate, a detailed written description thereof from the chief financial officer of the Borrower:

- (e) the occurrence of any event of default, or the receipt by the Borrower or any of its Subsidiaries of any written notice of an alleged event of default, with respect to any Material Indebtedness of the Borrower or any of its Subsidiaries;
- (f) any termination, expiration or loss of any Material Agreement that, individually or in the aggregate, could reasonably be expected to result in a reduction in Consolidated EBITDA of 10% or more on a consolidated basis from the prior Fiscal Year; and
- (g) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

The Borrower will furnish to the Administrative Agent and each Lender the following:

- (x) notice of any change (i) in any Loan Party's legal name (but, for the avoidance of doubt, excluding any trade names), (ii) in any Loan Party's chief executive office, (iii) in any Loan Party's organizational existence or (iv) in any Loan Party's federal taxpayer identification number or organizational number or jurisdiction of organization, in each case, prior to or concurrently with such change; and
- (y) promptly and in any event no later than three (3) Business Days after any Responsible Officer of the Borrower or any of its Subsidiaries has actual knowledge of:
  - (i) the voluntary disclosure by the Borrower or any of its Subsidiaries to the Office of the Inspector General of the United States Department of Health and Human Services, or any Third Party Payor Program (including to any intermediary, carrier or contractor of such Program), of an actual overpayment matter involving the submission of claims to a Third Party Payor in an amount greater than \$1,000,000;
  - (ii) that the Borrower or any of its Subsidiaries, or an owner, officer, manager, employee or Person with a "direct or indirect ownership interest" (as that phrase is defined in 42 C.F.R. §420.201) in the Borrower or any of its Subsidiaries, (i) has had a civil monetary penalty assessed against him or her pursuant to 42 U.S.C. §1320a-7a or is the subject of a proceeding seeking to assess such penalty; (ii) has been excluded from participation in a Federal Health Care Program (as that term is defined in 42 U.S.C. §1320a-7b) or is the subject of a proceeding seeking to assess such penalty; (iii) has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518 or is the subject of a proceeding seeking to assess such penalty; or (iv) has been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§3729-3731 or in any qui tam action brought pursuant to 31 U.S.C. §3729 et seq.;

- (iii) any claim to recover any alleged overpayments (other than any such claim made against the Borrower or any of its Subsidiaries that relates to a period during which the Borrower or such Subsidiary did not operate the respective facility) with respect to any receivables in excess of \$500,000:
- (iv) notice of any final and documented material reduction in the level of reimbursement expected to be received with respect to receivables;
- (v) any allegations of licensure violations or fraudulent acts or omissions involving the Borrower or any of its Subsidiaries, or, to the knowledge of the Borrower or any of its Subsidiaries, any Licensed Personnel that would, in the aggregate, have a Material Adverse Effect;
- (vi) the pending or threatened imposition of any material fine or penalty by any Governmental Authority under any Health Care Law against the Borrower or any of its Subsidiaries, or, to the knowledge of the Borrower or any of its Subsidiaries, any Licensed Personnel;
- (vii) any changes in any Health Care Law (including the adoption of a new Health Care Law) known to the Borrower or any of its Subsidiaries that would, in the aggregate, have a Material Adverse Effect;
- (viii) any pending or threatened (in writing) revocation, suspension, termination, probation, restriction, limitation, denial, or non-renewal with respect to any Health Care Permit or Third Party Payor Authorization;
- (ix) any non-routine and material inspection of any facility of the Borrower or any of its Subsidiaries by any Governmental Authority; and
- (x) without duplication, any failure of the Borrower or any of its Subsidiaries to comply with the covenants and conditions of <u>Section 5.15</u>.

Each notice or other document delivered under this Section shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice or other document and any action taken or proposed to be taken with respect thereto.

- Section 5.3. Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to (i) maintain in full force and effect its legal existence and (ii) preserve, renew and maintain its respective rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business (except, in the case of this clause (ii), as would not reasonably be expected to result in a Material Adverse Effect); provided that nothing in this Section shall prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.3.
- Section 5.4. <u>Compliance with Laws</u>. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and properties, including, without limitation, all Environmental Laws, ERISA and OSHA, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower will, and will cause each of its Subsidiaries to, comply with all applicable Sanctions and in all material respects with the laws, rules, regulations and requirements referenced in <u>Sections 4.20</u>, <u>4.21</u>, and <u>4.22</u>.
- Section 5.5. <u>Payment of Obligations</u>. The Borrower will, and will cause each of its Subsidiaries to, pay and discharge at or before maturity all of its obligations and liabilities (including, without limitation, all taxes, assessments and other governmental charges, levies and all other claims that

could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) the failure to make any such payment could not reasonably be expected to result in a Material Adverse Effect.

Section 5.6. <u>Books and Records</u>. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Borrower in conformity with GAAP.

Visitation and Inspection. The Borrower will, and will cause each of its Section 5.7. Subsidiaries to, permit any representative of the Administrative Agent or any Lender to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times as the Administrative Agent or any Lender may reasonably request after reasonable prior notice to the Borrower; provided that (a) so long as no Event of Default shall have occurred and be continuing, the Administrative Agent and the Lenders shall not make more than one (1) such visit and inspection in any Fiscal Year; (b) if an Event of Default has occurred and is continuing, no prior notice shall be required and the limitation on the number of visits and inspections shall no longer apply; (c) any such inspection and examination, copies and discussions shall not be permitted to the extent it would violate confidentiality agreements or result in a loss of attorney-client privilege or claim of attorney work product so long as the Borrower notifies the Administrative Agent of such limitation and the reason therefor; and (d) any such inspection and examination, copies and discussions shall be subject to the terms of any applicable Master Lease and the accompanying Collateral Access Agreement.

Section 5.8. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, force majeure, casualty and condemnation events excepted, (b) maintain with financially sound and reputable insurance companies, or with Affiliates of the Borrower (as permitted in Section 4.11(c)(ii)), (i) insurance with respect to its properties and business, and the properties and business of its Subsidiaries, against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations and (ii) all insurance required to be maintained pursuant to the Collateral Documents, and will, upon request of the Administrative Agent, furnish to each Lender a certificate of a Responsible Officer setting forth the nature and extent of all insurance maintained by the Borrower and its Subsidiaries in accordance with this Section, and (c) at all times shall name the Administrative Agent as additional insured on all liability policies of the Borrower and the other Loan Parties and as loss payee (pursuant to a loss payee endorsement approved by the Administrative Agent) on all casualty and property insurance policies of the Borrower and the other Loan Parties; provided that, so long as no Event of Default shall have occurred and be continuing, the Administrative Agent shall not make more than two requests for a certificate pursuant to clause (b)(ii) of this Section in any Fiscal Year; provided, further, that if an Event of Default has occurred and is continuing, the limitation on the number of requests for such a certificate shall no longer apply.

Section 5.9. <u>Use of Proceeds; Margin Regulations</u>. The Borrower (i) will use the proceeds of the initial Borrowing(s) to consummate the Closing Date Refinancing and the other Related Transactions, to pay transaction costs and expenses arising in connection herewith and for working capital and other general corporate purposes, and (ii) after the Closing Date, will use the proceeds of the Revolving Loans and the Swingline Loans for working capital, capital expenditures, dividends,

distributions and Permitted Acquisitions not prohibited by this Agreement, for other general corporate purposes of the Borrower and its Subsidiaries and for any other purpose not prohibited by this Agreement. The Borrower will use the proceeds of any Incremental Term Loans or Other Refinancing Term Loans for the purposes set forth in the applicable Incremental Commitment Joinder or Refinancing Amendment. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U or Regulation X. All Letters of Credit will be used for general corporate purposes.

Section 5.10. [Reserved].

Section 5.11. [Reserved].

Section 5.12. Additional Subsidiaries and Collateral.

Within 75 days after the end of the second Fiscal Quarter of each Fiscal Year of (a) the Borrower Ensign (or, if the Administrative Agent determines in its sole discretion that the Borrower is working in good faith, such longer period as the Administrative Agent shall permit not to exceed 60 additional days), commencing with the 2020 Fiscal Year, the Borrower will (i) cause each Domestic Subsidiary that is a Material Subsidiary (excluding any Excluded Subsidiary, any Specified Subsidiary and any Subsidiary that is already a Guarantor) (a "Joining Guarantor") (A) to become a new Guarantor and to grant Liens in favor of the Administrative Agent in all of its personal property subject to the Guaranty and Security Agreement by executing and delivering to the Administrative Agent a supplement to the Guaranty and Security Agreement in form and substance reasonably satisfactory to the Administrative Agent, executing and delivering a Copyright Security Agreement, Patent Security Agreement and Trademark Security Agreement, as and to the extent applicable, and authorizing and delivering, at the request of the Administrative Agent, such UCC financing statements or similar instruments required by the Administrative Agent to perfect the Liens in favor of the Administrative Agent and granted under any of the Loan Documents, (B) to deliver all such other documentation (including, without limitation, certified organizational documents, resolutions, lien searches and, if requested by the Administrative Agent, legal opinions, provided, that legal opinions shall only be required for a Joining Guarantor having a fair market value in excess of \$50,000,000) and to take all such other actions as such Joining Guarantor would have been required to deliver and take pursuant to Section 3.1 if such Joining Guarantor had been a Loan Party on the Closing Date, (C) to comply with Section 5.11, and (D) to deliver Collateral Access Agreements with respect to leased Real Estate (to the extent the landlord of any such leased Real Estate is a PropCo Landlord or a landlord under a Material Master Lease), in each case, of the type required under Section 5.13, (ii) pledge, or cause the applicable Loan Party to pledge, all of the Capital Stock of such Joining Guarantor to the Administrative Agent as security for the Obligations by executing and delivering a supplement to the Guaranty and Security Agreement in form and substance reasonably satisfactory to the Administrative Agent, and (iii) deliver the original certificates (if any and to the extent not prohibited under applicable law) evidencing such pledged Capital Stock to the Administrative Agent, together with appropriate powers executed in blank.

(b) Within 75 days after the end of the second Fiscal Quarter of each Fiscal Year of <a href="the-BerrowerEnsign">the-BerrowerEnsign</a> (or, if the Administrative Agent determines in its sole discretion that the Borrower is working in good faith, such longer period as the Administrative Agent shall permit not to exceed 60 additional days), commencing with the 2020 Fiscal Year, the Borrower shall (i) cause the applicable Loan Parties to pledge all of the Capital Stock of each Foreign Subsidiary and each Pass-Through Foreign Holdco that is a Material Subsidiary (excluding any Excluded Subsidiaries) to the extent such Capital Stock is owned directly by a Loan Party to the Administrative Agent as security for the Obligations pursuant to the Guaranty and Security Agreement; provided that, in the case of any such

Foreign Subsidiary that is a CFC and any such Pass-Through Foreign Holdco, such pledge shall be limited to 65% of the issued and outstanding voting Capital Stock and 100% of the issued and outstanding non-voting Capital Stock of such Foreign Subsidiary or such Pass-Through Foreign Holdco, as applicable, (ii) deliver the original certificates (if any and to the extent not prohibited under applicable law) evidencing such pledged Capital Stock to the Administrative Agent, together with appropriate powers executed in blank and (iii) deliver all such other documentation (including, without limitation, certified organizational documents, resolutions, lien searches and, if requested by the Administrative Agent, legal opinions) and to take all such other actions as the Administrative Agent may reasonably request.

- If (i) the Leverage Ratio for the four consecutive Fiscal Quarter period ending on the end of any Fiscal Quarter, commencing with the Fiscal Quarter ending on or about December 31, 2019, is greater than 2.00:1.00 and (ii) as of the end of such Fiscal Quarter either (x) the aggregate assets of all Subsidiaries of the Borrower (other than Excluded Subsidiaries and Specified Subsidiaries) that are not Subsidiary Loan Parties as of such date are in excess of 20.0% of the total assets of the Borrower Ensign and its Subsidiaries determined on a consolidated basis as of such date or (y) the aggregate revenues of all Subsidiaries of the Borrower (other than Excluded Subsidiaries and Specified Subsidiaries) that are not Subsidiary Loan Parties as of such date are in excess of 10.0% of the total revenues of the Borrower Ensign and its Subsidiaries on a consolidated basis as of such date (such percentages in clauses (x) and (y), the "Threshold Amounts"), then within 75 days after the end of such Fiscal Quarter (or with respect to the fourth Fiscal Quarter of each Fiscal Year, then within 120 days after the end of such Fiscal Quarter), the Borrower shall cause one or more of such Domestic Subsidiaries that is at such time not a Subsidiary Loan Party to become an additional Subsidiary Loan Party to the extent necessary to cause the aggregate assets and the aggregate revenue of all Subsidiaries of the Borrower that are not Subsidiary Loan Parties at such time (other than Excluded Subsidiaries and Specified Subsidiaries) to be no greater than the Threshold Amounts, by executing and delivering the documents and taking the actions described in subsection (a) above as if such Domestic Subsidiaries were Joining Guarantors.
- (d) The Borrower agrees that, following the delivery of any Collateral Documents required to be executed and delivered by this Section, the Administrative Agent shall have a valid and enforceable, first priority perfected Lien on the property required to be pledged pursuant to subsections (a), (b) and (c) of this Section (to the extent that such Lien can be perfected by execution, delivery and/or recording of the Collateral Documents or UCC financing statements, or possession of such Collateral), free and clear of all Liens other than Liens expressly permitted by Section 7.2. All actions to be taken pursuant to this Section shall be at the expense of the Borrower or the applicable Loan Party, and shall be taken to the reasonable satisfaction of the Administrative Agent.
- Section 5.13. <u>Collateral Access Agreements</u>. To the extent otherwise permitted hereunder, if any Loan Party proposes to lease any Real Estate from a PropCo Landlord under a Master Lease or any landlord that is party to a Material Master Lease, it shall first provide to the Administrative Agent a copy of such lease (if the Administrative Agent has not previously received a copy of such lease) and a Collateral Access Agreement from the landlord of such leased property; <u>provided</u> that with regard to landlords other than PropCo Landlords, no such Collateral Access Agreement shall be required if the Borrower is unable to obtain such Collateral Access Agreement following use of commercially reasonable efforts to do so.
- Section 5.14. <u>Further Assurances</u>. The Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which may be required under any applicable law, or which the Administrative Agent or the Required

Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created by the Collateral Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

# Section 5.15. Health Care Matters.

- (a) Without limiting or qualifying <u>Section 5.4</u>, or any other provision of this Agreement, the Borrower and each of its Subsidiaries will be in material compliance with all applicable Health Care Laws relating to the operation of such Person's business.
  - (b) Each of the Borrower and its Subsidiaries shall:
  - (i) obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all material Health Care Permits (including, as applicable, Health Care Permits necessary for it to be eligible to receive payment and compensation from and to participate in Medicare, Medicaid or any other Third Party Payor programs) which are necessary or useful in the proper conduct of its business;
  - (ii) be and remain in material compliance with all requirements for participation in, and for licensure required to provide the goods or services that are reimbursable under, Medicare, Medicaid and other Third Party Payor Programs;
  - (iii) cause all Licensed Personnel to be in material compliance with all applicable Health Care Laws in the performance of their duties to or for the Borrower and its Subsidiaries, and to maintain in full force and effect all professional licenses and other Health Care Permits required to perform such duties; and
  - (iv) keep and maintain all records required to be maintained by any Governmental Authority or otherwise under any Health Care Law.
- The Borrower and each of its Subsidiaries shall maintain a corporate and health care regulatory compliance program ("CCP") which addresses the requirements of Health Care Laws, including, without limitation, HIPAA and includes at least the following components and allows the Administrative Agent (and/or its consultants) from time to time to review such CCP: (i) standards of conduct and procedures that describe compliance policies regarding laws with an emphasis on prevention of fraud and abuse; (ii) a specific officer within high-level personnel identified as having overall responsibility for compliance with such standards and procedures: (iii) training and education programs which effectively communicate the compliance standards and procedures to employees and agents, including, without limitation, fraud and abuse laws and illegal billing practices; (iv) auditing and monitoring systems and reasonable steps for achieving compliance with such standards and procedures, including, without limitation, publicizing a report system to allow employees and other agents to anonymously report criminal or suspect conduct and potential compliance problems; (v) disciplinary quidelines and consistent enforcement of compliance policies, including, without limitation, discipline of individuals responsible for the failure to detect violations of the CCP; and (vi) mechanisms to immediately respond to detected violations of the CCP. The Borrower and its Subsidiaries shall modify such CCPs from time to time, as may be necessary to ensure continuing compliance with all applicable Health Care Laws. Upon request, the Administrative Agent (and/or its consultants) shall be permitted to review such CCPs.

Section 5.16. <u>Post-Closing Matters</u>. The Borrower will, and will cause each other Loan Party to, satisfy the requirements set forth on Schedule 5.16 on or before the date specified for such requirement or such later date as agreed to by the Administrative Agent in its sole discretion.

Section 5.17. [Reserved].

Section 5.18. Limitations on Designation of Excluded Subsidiaries.

- (a) The Borrower may, on or after the Closing Date, designate any Subsidiary of the Borrower (other than Ensign REIT or any Intermediate Entity) as an "Excluded Subsidiary" under this Agreement (an "Excluded Subsidiary Designation") only if:
  - (i) no Default or Event of Default shall have occurred and be continuing at the time of or immediately after giving effect to such Excluded Subsidiary Designation;
  - (ii) the Borrower would be permitted under this Agreement to make an Investment at the time of such Excluded Subsidiary Designation (assuming the effectiveness of such Excluded Subsidiary Designation) in an amount (the "Excluded Subsidiary Designation Amount") equal to the sum of the book value (or, in the case of cash, the amount of cash invested) (without duplication) of Investments held by the Borrower or other Loan Parties in such Subsidiary determined net of any payments received with respect to such Investment from the date that such Investment was made through the date of such Excluded Subsidiary Designation (to be determined without duplication of other Investments permitted under Section 7.4);
  - (iii) after giving effect to such Excluded Subsidiary Designation and any Acquisition or Disposition permitted by this Agreement consummated since the most recently ended Test Period, the Borrower shall be in compliance on a Pro Forma Basis with the covenants set forth in <a href="Article VI">Article VI</a> as of the end of the most recently ended Test Period as if such Excluded Subsidiary Designation had occurred, and any Indebtedness incurred in connection therewith was incurred, on the first day of such Test Period;
  - substantially concurrent with such Excluded Subsidiary Designation, either (x) such Subsidiary incurs or assumes Indebtedness that is permitted pursuant to Section 7.1(h) that is secured by Liens that are permitted pursuant to Section 7.2(f), (y) such Subsidiary enters into a lease with respect to Real Estate to be operated or otherwise used by such Subsidiary, which lease requires such Subsidiary to grant a first priority Lien in favor of such landlord on such Subsidiary's accounts receivable and/or the Capital Stock of such Subsidiary or otherwise prohibits such Subsidiary from granting a first priority Lien in favor of the Administrative Agent on such Subsidiary's accounts receivable and/or the Capital Stock of such Subsidiary (or results in a lease default if such Lien is granted), provided, that the Borrower shall not be required to designate such Subsidiary as an Excluded Subsidiary to the extent such Subsidiary is a Subsidiary Loan Party and the Liens and security interests in favor of the landlord on the assets of such Subsidiary Loan Party are permitted pursuant to, and subject to an intercreditor agreement contemplated by, Section 7.2(i) or (z) with respect to a lease that was previously entered into by such Subsidiary with respect to Real Estate to be operated or otherwise used by such Subsidiary and in connection with such lease the landlord under such lease was granted a Lien on and security interest in the assets of such Subsidiary that were permitted immediately prior to such Excluded Subsidiary Designation pursuant to, and subject to an intercreditor agreement contemplated by, Section 7.2(i), the date occurs that is 75 days prior to the date provided in the applicable intercreditor agreement whereupon any of the Liens on and security interests in favor of such landlord on the assets of such Subsidiary will cease to have the relative

lien priority necessary for such Liens and security interests to be permitted pursuant to <u>Section</u> 7.2(i); and

- (v) such Subsidiary is not a tenant under any PropCo Master Lease.
- (b) Upon any such Excluded Subsidiary Designation after the Closing Date, the Borrower and its Subsidiaries shall be deemed to have made an Investment in such Excluded Subsidiary in an amount equal to the Excluded Subsidiary Designation Amount.
- (c) Borrower may revoke any Excluded Subsidiary Designation of a Subsidiary as an Excluded Subsidiary (an "Excluded Subsidiary Revocation"), whereupon such Subsidiary shall cease to be an Excluded Subsidiary, if:
  - (i) no Default or Event of Default shall have occurred and be continuing at the time and immediately after giving effect to such Excluded Subsidiary Revocation;
  - (ii) all Liens and Indebtedness of such Excluded Subsidiary and its Subsidiaries outstanding immediately following such Excluded Subsidiary Revocation would, if incurred at the time of such Excluded Subsidiary Revocation, have been permitted to be incurred for all purposes of this Agreement; and
  - (iii) such Subsidiary (and any other applicable Loan Party) executes and delivers the documents and takes the actions described in <u>Section 5.12(a)</u> as if such Subsidiary was a Joining Guarantor.
- (d) All Excluded Subsidiary Designations and Excluded Subsidiary Revocations occurring after the Closing Date must be evidenced by a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent certifying compliance with the foregoing provisions of this <u>Section 5.18(a)</u> (in the case of any such Excluded Subsidiary Designations) and of <u>Section 5.18(c)</u> (in the case of any such Excluded Subsidiary Revocations).
- (e) If the Borrower designates a Guarantor as an Excluded Subsidiary in accordance with this Section 5.18, the Obligations of such Guarantor under the Loan Documents shall terminate and be of no further force and effect and all Liens granted by such Guarantor under the applicable Collateral Documents shall terminate and be released and be of no further force and effect, and all Liens on the Capital Stock and debt obligations of such Guarantor shall be terminated and released and of no further force and effect, in each case, without any action required by the Administrative Agent. At the Borrower's request, the Administrative Agent will execute and deliver any instrument evidencing such termination and the Administrative Agent shall take all actions appropriate in order to effect such termination and release of such Liens and without recourse or warranty by the Administrative Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by the Administrative Agent shall be at the sole cost and expense of the Borrower.
- Section 5.19. <u>Anti-Corruption Laws; Sanctions</u>. The Borrower will comply and conduct its, and cause its Subsidiaries to comply and conduct their, business in compliance in all material respects with the Anti-Corruption Laws and all applicable Sanctions and institute and maintain policies and procedures designed to promote and achieve compliance by the Borrower and its Subsidiaries and their

respective directors, officers, employees, agents and Affiliates with such Anti-Corruption Laws and Sanctions.

#### ARTICLE VI

## FINANCIAL COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

Section 6.1. <u>Leverage Ratio</u>. The Borrower will maintain, as of the end of each Test Period, commencing with the Test Period ended on September 30, 2019, a Leverage Ratio of not greater than 3.00:1.00 (the "<u>Maximum Leverage Threshold</u>"); <u>provided</u> that if the aggregate consideration paid in connection with all Permitted Acquisitions or other Acquisitions permitted hereunder consummated during any six (6) consecutive month period exceeds \$50,000,000, then, at the election of the Borrower by written notice to the Administrative Agent (with a description in reasonable detail of the Permitted Acquisitions or other Acquisitions permitted hereunder consummated during such period and the consideration paid), the Maximum Leverage Threshold shall be increased to 3.50:1.00 for the current Fiscal Quarter and the immediately following three Fiscal Quarters; <u>provided</u>, <u>further</u>, that the Maximum Leverage Threshold shall not be increased pursuant to the preceding proviso (i) more than four times (or with respect to more than twelve Fiscal Quarters) during the term of this Agreement and (ii) unless in the most recently ended four consecutive Fiscal Quarter period there shall be at least one Fiscal Quarter in respect of which the Maximum Leverage Threshold has not been increased.

Section 6.2. <u>Interest/Rent Coverage Ratio</u>. The Borrower will maintain, as of the end of each Test Period, commencing with the Test Period ended on September 30, 2019, an Interest/Rent Coverage Ratio of not less than 1.50:1.00.

### ARTICLE VII

# **NEGATIVE COVENANTS**

The Borrower covenants and agrees that until Payment in Full of the Obligations:

- Section 7.1. <u>Indebtedness and Preferred Equity</u>. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:
  - (a) Indebtedness created pursuant to the Loan Documents;
- (b) Indebtedness of the Borrower and its Subsidiaries existing on the date hereof and set forth on <u>Schedule 7.1</u> and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (immediately prior to giving effect to such extension, renewal or replacement) or shorten the maturity or the weighted average life thereof;
- (c) Indebtedness of the Borrower or any of its Subsidiaries incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations (it being understood that the completion of the construction or development of additional beds at existing facilities or new facilities shall constitute the acquisition of property), and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets (provided that such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvements), and extensions, renewals, refinancings or replacements of any such Indebtedness that do not increase the outstanding principal amount thereof

(immediately prior to giving effect to such extension, renewal, refinancing or replacement, other than in an amount not to exceed unpaid interest and fees and expenses incurred in connection therewith) or shorten the maturity or the weighted average life thereof; <u>provided</u> that the aggregate principal amount of such Indebtedness at any time outstanding does not exceed the greater of \$70,000,000 and 40.0% of Consolidated EBITDA for the most recently ended Test Period; <u>provided</u>, <u>further</u>, that the aggregate principal amount of Capital Lease Obligations that are permitted under subsection (j) of this Section shall not be included in calculating the aggregate principal amount of Indebtedness for purposes of the limitation set forth in this subsection:

- (d) Indebtedness of the Borrower owing to any Subsidiary and of any Subsidiary owing to the Borrower or any other Subsidiary; <u>provided</u> that any such Indebtedness that is owed by a Subsidiary that is not a Subsidiary Loan Party shall be subject to <u>Section 7.4</u>;
- (e) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary; <u>provided</u> that Guarantees by any Loan Party of Indebtedness of any Subsidiary that is not a Subsidiary Loan Party shall be subject to <u>Section 7.4</u>; <u>provided</u>, <u>further</u>, that <u>the BorrowerEnsign</u> may Guarantee on an unsecured basis all Indebtedness permitted under Section 7.1(h);
- (f) Indebtedness of any Person which becomes a Subsidiary (other than an Excluded Subsidiary) after the date of this Agreement and Indebtedness secured by assets acquired by the Borrower or any of its Subsidiaries (other than an Excluded Subsidiary) after the date of this Agreement; provided that in each case (i) such Indebtedness exists at the time that such Person becomes a Subsidiary or such asset is acquired and is not created in contemplation of or in connection with such Person becoming a Subsidiary or such asset being acquired, and (ii) the aggregate principal amount of all such Indebtedness permitted hereunder at any time outstanding shall not exceed the greater of \$70,000,000 and 40.0% of Consolidated EBITDA for the most recently ended Test Period;
  - (g) Hedging Obligations permitted by Section 7.10;
- (h) Indebtedness of an Excluded Subsidiary secured by Liens permitted by Section 7.2(f) in an aggregate principal amount, when taken together with the aggregate amount of Investments in any Excluded Subsidiaries made pursuant to Section 7.4(h) that remain outstanding at such time (other than any portion of such Investment made in reliance on the Available Amount), for all such Indebtedness not to exceed at any time outstanding the greater of (x) \$350,000,000 and (y) an amount equal to (I) Consolidated EBITDA for the most recently ended Test Period multiplied by (II) two; provided that, at the time of and immediately after giving effect to the incurrence or assumption of any such Indebtedness, (A) no Default or Event of Default shall exist and (B) the Borrower and its Subsidiaries shall be in proforma compliance with Sections 6.1 and 6.2 as of the most recently ended Test Period, calculated as if all such Indebtedness had been incurred as of the first day of the relevant period for testing compliance;
- (i) other unsecured Indebtedness of the Borrower or its Subsidiaries; provided that, at the time of and immediately after giving effect to any such Indebtedness, (A) no Default or Event of Default shall exist and (B) the Borrower and its Subsidiaries shall be in proforma compliance with Sections 6.1 and 6.2 as of the most recently ended Test Period, calculated as if all such Indebtedness had been incurred as of the first day of the relevant period for testing compliance;
- (j) Capital Lease Obligations incurred in connection with any Permitted Acquisition structured as a capital lease;

- (k) unsecured Indebtedness of a Subsidiary Loan Party owing to its landlord or Affiliates of such landlord under a lease of Real Estate for loans advanced by such landlord or its Affiliates for the purpose of funding capital expenditures with respect to healthcare facilities located on such Real Estate, provided that the aggregate amount of Indebtedness at any time outstanding pursuant to this Section 7.1(k) shall not exceed the greater of \$70,000,000 and 40.0% of Consolidated EBITDA for the most recently ended Test Period;
- (I) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds, completion guarantees and letters of credit arising in the ordinary course of its business;
- (m) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five (5) Business Days of its incurrence;
- (n) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;
- (o) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business; and
- (p) other Indebtedness of the Borrower or its Subsidiaries in an aggregate principal amount at any time outstanding not to exceed the greater of \$70,000,000 and 40.0% of Consolidated EBITDA for the most recently ended Test Period.

The Borrower will not, and will not permit any Subsidiary to, issue any preferred stock or other preferred equity interest that (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (ii) is or may become redeemable or repurchaseable by the Borrower or such Subsidiary at the option of the holder thereof, in whole or in part, or (iii) is convertible or exchangeable at the option of the holder thereof for Indebtedness or preferred stock or any other preferred equity interest described in this paragraph, on or prior to, in the case of clause (i), (ii) or (iii), the date that is 180 days after the later of the Revolving Commitment Termination Date and the then latest Maturity Date.

- Section 7.2. <u>Liens</u>. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired, except:
- (a) Liens securing the Obligations; <u>provided</u> that no Liens may secure Hedging Obligations or Bank Product Obligations without securing all other Obligations on a basis at least pari passu with such Hedging Obligations or Bank Product Obligations and subject to the priority of payments set forth in <u>Section 2.21</u> and <u>Section 8.2</u>;
  - (b) Permitted Encumbrances;
- (c) Liens on any property or asset of the Borrower or any of its Subsidiaries existing on the date hereof and set forth on Schedule 7.2; provided that such Liens shall not apply to any other property or asset of the Borrower or any Subsidiary;
- (d) purchase money Liens upon or in any fixed or capital assets to secure the purchase price or the cost of construction or improvement of such fixed or capital assets or to secure Indebtedness incurred solely for the purpose of financing the acquisition, construction or improvement of

such fixed or capital assets (including Liens securing any Capital Lease Obligations); provided that (i) any such Lien secures Indebtedness permitted by Section 7.1(c), (ii) any such Lien attaches to such asset concurrently or within 90 days after the acquisition or the completion of the construction or improvements thereof (or, in the case of an extension, refinancing, replacement or renewal, at the time of such extension, refinancing, replacement or renewal), (iii) any such Lien does not extend to any other asset other than accessions and reasonable extensions thereof, and (iv) the Indebtedness secured thereby does not exceed the cost (including interest costs) of acquiring, constructing or improving such fixed or capital assets;

- (e) any Lien (x) existing on any asset of any Person at the time such Person becomes a Subsidiary of the Borrower, (y) existing on any asset of any Person (other than any Subsidiary of the Borrower) at the time such Person is merged with or into the Borrower or any of its Subsidiaries, or (z) existing on any asset prior to the acquisition thereof by the Borrower or any of its Subsidiaries; provided that (i) any such Lien was not created in the contemplation of any of the foregoing and (ii) any such Lien secures only those obligations which it secures on the date that such Person becomes a Subsidiary or the date of such merger or the date of such acquisition;
- (f) Liens on the assets of, and Capital Stock in, any Excluded Subsidiary; provided that (i) to the extent any such Lien secures Indebtedness, any such Lien secures only Indebtedness permitted by Section 7.1(h), (ii) no such Lien is prohibited by any other Contractual Obligation of the Borrower or any of its Subsidiaries and (iii) at the time of and immediately after giving effect to any such Lien (which for Liens on the assets of, and Capital Stock in, any Excluded Subsidiary that is designated pursuant to Section 5.18(a)(iv)(z) shall be the date of such designation), (A) no Default or Event of Default shall exist and (B) the Borrower and its Subsidiaries shall be in proforma compliance with Sections 6.1 and 6.2 as of the most recently ended Test Period, calculated as if all Indebtedness secured by such Lien had been incurred as of the first day of the relevant period for testing compliance and all Acquisitions permitted hereunder since the end of such Test Period had been consummated as of the first day of the relevant period for testing compliance;

# (g) [Reserved];

- (h) extensions, renewals, or replacements of any Lien referred to in <u>subsections (b)</u> through (g) of this Section; <u>provided</u> that the principal amount of the Indebtedness secured thereby is not increased (other than in an amount not to exceed unpaid interest and fees, and expenses incurred in connection therewith) and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby;
- (i) to the extent required by the landlord under a lease of Real Estate entered into by a Subsidiary Loan Party with a landlord that is not (x) an Affiliate of the Borrower or (y) a PropCo Landlord, Liens on the assets of a Subsidiary Loan Party or such Subsidiary Loan Party's Subsidiaries (but not, for the avoidance of doubt, on the Capital Stock of such Subsidiary Loan Party or such Subsidiary Loan Party's Subsidiaries) to secure the obligations of such Subsidiary Loan Party under such lease; provided that such Subsidiary Loan Party and its Subsidiaries shall not be required to become Excluded Subsidiaries on account of such lease and shall instead be Subsidiary Loan Parties to the extent any such lien granted to or in favor of such landlord is subject to a customary intercreditor agreement between the Administrative Agent and the landlord under such lease that provides that any such Liens of such landlord on accounts receivable (and proceeds thereof, books and records related thereto and accounts into which the same are deposited) of such Subsidiary Loan Party or such Subsidiary Loan Party's Subsidiary (collectively, "Accounts Collateral") shall be junior to the Lien of the Administrative Agent on such Accounts Collateral; provided further that, to the extent any such intercreditor agreement provides that the Liens of such landlord on Accounts Collateral that are initially junior to the Lien of the Administrative

Agent on such Accounts Collateral, such Liens of such landlord on Accounts Collateral shall cease to be permitted pursuant to this clause (i) on the date that is 75 days prior to the date provided in such intercreditor agreement whereupon the Liens of such landlord on Accounts Collateral will cease to be junior to the Liens of the Administrative Agent on such Accounts Collateral; and

(j) Liens on the assets of the Borrower or its Subsidiaries not otherwise permitted by this Section 7.2, securing an aggregate principal amount of obligations at any time outstanding not to exceed the greater of \$70,000,000 and 40.0% of Consolidated EBITDA for the most recently ended Test Period.

# Section 7.3. Fundamental Changes.

- (a) The BorrowerNeither Ensign nor Ensign REIT will not, and nor will not Ensign or Ensign REIT permit any of its their respective Subsidiaries to, merge into or consolidate into any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of the assets of the Borrower and its Subsidiaries on a consolidated basis (in each case, whether now owned or hereafter acquired) or liquidate or dissolve; provided that if, at the time thereof and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (i) the Borrower or any Subsidiary Ensign and Ensign REIT may merge with a Person if the Borrower (or such Subsidiary if the Borrower is not a party to such merger and if any party to such merger is a Subsidiary Loan Party, a Subsidiary Loan Party shall be the surviving Person (unless the Borrower is a party thereto, in which case the Borrower shall be the surviving Person))Ensign or Ensign REIT, as the case may be, is the surviving Person, (ii) any Subsidiary of Ensign (other than Ensign REIT) may merge into another with a Person if such Subsidiary, is the surviving person (provided that if any party to such mergerSubsidiary is a Subsidiary Loan Party, the such Subsidiary Loan Party shall be the surviving Person), (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Borrower or to a Subsidiary Loan Party, (iv) any Subsidiary (other than Ensign REIT) may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that if such Subsidiary is a Subsidiary Loan Party, the assets of such Subsidiary shall be distributed to the Borrower or a Subsidiary Loan Party, (v) subject to clause (ii), any Subsidiary (other than Ensign REIT) may merge, dissolve or consolidate in connection with the consummation of any Permitted Acquisition, and (vi) any Subsidiary that is not a Loan Party may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Borrower or any Subsidiary of the Borrower.
- (b) The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof and businesses ancillary or reasonably related to, or extensions of, the business of the Borrower and its Subsidiaries.
- Section 7.4. <u>Investments, Loans</u>. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any Capital Stock, evidence of Indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person (all of the foregoing being collectively called "<u>Investments</u>"), or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person that constitute a business unit, or create or form any Subsidiary, except:

- (a) (x) Investments existing on the date hereof in Excluded Subsidiaries that are set forth on <u>Schedule 7.4</u> and (y) other Investments (other than Permitted Investments) existing on the date hereof (including Investments in Subsidiaries but excluding, for the avoidance of doubt, Investments in Pennant Subsidiaries from and after consummation of the Pennant Transaction);
  - (b) Permitted Investments;
  - (c) Permitted Alternative Investments:
- (d) Guarantees by the Borrower and its Subsidiaries constituting Indebtedness permitted by Section 7.1; provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Subsidiary Loan Parties that is Guaranteed by any Loan Party shall be subject to the limitation set forth in subsection (e) of this Section;
- Investments made by the Borrower in or to any Subsidiary and by any Subsidiary to the Borrower or in or to another Subsidiary; provided that, with respect to any such Investments that consist of Investments by the Loan Parties in or to, and Guarantees by the Loan Parties of Indebtedness of, Excluded Subsidiaries or Subsidiaries that are not Loan Parties, if the Leverage Ratio for the most recently ended four consecutive Fiscal Quarter period for which financial statements were required to have been delivered pursuant to Section 5.1(a) or (b) (calculated on a pro forma basis as if such Investment (and any other Investments or Restricted Payments that occur subsequent to such four consecutive Fiscal Quarter period for which the pro forma financial effect of such events has been calculated under this Agreement) had been made on the first day of such four consecutive Fiscal Quarter period), exceeds 1.75:1.00 then, at the time of and immediately after giving effect to such Investment, the aggregate outstanding amount of Investments by the Loan Parties that were made by the Loan Parties at a time when the Leverage Ratio (calculated on a pro forma basis after giving effect to such Investments) is greater than 1.75:1.00 in or to, and Guarantees by the Loan Parties of Indebtedness of, (x) Excluded Subsidiaries (including all such Investments and Guarantees existing on the Closing Date) shall not exceed the greater of \$70.000.000 and 40.0% of Consolidated EBITDA for the most recently ended four consecutive Fiscal Quarter period for which financial statements were required to have been delivered pursuant to Section 5.1(a) or (b) and (y) Subsidiaries that are not Subsidiary Loan Parties (other than Excluded Subsidiaries) (including all such Investments and Guarantees existing on the Closing Date) shall not exceed at any time the sum of (A) the greater of \$35,000,000 and 20.0% of Consolidated EBITDA for the most recently ended four consecutive Fiscal Quarter period for which financial statements were required to have been delivered pursuant to Section 5.1(a) or (b) plus (B) the Available Amount, in each case, excluding Investments permitted under the succeeding proviso; provided, further, that (i) Guarantees of Indebtedness of Excluded Subsidiaries shall not be permitted except (x) Excluded Subsidiaries may Guarantee Indebtedness of other Excluded Subsidiaries and (y) the Borrower Ensign may Guarantee on an unsecured basis all Indebtedness of Excluded Subsidiaries permitted under Section 7.1(h) (and make payments thereunder to the extent such payment is permitted as an Investment hereunder at such time), (ii) additional Investments in Excluded Subsidiaries pursuant to Section 7.1(h) below shall be permitted subject to the limitations set forth therein and (iii) in the case of Investments in Excluded Subsidiaries pursuant to this clause (e), at the time of and immediately after giving effect to any such Investment, (A) no Default or Event of Default shall exist and (B) the Borrower and its Subsidiaries shall be in pro forma compliance with Sections 6.1 and 6.2 as of the most recently ended Test Period, calculated as if such Investment had been made as of the first day of the relevant period for testing compliance;
- (f) Ioans or advances to employees, officers or directors of the Borrower or any of its Subsidiaries in the ordinary course of business for travel, relocation and related expenses; provided

that the aggregate amount of all such loans and advances does not exceed \$3,000,000 at any time outstanding;

- (g) Hedging Transactions permitted by <u>Section 7.10</u>;
- (h) (y) Investments in Excluded Subsidiaries made for the purpose of financing the construction, development, refurbishment or expansion of any health care facility and (z) Investments constituting Excluded Subsidiary Designation Amounts (other than, in the case of this clause (z), cash or cash equivalents funded by any Loan Party into an Excluded Subsidiary prior to such Subsidiary being designated as an Excluded Subsidiary, except to the extent of cash or cash equivalents funded for the purpose of financing the Permitted Acquisition of such Subsidiary or the construction, development, refurbishment or expansion of any health care facility); provided that the aggregate amount of Investments in Excluded Subsidiaries made for the purpose of financing the construction, development. refurbishment or expansion of any health care facility and Excluded Subsidiary Designation Amounts, together with the amount of any then outstanding Indebtedness that was incurred or assumed pursuant to Section 7.1(h) and any other then outstanding Investment in any Excluded Subsidiary arising pursuant to this Section 7.4(h) (in each case, without duplication), shall not exceed at any time the sum of (A) the greater of (x) \$350,000,000 and (y) an amount equal to (I) Consolidated EBITDA for the most recently ended four consecutive Fiscal Quarter period for which financial statements were required to have been delivered pursuant to Section 5.1(a) or (b) multiplied by (II) two plus (B) the Available Amount;
- (i) with respect to the Insurance Subsidiaries only, (A) commercial paper having, at the time of acquisition thereof, a short-term rating from S&P or Moody's of at least A-1/P-1; (B) certificates of deposit, bankers' acceptances and time deposits issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any commercial bank or other financial institution that has total assets of not less than \$500,000,000 or the equivalent thereof at the time of acquisition thereof; (C) other securities, including, without limitation, corporate debt, having, at the time of acquisition thereof, a long-term rating from S&P or Moody's of at least A-/A3; and (D) mutual funds investing primarily in any one or more of the foregoing;
- (j) other Investments that in the aggregate do not exceed at any time outstanding the greater of \$70,000,000 and 40.0% of Consolidated EBITDA for the most recently ended Test Period;
- (k) Investments held by a Subsidiary Loan Party that is acquired after the Closing Date, or of a Person (other than a Subsidiary of the Borrower) merged or consolidated with or into the Borrower or a Subsidiary Loan Party, in each case in accordance with the terms of this Agreement to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation (such Investments, "Acquired Investments"); provided, however, that Acquired Investments shall not include (and in no event shall this Section 7.4(k) permit) Investments in or with respect to Excluded Subsidiaries (including, for the avoidance of doubt, Investments constituting Excluded Subsidiary Designation Amounts); and

### Permitted Acquisitions.

The amount of any Investment (other than Investments made using the Available Amount) shall be deemed to be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but determined net of all payments received with respect to such Investment whether constituting sale proceeds thereof, dividends, distributions, interest, return of capital or otherwise, and the amount of any Investment constituting a Guarantee shall be reflective of the principal amount subject to such Guarantee from time to time.

Notwithstanding the foregoing, in no event shall any Excluded Subsidiary make, purchase, hold or acquire any Investments in the Capital Stock of any Loan Party.

- Section 7.5. <u>Restricted Payments</u>. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:
  - (i) dividends payable by the Borrower Ensign solely in interests of any class of its common equity;
  - (ii) Restricted Payments made by any Subsidiary to <a href="the-BorrowerEnsign">the BorrowerEnsign</a> or to another Subsidiary, on at least a pro rata basis with any other shareholders if such Subsidiary is not wholly owned by <a href="the-BorrowerEnsign">the BorrowerEnsign</a> and other wholly owned Subsidiaries of <a href="the-BorrowerEnsign">the BorrowerEnsign</a>;
  - (iii) other Restricted Payments so long as (x) no Default or Event of Default shall have occurred and be continuing at the time such Restricted Payment is paid, and (y) the aggregate amount of all such Restricted Payments made by <a href="the-BorrowerEnsign">the BorrowerEnsign</a> in any Fiscal Year does not exceed 25% of Consolidated Net Income (if greater than \$0) earned during the immediately preceding Fiscal Year;
  - (iv) the Borrower Ensign may repurchase common stock or common stock options from present or former officers, directors or employees (or heirs of, estates of or trusts formed by such Persons) of the Borrower or any Subsidiary upon the death, disability, retirement or termination of employment or position of such officer, director or employee or pursuant to the terms of any stock option plan or like agreement; provided, however, that the aggregate amount of payments under this clause (except to the extent made with Equity Issuance Proceeds received for such purpose that are not used to increase the Available Amount or otherwise applied to increase basket capacity hereunder) shall not exceed the lesser of (i) \$6,000,000 in any Fiscal Year or (ii) \$30,000,000 during the term of this Agreement (not including any such payments made prior to the Closing Date);
  - (v) other Restricted Payments (including, for the avoidance of doubt, payments with respect to subordinated Indebtedness) in an aggregate amount not to exceed \$15,000,000 in any Fiscal Year;
  - (vi) the Borrower and its Subsidiaries may (x) repurchase Capital Stock to the extent deemed to occur upon exercise of stock options, warrants or rights in respect thereof to the extent such Capital Stock represents a portion of the exercise price of such options, warrants or rights in respect thereof and (y) make payments in respect of withholding or similar taxes payable or expected to be payable by any present or former member of management, director, officer, employee, or consultant of the Borrower or any of its Subsidiaries or family members, spouses or former spouses, heirs of, estates of or trusts formed by such Persons in connection with the exercise of stock options or grant, vesting or delivery of Capital Stock; provided, however, that the aggregate amount of payments under this clause (y) (except to the extent made pursuant to a stock option plan or incentive plan) shall not exceed the lesser of (i) \$6,000,000 in any Fiscal Year or (ii) \$30,000,000 during the term of this Agreement (not including any such payments made prior to the Closing Date);
  - (vii) the Borrower and its Subsidiaries may make Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options

or, warrants or rights or upon the conversion or exchange of or into Capital Stock, or payments or distributions to dissenting stockholders pursuant to applicable law;

- (viii) in addition to the other Restricted Payments otherwise permitted under this <u>Section 7.5</u>, the Borrower and its Subsidiaries may make additional Restricted Payments in an amount not to exceed the Available Amount;
- (ix) the refinancing of any Indebtedness that is subordinated to the Obligations; provided that (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom; (B) any such refinancing Indebtedness shall (x) not have a stated maturity or, other than in the case of a revolving credit facility, a Weighted Average Life to Maturity that is shorter than that of the Indebtedness being refinanced, (y) if the Indebtedness being refinanced is subordinated to the Obligations by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be at least as subordinate to the Obligations as the Indebtedness being refinanced (and unsecured if the refinanced Indebtedness is unsecured) and (z) be in a principal amount that does not exceed the principal amount so refinanced, plus, accrued interest, plus, any premium or other payment required to be paid in connection with such refinancing, plus, the amount of fees and expenses of the Borrower or any of its Subsidiaries incurred in connection with such refinancing, plus, any unutilized commitments thereunder; and (C) the obligors on such refinancing Indebtedness shall be the obligors on such Indebtedness being refinanced; provided, further, however, that (i) the borrower of the refinancing indebtedness shall be the Borrower or the borrower of the Indebtedness being refinanced, (ii) any Loan Party shall be permitted to guarantee any such refinancing Indebtedness of any other Loan Party and (iii) any non-Loan Party shall be permitted to guarantee any such refinancing Indebtedness of any other non-Loan Party;
- (x) in addition to the other Restricted Payments otherwise permitted under this Section 7.5, the Borrower and its Subsidiaries may make additional Restricted Payments so long as (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (B) the Leverage Ratio for the most recently ended four consecutive Fiscal Quarter period for which financial statements were required to have been delivered pursuant to Section 5.1(a) or (b) (calculated on a pro forma basis as if such Restricted Payment (and any other Restricted Payment or Investment that occurs subsequent to such four consecutive Fiscal Quarter period for which the pro forma financial effect of such events has been calculated under this Agreement) had been made on the first day of such four consecutive Fiscal Quarter period) does not exceed 2.00:1.00; and
- (xi) Restricted Payments necessary to effect the Pennant Transaction pursuant to the Pennant Transaction Documents, including the distribution of all of the Capital Stock of the Pennant Subsidiaries to the shareholders of the Borrower Ensign.
- Section 7.6. <u>Sale of Assets</u>. The Borrower will not, and will not permit any of its Subsidiaries to, convey, sell, lease, assign, transfer or otherwise dispose of any of its assets, business or property or, in the case of any Subsidiary (other than an Immaterial Subsidiary), any shares of such Subsidiary's Capital Stock, in each case whether now owned or hereafter acquired, to any Person other than the Borrower or any wholly owned Subsidiary of the Borrower (or to qualify directors if required by applicable law), except:

- (a) the sale or other disposition of obsolete or worn out property or other property not necessary for operations or no longer useful in the business disposed of in the ordinary course of business:
- (b) the sale of inventory and Permitted Investments in the ordinary course of business;
  - (c) dispositions of cash and cash equivalents:
- (d) dispositions of equipment to the extent that (i) such equipment is exchanged for credit against the purchase price of similar replacement equipment and (ii) the proceeds of such disposition are applied in whole or in part to purchases of such replacement equipment;
- (e) assets sold in connection with condemnation, eminent domain or insurance claims; and
- asset sales or other dispositions; provided that (i) at the time of such sale or other disposition, no Event of Default then exists or would arise therefrom, (ii) the Borrower or any of its Subsidiaries shall receive not less than 75% of such consideration in the form of (x) cash or Permitted Investments or (y) real property (and improvements thereon related to one or more healthcare facilities) acquired in an exchange pursuant to or intended to qualify under Section 1031 (or any successor section) of the Code (it being understood that for the purposes of clause (f)(ii)(x), the following shall be deemed to be cash: (A) any liabilities (as shown on the Borrower's Ensign's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable sale or disposition and for which all of its Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such Subsidiary from such transferee that are converted by such Subsidiary into cash or Permitted Investments (to the extent of the cash or Permitted Investments received) within one hundred and eighty (180) days following the closing of the applicable disposition and (C) any Designated Non-Cash Consideration received in respect of such disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not in excess of \$1,000,000, with the fair market value of each item of Designated Non-Cash Consideration being measured at such date of receipt or such agreement, as applicable, and without giving effect to subsequent changes in value) and (iii) such sale or other disposition shall be for fair market value (as determined by the Borrower in good faith).
- Section 7.7. <u>Transactions with Affiliates</u>. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:
- (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties;
- (b) transactions between or among the Borrower and its Subsidiaries in the ordinary course of business; and
- (c) any Restricted Payment permitted by <u>Section 7.5</u> and Investments permitted by <u>Section 7.4</u>.

Section 7.8. Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement (including any lease of Real Estate) that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any of its Subsidiaries to create, incur or permit any Lien as security for the Obligations upon any of its assets or properties, whether now owned or hereafter acquired, or (b) the ability of any of its Subsidiaries to pay dividends or other distributions with respect to its Capital Stock, to make or repay loans or advances to the Borrower or any other Subsidiary thereof, to Guarantee Indebtedness of the Borrower or any other Subsidiary thereof or to transfer any of its property or assets to the Borrower or any other Subsidiary thereof; provided that (i) the foregoing shall not apply to restrictions or conditions imposed by law or by this Agreement or any other Loan Document or any Spin-Off Document, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iii) the foregoing shall not apply to restrictions contained in the leases of Real Estate listed on Schedule 7.8 as in effect as of the Closing Date, (iv) the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Indebtedness, (v) the foregoing shall not apply to customary provisions in leases restricting the assignment thereof, (vi) the foregoing shall not apply to Excluded Subsidiaries or the Capital Stock of Excluded Subsidiaries, (vii) the foregoing shall not apply to restrictions in Indebtedness described in Section 7.1(f) to the extent relating solely to the applicable assets or Persons acquired after the Closing Date in connection with the assumption of such Indebtedness, (viii) the foregoing shall not apply to restrictions in leases of Real Estate binding upon the tenants thereunder (or guarantors thereof), (ix) the foregoing shall not apply to Indebtedness permitted under Section 7.1(i) to the extent the restrictions thereunder are no more restrictive, in any material respect, taken as a whole, than such restrictions contained herein, (x) the foregoing shall not apply to customary restrictions in joint venture arrangements, provided that such restrictions are limited to the assets of such joint ventures and the Capital Stock of the Persons party to such joint venture arrangements and (xi) the foregoing shall not apply to customary non-assignment provisions in contracts entered into in the ordinary course of business, provided that such restrictions are limited to the assets subject to such contracts and the Capital Stock of the Persons party to such contracts.

Section 7.9. <u>Sale and Leaseback Transactions</u>. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (each, a "<u>Sale/Leaseback Transaction</u>"), unless at the time such Sale/Leaseback Transaction is entered into (a) no Default or Event of Default has occurred and is continuing, (b) after giving pro forma effect to such Sale/Leaseback Transaction, the Borrower and its Subsidiaries are in compliance with the financial covenants set forth in <u>Article VI</u> and (c) the Borrower has delivered a certificate to the Lenders certifying the conditions set forth in clauses (a) and (b) and setting forth in reasonable detail calculations demonstrating pro forma compliance with the financial covenants set forth in <u>Article VI</u>.

Section 7.10. <u>Hedging Transactions</u>. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Hedging Transaction, other than Hedging Transactions entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities, including, without limitation, any Hedging Transaction entered into in order to hedge against fluctuations in interest rates or currency values that arise in connection with any Borrowing or any other Indebtedness. Solely for the avoidance of doubt, the Borrower acknowledges that a Hedging Transaction entered into for speculative purposes or of a speculative nature (which shall be deemed to include any Hedging Transaction under which the

Borrower or any of its Subsidiaries is or may become obliged to make any payment (i) in connection with the purchase by any third party of any Capital Stock or any Indebtedness or (ii) as a result of changes in the market value of any Capital Stock or any Indebtedness) is not a Hedging Transaction entered into in the ordinary course of business to hedge or mitigate risks.

Section 7.11. <u>Amendment to Material Documents</u>. The Borrower will not, and will not permit any of its Subsidiaries to, amend, modify or waive any of its rights under (a) its certificate of incorporation, bylaws or other organizational documents or (b) any Material Agreements, in each case in any manner that is materially adverse to the interests of the Lenders or the Administrative Agent.

Section 7.12. PropCo Master Leases. The Borrower will not, and will not permit any of its Subsidiaries to, terminate or allow or consent to the termination of any PropCo Master Lease or enter into any amendment, waiver or modification to any PropCo Master Lease if (i) such amendment, waiver or modification could reasonably be expected to have a Material Adverse Effect or (ii) after giving pro forma effect to such amendment, waiver or modification, the Borrower will not be in compliance with the provisions of Article VI; provided that, notwithstanding the foregoing, the Borrower will not, and will not permit any of its Subsidiaries to, allow any amendment, waiver or modification of any PropCo Master Lease that (i) shortens the term of such PropCo Master Lease to less than twelve (12) years (including extension or renewal options) from the date of such amendment, waiver or modification, (ii) amends, waives or modifies Articles X, XI, or XVI of such PropCo Master Lease (including by amendment of the defined terms used therein) in a manner adverse in any material respects to the interests of the Secured Parties or (iii) amends, waives or modifies Section 5.13 of such PropCo Master Lease to the extent adversely impacting the ability of the Secured Parties to obtain or maintain a Lien on any assets of the Borrower or any of its Subsidiaries (other than the leasehold interests in such PropCo Master Lease), in each case, without the consent of the Required Lenders. No tenant under any PropCo Master Lease shall transfer its rights or obligations under such PropCo Master Lease to any Person other than to the Borrower or any other Loan Party; provided, however, that no such transfer shall be permitted hereunder unless expressly permitted under such PropCo Master Lease or consented to in writing by landlord under such PropCo Master Lease.

Section 7.13. <u>Accounting Changes</u>. The Borrower will not, and will not permit any of its Subsidiaries to, change the fiscal year of the Borrower or of any of its Subsidiaries, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of <u>the Borrower Ensign</u>.

Section 7.14. <u>Government Regulation</u>. The Borrower will not, and will not permit any of its Subsidiaries to, be or become subject at any time to any law, regulation or list of any Governmental Authority of the United States (including, without limitation, the OFAC list) that prohibits or limits the Lenders or the Administrative Agent from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Loan Parties.

Section 7.15. <u>Sanctions</u>. The Borrower will not, and will not permit any of its Subsidiaries to, use any Loan or Letter of Credit or the proceeds of any Loan and/or Letter of Credit, or lend, contribute or otherwise make available any Loan or Letter Credit or the proceeds of any Loan or Letter of Credit to any Sanctioned Person, to fund any activities of or business with any Sanctioned Person or in any Sanctioned Country, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as a Lead Arranger, the Administrative Agent, a Lender (including a Swingline Lender) or an Issuing Bank or otherwise) of Sanctions.

Section 7.16. <u>Anti-Corruption Laws</u>. The Borrower will not, and will not permit any of its Subsidiaries to, use any Loan or Letter of Credit or the proceeds therefrom for any purpose that would violate any Anti-Corruption Laws.

#### ARTICLE VIII

#### **EVENTS OF DEFAULT**

- Section 8.1. <u>Events of Default</u>. If any of the following events (each, an "<u>Event of Default</u>") shall occur:
- (a) the Borrower shall fail to pay any principal of any Loan or of any reimbursement obligation in respect of any LC Disbursement, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise; or
- (b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount payable under subsection (a) of this Section or an amount related to a Bank Product Obligation) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) days; or
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document (including the Schedules attached hereto and thereto), or in any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to the Administrative Agent or the Lenders by any Loan Party or any representative of any Loan Party pursuant to or in connection with this Agreement or any other Loan Document shall prove to be incorrect in any material respect (other than any representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such representation or warranty shall prove to be incorrect in any respect) when made or deemed made or submitted; or
- (d) the Borrower shall fail to observe or perform any covenant or agreement contained in Section 5.3 (with respect to the Borrower's legal existence), Section 5.18 or Article VI or  $\overline{\text{VII}}$ ; or
- (e) (i) any Loan Party shall fail to observe or perform any covenant or agreement contained in Section 5.1 or 5.2, and such failure shall remain unremedied for fifteen (15) days after the earlier of (x) any Responsible Officer of the Borrower becomes aware of such failure, or (y) notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender, or (ii) any Loan Party shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those referred to in subsections (a), (b), (d) and (e)(i) of this Section) or any other Loan Document or related to any Bank Product Obligation, and such failure shall remain unremedied for 30 days after the earlier of (x) any Responsible Officer of the Borrower becomes aware of such failure, or (y) notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender; or
- (f) the Borrower or any of its Subsidiaries (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of, or premium or interest on, any Material Indebtedness that is outstanding, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any Material Indebtedness and shall continue after the applicable grace period, if

any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of such Indebtedness; or any Material Indebtedness shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof (excluding (i) any prepayment or redemption requirements in connection with a sale of assets that secures Material Indebtedness to the extent such Material Indebtedness is repaid in connection with such sale and (ii) any offer to prepay or redeem Indebtedness of any Person or securing any assets acquired in a Permitted Acquisition); or

- (g) the Borrower or any of its Material Subsidiaries shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this subsection, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any such Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing; or
- (h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its Material Subsidiaries or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any of its Material Subsidiaries or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or
- (i) the Borrower or any of its Material Subsidiaries shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts as they become due; or
- (j) (i) an ERISA Event shall have occurred, (ii) there is or arises an Unfunded Pension Liability (not taking into account Plans with negative Unfunded Pension Liability), or (iii) there is or arises any potential Withdrawal Liability, which, with respect to any of the foregoing <u>clauses (i)</u> through <u>(iii)</u>, could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect; or
- (k) any judgment or order for the payment of money in excess of \$35,000,000 in the aggregate, to the extent not adequately covered by insurance as to which a solvent insurance company has not contested or denied coverage, shall be rendered against the Borrower or any of its Subsidiaries, and there shall be a period of 60 consecutive days during which (i) a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect or (ii) such judgment or order shall remain undischarged, unvacated or unbonded; or
- (I) any non-monetary judgment or order shall be rendered against the Borrower or any of its Subsidiaries that could reasonably be expected, either individually or in the aggregate for all such events, to have a Material Adverse Effect, and there shall be a period of 60 consecutive days during

which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

- (m) a Change in Control shall occur or exist; or
- (n) (i) there shall occur any revocation, suspension, termination, rescission, non-renewal or forfeiture or any similar final administrative action with respect to one or more Health Care Permits, Third Party Payor Programs or Third Party Payor Authorizations that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect or (ii) the Borrower or any of its Subsidiaries shall be named in any action, fully or partially unsealed, in which the United States has affirmatively intervened, alleging violation of the federal False Claims Act or any other applicable law and, in connection with such action, the Borrower shall have offered, agreed or paid to, or received a final judgment requiring payment to, any Governmental Authority for payment of any fine, penalty or overpayment in excess of \$50,000,000; or
- (o) any material provision of the Guaranty and Security Agreement or any other Collateral Document shall for any reason cease to be valid and binding on, or enforceable against, any Loan Party, or any Loan Party shall so state in writing, or any Loan Party shall seek to terminate its obligation under the Guaranty and Security Agreement or any other Collateral Document (other than the release of any guaranty or collateral to the extent permitted pursuant to <u>Section 9.11</u>); or
- (p) any Lien purported to be created under any Collateral Document (with respect to a material portion of the Collateral) shall fail or cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Collateral Documents (other than as a result of the failure by the Administrative Agent to take any action within its control); or
- (q) (i) any PropCo Master Lease shall terminate or otherwise cease to be effective, other than upon the expiration or termination thereof with respect to any particular property or properties pursuant to Section 10.4 or Article XI of such PropCo Master Lease or pursuant to an amendment, waiver or modification of such PropCo Master Lease not prohibited by Section 7.12 of this Agreement, or an "Event of Default" (as defined in such PropCo Master Lease) shall have occurred and is continuing under Section 12.1.1, Section 12.1.2, Section 12.1.3 (for the avoidance of doubt, in the case of Sections 12.1.2 and 12.1.3, after the expiration of the applicable cure period set forth therein), Section 12.1.15, Section 12.1.16 (other than with respect to Section 5.11 and 5.12.3 thereof), or Section 16.1 of such PropCo Master Lease, or the landlord under such PropCo Master Lease shall have given the tenant under such PropCo Master Lease notice of termination of such PropCo Master Lease following an "Event of Default" (as defined in such PropCo Master Lease) or the landlord has issued a "Termination Notice" pursuant to Section 12.2.6 of the PropCo Master Lease or (ii) any event of the type described in the foregoing clause (i) shall have occurred with respect to any Material Master Lease;

then, and in every such event (other than an event with respect to the Borrower described in subsection (g), (h) or (i) of this Section) and at any time thereafter during the continuance of such event, the Administrative Agent may, and upon the written request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitment of each Lender shall terminate immediately, (ii) declare the principal of and any accrued interest on the Loans, and all other Obligations owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, (iii) exercise all remedies contained in any other Loan Document and (iv) exercise any other remedies available at law or in equity; provided that, if an Event of Default with respect to the Borrower specified in either subsection (g), (h)

- or (i) shall occur, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, and all fees and all other Obligations shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.
- Section 8.2. <u>Application of Proceeds from Collateral</u>. All proceeds from each sale of, or other realization upon, all or any part of the Collateral by any Secured Party after an Event of Default arises shall be applied as follows:
  - (a) <u>first</u>, to the reimbursable expenses of the Administrative Agent incurred in connection with such sale or other realization upon the Collateral, until the same shall have been paid in full;
  - (b) second, to the fees and other reimbursable expenses of the Administrative Agent, the Swingline Lender and each Issuing Bank then due and payable pursuant to any of the Loan Documents, until the same shall have been paid in full;
  - (c) <u>third</u>, to all reimbursable expenses, if any, of the Lenders then due and payable pursuant to any of the Loan Documents, until the same shall have been paid in full;
  - (d) <u>fourth</u>, to the fees and interest then due and payable under the terms of this Agreement, until the same shall have been paid in full;
  - (e) <u>fifth</u>, to the aggregate outstanding principal amount of the Loans, the LC Exposure, the Bank Product Obligations and the Hedging Obligations that constitute Obligations, until the same shall have been paid in full, allocated pro rata among the Secured Parties based on their respective pro rata shares of the aggregate amount of such Loans, LC Exposure, Bank Product Obligations and Hedging Obligations;
  - (f) <u>sixth</u>, to additional cash collateral for the aggregate amount of all outstanding Letters of Credit until the aggregate amount of all cash collateral held by the Administrative Agent pursuant to this Agreement is at least 103% of the LC Exposure after giving effect to the foregoing clause <u>fifth</u>; and
  - (g) <u>seventh</u>, to the extent any proceeds remain, to the Borrower or as otherwise provided by a court of competent jurisdiction.

All amounts allocated pursuant to the foregoing clauses third through fifth to the Lenders as a result of amounts owed to the Lenders under the Loan Documents shall be allocated among, and distributed to, the Lenders pro rata based on their respective Pro Rata Shares; provided that all amounts allocated to that portion of the LC Exposure comprised of the aggregate undrawn amount of all outstanding Letters of Credit pursuant to clauses fifth and sixth shall be distributed to the Administrative Agent, rather than to the Lenders, and held by the Administrative Agent in an account in the name of the Administrative Agent for the benefit of each Issuing Bank and the Lenders as cash collateral for the LC Exposure, such account to be administered in accordance with Section 2.22(g). All cash collateral for LC Exposure shall be applied to satisfy drawings under the Letters of Credit as they occur; if any amount remains on deposit on cash collateral after all letters of credit have either been fully drawn or expired, such remaining amount shall be applied to other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Bank Product Obligations and Hedging Obligations shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request,

from the Bank Product Provider or the Lender-Related Hedge Provider, as the case may be. Each Bank Product Provider or Lender-Related Hedge Provider that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of <a href="Article IX">Article IX</a> hereof for itself and its Affiliates as if a "Lender" party hereto.

#### ARTICLE IX

# THE ADMINISTRATIVE AGENT

# Section 9.1. Appointment of the Administrative Agent.

- (a) Each Lender irrevocably appoints SunTrust Bank as the Administrative Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with all such actions and powers that are reasonably incidental thereto. The Administrative Agent may perform any of its duties hereunder or under the other Loan Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Administrative Agent. The Administrative Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent, attorney-in-fact or Related Party and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.
- (b) Each Issuing Bank shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith until such time and except for so long as the Administrative Agent may agree at the request of the Required Lenders to act for such Issuing Bank with respect thereto; provided that each Issuing Bank shall have all the benefits and immunities (i) provided to the Administrative Agent in this Article with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term "Administrative Agent" as used in this Article included such Issuing Bank with respect to such acts or omissions and (ii) as additionally provided in this Agreement with respect to such Issuing Bank.
- Section 9.2. Nature of Duties of the Administrative Agent and the Other Agents. The Administrative Agent and the other Agents shall not have any duties or obligations except those expressly set forth in this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent and the other Agents shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Administrative Agent and the other Agents shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law, and (c) the Administrative Agent and each other Agent shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender

or Issuing Bank, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, obtained by or in the possession of the Administrative Agent, such other Agent or any of their respective Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders and Issuing Banks by the Administrative Agent herein or in any other Loan Document. The Administrative Agent shall not be liable for any action taken or not taken by it, its sub-agents or its attorneys-in-fact with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2) or in the absence of its own gross negligence or willful misconduct (as determined by a court of competent jurisdiction by final and non-appealable judgment). The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (which notice shall include an express reference to such event being a "Default" or "Event of Default" hereunder) is given to the Administrative Agent by the Borrower or any Lender, and the Administrative Agent and each other Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or the reunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The Administrative Agent may consult with legal counsel (including counsel for the Borrower) concerning all matters pertaining to such duties.

Section 9.3. Lack of Reliance on the Agents, the Issuing Banks and the Lenders. Each Lender and each Issuing Bank expressly acknowledges that none of the Agents has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent to any Issuing Bank or Lender as to any matter, including whether any Agent disclosed material information in its (or its Related Parties') possession. Each Lender and each Issuing Bank represents to each Agent, each other Issuing Bank and each other Lender that it has, independently and without reliance upon any Agent, any other Issuing Bank, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon any Agent, any other Issuing Bank, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking any action under or based on this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or Issuing Bank for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing. Each Lender and each Issuing Bank represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

- Section 9.4. <u>Certain Rights of the Administrative Agent</u>. If the Administrative Agent shall request instructions from the Required Lenders with respect to any action or actions (including the failure to act) in connection with this Agreement, the Administrative Agent shall be entitled to refrain from such act or taking such act unless and until it shall have received instructions from such Lenders, and the Administrative Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders where required by the terms of this Agreement.
- Section 9.5. Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. The Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.
- Section 9.6. The Administrative Agent in its Individual Capacity. The bank serving as the Administrative Agent shall have the same rights and powers under this Agreement and any other Loan Document in its capacity as a Lender as any other Lender and may exercise or refrain from exercising the same as though it were not the Administrative Agent; and the terms "Lenders", "Required Lenders", "Required Revolving Lenders", or any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity. The bank acting as the Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or Affiliate of the Borrower as if it were not the Administrative Agent hereunder.

# Section 9.7. Successor Administrative Agent.

- (a) The Administrative Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent, subject to approval by the Borrower provided that no Default or Event of Default shall exist at such time. If no successor Administrative Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States or any state thereof or a bank which maintains an office in the United States, having a combined capital and surplus of at least \$500,000,000.
- (b) Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring

Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. If, within 45 days after written notice is given of the retiring Administrative Agent's resignation under this Section, no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such  $45^{th}$  day (i) the retiring Administrative Agent's resignation shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (iii) the Required Lenders shall thereafter perform all duties of the retiring Administrative Agent under the Loan Documents until such time as the Required Lenders appoint a successor Administrative Agent as provided above. After any retiring Administrative Agent's resignation hereunder, the provisions of this Article shall continue in effect for the benefit of such retiring Administrative Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as the Administrative Agent.

(c) In addition to the foregoing, if a Lender becomes, and during the period it remains, a Defaulting Lender, and if any Default has arisen from a failure of the Borrower to comply with <a href="Section 2.26(a)">Section 2.26(a)</a>, then each Issuing Bank and the Swingline Lender may, upon prior written notice to the Borrower and the Administrative Agent, resign as an Issuing Bank or as Swingline Lender, as the case may be, effective at the close of business Atlanta, Georgia time on a date specified in such notice (which date may not be less than five (5) Business Days after the date of such notice).

# Section 9.8. Withholding Tax.

- (a) To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any authority of the United States or any other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses; provided that if the Administrative Agent is subsequently reimbursed by the Borrower or any other Loan Party for any such amounts, the Administrative Agent shall reasonably promptly refund to the applicable Lender the amount of any excess reimbursement.
- (b) Without duplication of any indemnity provided under subsection (a) of this Section, each Lender shall also indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so); provided that if the Administrative Agent is subsequently reimbursed by the Borrower or any other Loan Party for any such amounts, the Administrative Agent shall reasonably promptly refund to the applicable Lender the amount of any excess reimbursement, (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.4(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise

payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection.

# Section 9.9. The Administrative Agent May File Proofs of Claim.

- (a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or any Revolving Credit Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:
  - (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or Revolving Credit Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, each Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, each Issuing Bank and the Administrative Agent and counsel and all other amounts due the Lenders, each Issuing Bank and the Administrative Agent under Section 10.3) allowed in such judicial proceeding; and
  - (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.
- (b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and each Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 10.3.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.10. <u>Authorization to Execute Other Loan Documents</u>. Each Lender hereby authorizes the Administrative Agent to execute on behalf of all Lenders all Loan Documents (including, without limitation, the Collateral Documents and any subordination agreements permitted hereunder) other than this Agreement, subject to any approval of the Lenders or the Required Lenders required by the Loan Documents.

Section 9.11. <u>Collateral and Guaranty Matters</u>. The Lenders irrevocably authorize the Administrative Agent, at its option and discretion to effectuate the releases and subordination agreements contemplated by <u>Section 10.17</u>. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property or to release any Loan Party from its obligations under the applicable Collateral Documents pursuant to Section 10.17.

Section 9.12. <u>Co-Documentation Agents; Co-Syndication Agents; Lead Arrangers</u>. Each Lender hereby designates BBVA USA, Citizens Bank, N.A., Fifth Third Bank and Wells Fargo Bank, National Association as Co-Documentation Agents (the "<u>Co-Documentation Agents</u>") and agrees that the Co-Documentation Agents shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party. Each Lender hereby designates Bank of America, N.A. and Regions Bank as Co-Syndication Agents (the "<u>Co-Syndication Agents</u>") and agrees that the Co-Syndication Agents shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party. Each Lender agrees that the Lead Arrangers shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party.

Section 9.13. Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Collateral Documents, it being understood and agreed that all powers, rights and remedies hereunder and under the Collateral Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

Section 9.14. <u>Secured Bank Product Obligations and Hedging Obligations</u>. No Bank Product Provider or Lender-Related Hedge Provider that obtains the benefits of <u>Section 8.2</u>, the Collateral Documents or any Collateral by virtue of the provisions hereof or of any other Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations and Hedging Obligations unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Product Provider or Lender-Related Hedge Provider, as the case may be.

## Section 9.15. Certain ERISA Matters.

- (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:
  - (i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

- (ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,
- (iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or
- (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.
- (b) In addition, unless either (1) <u>sub-clause (i)</u> in the immediately preceding <u>clause (a)</u> is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with <u>sub-clause (iv)</u> in the immediately preceding <u>clause (a)</u>, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent or the Lead Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

### ARTICLE X

# **MISCELLANEOUS**

Section 10.1. Notices.

# (a) Written Notices.

(i) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

To the Borrower: The Ensign Group, Inc.

27101 Puerta Real, Suite 450 Mission Viejo, CA 92691

Attention: Suzanne D. Snapper, Chief Financial Officer

Telecopy Number: (949) 540-3003 Email: SSnapper@EnsignServices.net

With a copy to: Ensign Services, Inc.

27101 Puerta Real, Suite 450 Mission Viejo, CA 92691 Attention: General Counsel Telecopy Number: (949) 540-3007 Email: legal @ensignservices.net

To the Administrative Agent: SunTrust Bank

3333 Peachtree Road

7th Floor

Atlanta, Georgia 30326 Attention: Portfolio Manager

Email: Katherine.Bass@SunTrust.com

With copies to (for

informational purposes only):

SunTrust Bank 3333 Peachtree Road Atlanta, Georgia 30326 Attn: Ron Caldwell

Telecopy Number: (404) 926-5248 Email: Ron.Caldwell@SunTrust.com

SunTrust Bank Agency Services

303 Peachtree Street, N.E. / 25th Floor

Atlanta, Georgia 30308

Attention: Agency Services Manager Telecopy Number: (404) 221-2001

and

Latham & Watkins LLP

355 South Grand Avenue, Suite 100 Los Angeles, CA 90071-1560 Attention: Jason Bosworth Telecopy Number: (213) 891-8291

Email: jason.bosworth@lw.com

To the Issuing Bank: SunTrust Bank

Attn: Standby Letter of Credit Dept. 245 Peachtree Center Ave., 17th FL

Atlanta, GA 30303

Telephone: (800) 951-7847 Telecopy Number: (801) 567-6205

Email: LCandTradeServices@SunTrust.com

To the Swingline Lender: SunTrust Bank Agency Services

303 Peachtree Street, N.E. / 25th Floor

Atlanta, Georgia 30308

Attention: Agency Services Manager Telecopy Number: (404) 221-2001

To any other Lender: the address set forth in the Administrative Questionnaire

or the Assignment and Acceptance executed by such

Lender

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall be effective upon actual receipt by the relevant Person or, if delivered by overnight courier service, upon the first Business Day after the date deposited with such courier service for overnight (next-day) delivery or, if sent by telecopy, upon transmittal in legible form by facsimile machine or, if mailed, upon the third Business Day after the date deposited into the mail or, if delivered by hand, upon delivery; provided that notices delivered to the Administrative Agent, any Issuing Bank or the Swingline Lender shall not be effective until actually received by such Person at its address specified in this Section.

Lender herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Borrower. The Administrative Agent, each Issuing Bank and each Lender shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Administrative Agent, each Issuing Bank and the Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by the Administrative Agent, any Issuing Bank or any Lender in reliance upon such telephonic or facsimile notice. The obligation of the Borrower to repay the Loans and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Administrative Agent, any Issuing Bank or any Lender to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent, any Issuing Bank or any Lender to aconfirmation which is at variance with the terms understood by the Administrative Agent, such Issuing Bank and such Lender to be contained in any such telephonic or facsimile notice.

# (b) Electronic Communications.

(i) Notices and other communications to the Lenders and each Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to <a href="Article II">Article II</a> unless such Lender, such Issuing Bank, as applicable, and the Administrative Agent have agreed to receive notices under any Section thereof by electronic communication and have agreed to the procedures governing such communications. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder

by electronic communications pursuant to procedures approved by it; <u>provided</u> that approval of such procedures may be limited to particular notices or communications.

- (ii) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.
- (c) <u>Certification of Public Information</u>. The Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to <u>Section 5.1</u> or <u>Section 5.2</u> otherwise are being distributed through Syndtrak, Intralinks or any other Internet or intranet website or other information platform (the "<u>Platform</u>"), any document or notice that the Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for such Public Lenders. The Borrower agrees to clearly designate all information provided to the Administrative Agent by or on behalf of the Borrower which is suitable to make available to Public Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to <u>Section 5.1</u> or <u>Section 5.2</u> contains Non-Public Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Non-Public Information.
- (d) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including Unites States federal and state securities laws, to make reference to information that is not made available through the "Public Side Information" portion of the Platform and that may contain Non-Public Information with respect to the Borrower, its Affiliates or any of their securities or loans for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself not to access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents.

# Section 10.2. Waiver; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document, and no course of dealing between the Borrower and the Administrative Agent or any Lender, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. The rights and remedies of the Administrative Agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies provided by law. No waiver of any provision of this Agreement or of any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be

effective unless the same shall be permitted by subsection (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

- (b) Subject to Section 2.16(b), no amendment or waiver of any provision of this Agreement or of the other Loan Documents (other than the Fee Letter), nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders, or the Borrower and the Administrative Agent with the consent of the Required Lenders, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that, in addition to the consent of the Required Lenders, no amendment, waiver or consent shall:
  - (i) extend or increase the Commitment of any Lender without the written consent of such Lender;
  - (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder or in any other Loan Document, without the written consent of each Lender directly affected thereby (provided that any change to the calculation of the Leverage Ratio or the component definitions used therein shall not require consent of each Lender directly affected thereby and shall only be subject to Required Lender approval);
  - (iii) postpone the date fixed for any payment (other than any mandatory prepayment) of any principal of, or interest on, any Loan or LC Disbursement or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender directly affected thereby (provided that any change to the calculation of the Leverage Ratio or the component definitions used therein shall not require consent of each Lender directly affected thereby and shall only be subject to Required Lender approval);
  - (iv) change Section 2.21(b) or (c) or Section 8.2 in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender directly affected thereby;
  - (v) change any of the provisions of this subsection (b) or the percentage set forth in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender;
  - (vi) release all or substantially all of the guarantors, or limit the liability of all or substantially all of the guarantors, under any guaranty agreement guaranteeing any of the Obligations, without the written consent of each Lender; or
  - (vii) release all or substantially all collateral (if any) securing any of the Obligations, without the written consent of each Lender;

<u>provided</u>, <u>further</u>, that (x) no such amendment, waiver or consent shall amend, modify or otherwise affect the rights, duties or obligations of the Administrative Agent, the Swingline Lender or any Issuing Bank without the prior written consent of such Person, and (y) no amendment, waiver or consent shall, unless

signed by the Borrower and the Required Revolving Lenders, or the Borrower and the Administrative Agent with the consent of the Required Revolving Lenders:

- (1) amend or waive compliance with the conditions precedent to the obligations of the Revolving Lenders to make any Revolving Loan or LC Disbursement;
  - (2) amend or waive non-compliance with any provision of Section 2.12(d);
- (3) waive any Default or Event of Default for the purpose of satisfying the conditions precedent to the obligations of the Revolving Lenders to make any Revolving Loan or LC Disbursement; or
  - (4) change any of the provisions of this clause (y);

<u>provided</u>, <u>further</u>, that no such amendment, waiver or consent shall change the number or percentage contained in the definition of "Required Revolving Lenders" or any other provision hereof specifying the number or percentage of Revolving Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Revolving Lender.

- (c) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended, and amounts payable to such Lender hereunder may not be permanently reduced, without the consent of such Lender (other than reductions in fees and interest in which such reduction does not disproportionately affect such Lender). Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3), such Lender shall have no other commitment or other obligation hereunder and such Lender shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.
- (d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, Administrative Agent and Borrower (a) to add one or more additional credit facilities to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.
- (e) Notwithstanding anything to the contrary herein, any Loan Document may be waived, amended, supplemented or modified pursuant to an agreement or agreements in writing entered into by the Borrower and the Administrative Agent (without the consent of any Lender) solely to effect administrative changes that are not adverse to any Lender or to correct administrative errors or omissions or to cure an ambiguity, defect or error (including, without limitation, to revise the legal description of any Collateral), or to grant a new Lien for the benefit of the Secured Parties or extend an existing Lien over additional property. Notwithstanding anything to the contrary herein, (A) additional extensions of credit consented to by the Required Lenders shall be permitted hereunder on a ratable basis with the existing Loans (including as to proceeds of, and sharing in the benefits of, Collateral and sharing of prepayments), and (B) the Administrative Agent shall enter into the intercreditor agreement upon the

request of the Borrower as contemplated by <u>Section 7.2(i)</u> solely to the extent such intercreditor agreement is reasonably acceptable to the Administrative Agent.

#### Section 10.3. Expenses; Indemnification.

- The Borrower shall pay (i) all reasonable, documented out-of-pocket costs and (a) expenses of the Administrative Agent, the Lead Arrangers and their Affiliates, including the reasonable fees, charges and disbursements of one outside counsel for the Administrative Agent, the Lead Arrangers and their Affiliates, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated), (ii) all reasonable, documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out-of-pocket costs and expenses which shall be limited, in the case of outside counsel, to the reasonable fees, charges and disbursements of one outside counsel to the Secured Parties, taken as a whole, any applicable local counsel required for the Secured Parties in any applicable jurisdiction and any special regulatory counsel (and, solely in the case of a conflict of interest, one additional of each such counsel for each group of similarly situated Secured Parties)) incurred by the Administrative Agent, any Issuing Bank or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made or any Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.
- The Borrower shall indemnify the Administrative Agent (and any sub-agent (b) thereof), each Lender and each Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, penalties, damages, liabilities and related expenses (including the reasonable and documented fees, charges and disbursements of one primary counsel for the Indemnitees, taken as a whole, any local counsel for the Indemnitees in any applicable jurisdiction and any special regulatory counsel (and, solely in the case of a conflict of interest, one additional of each such counsel for each group of similarly situated Indemnitees)) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, penalties, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) a material breach of such Indemnitee's obligations hereunder or under any other Loan Document. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through Syndtrak, Intralinks or any other Internet or intranet website, except as a result of such Indemnitee's gross

negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment.

- (c) The Borrower shall pay, and hold the Administrative Agent, each Issuing Bank and each of the Lenders harmless from and against, any and all present and future stamp, documentary, and other similar taxes with respect to this Agreement and any other Loan Documents, any collateral described therein or any payments due thereunder, and save the Administrative Agent, each Issuing Bank and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes.
- (d) To the extent that the Borrower fails to pay any amount required to be paid to the Administrative Agent, any Issuing Bank or the Swingline Lender under subsection (a), (b) or (c) hereof, each Lender severally agrees to pay to the Administrative Agent, the applicable Issuing Bank or the Swingline Lender, as the case may be, such Lender's pro rata share (in accordance with its respective Revolving Commitment (or Revolving Credit Exposure, as applicable) and Term Loan determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the applicable Issuing Bank or the Swingline Lender in its capacity as such.
- (e) To the extent permitted by applicable law, each party hereto waives, and agrees not to assert, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Loan or any Letter of Credit or the use of proceeds thereof.
- (f) All amounts due under this Section shall be payable promptly after written demand therefor.

# Section 10.4. Successors and Assigns.

- (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans and other Revolving Credit Exposure at the time owing to it); provided that any such assignment shall be subject to the following conditions:

# (i) Minimum Amounts.

- (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments, Loans and other Revolving Credit Exposure at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and
- (B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which, in the case of Revolving Commitments, includes Revolving Loans and Revolving Credit Exposure outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans and/or Revolving Credit Exposure, as applicable, of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date) shall not be less than \$1,000,000 with respect to Term Loans and \$5,000,000 with respect to Revolving Loans and Revolving Commitments and in minimum increments of \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed).
- (ii) <u>Proportionate Amounts</u>. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans, other Revolving Credit Exposure or the Commitments assigned, except that this subsection (b)(ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Commitments or Classes on a non-pro rata basis.
- (iii) <u>Required Consents</u>. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:
  - (A) the consent of the Borrower shall be required (such consent not to be unreasonably withheld, conditioned or delayed) unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) (1) in the case of Term Loans such assignment is to a Lender, an Affiliate of such Lender or an Approved Fund of such Lender, or (2) in the case of Revolving Commitments or Revolving Loans, such assignment is to a Lender holding Revolving Commitments or an Affiliate of such Lender or an Approved Fund of such Lender;
  - (B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) such assignment is of a Term Loan to a Lender, an Affiliate of such Lender or an Approved Fund of such Lender, or (2) in the case of Revolving Commitments or Revolving Loans, such assignment is to a Lender holding Revolving Commitments or an Affiliate of such Lender or an Approved Fund of such Lender; and
  - (C) the consent of each Issuing Bank (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding), and the consent of the Swingline Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of the Revolving Commitments unless such assignment is to a

Lender holding Revolving Commitments or Revolving Loans, an Affiliate of such Lender or an Approved Fund of such Lender.

- (iv) <u>Assignment and Acceptance</u>. The parties to each assignment shall deliver to the Administrative Agent (A) a duly executed Assignment and Acceptance, (B) a processing and recordation fee of \$3,500 (except with respect to any assignment by a Lender to one of its Affiliates or Approved Funds), (C) an Administrative Questionnaire unless the assignee is already a Lender and (D) the documents required under <u>Section 2.20(e)</u>.
- (v) <u>No Assignment to the Borrower</u>. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.
- (vi) <u>No Assignment to Natural Persons, Defaulting Lenders or Disqualified Institutions.</u> No such assignment shall be made to a natural person, a Defaulting Lender or a Disqualified Institution.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section. If the consent of the Borrower to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), the Borrower shall be deemed to have given its consent unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after notice thereof has actually been delivered by the assigning Lender (through the Administrative Agent) to the Borrower.

- (c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Atlanta, Georgia a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans and Revolving Credit Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Information contained in the Register with respect to any Lender shall be available for inspection by such Lender at any reasonable time and from time to time upon reasonable prior notice; information contained in the Register shall also be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In establishing and maintaining the Register, the Administrative Agent shall serve as the Borrower's agent solely for tax purposes and solely with respect to the actions described in this Section, and the Borrower hereby agrees that, to the extent SunTrust Bank serves in such capacity, SunTrust Bank and its officers, directors, employees, agents, sub-agents and Affiliates shall constitute "Indemnitees".
- (d) Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Swingline Lender or any Issuing Bank, sell participations to any Person

(other than a natural person, a Disqualified Institution, the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, each Issuing Bank, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment of such Lender; (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder (excluding the right of any Participant to consent to changes in the calculation of the Leverage Ratio or the component definitions thereof); (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or LC Disbursement or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment (excluding the right of any Participant to consent to changes in the calculation of the Leverage Ratio or the component definitions thereof); (iv) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby; (v) change any of the provisions of Section 10.2(b) or the definition of "Required Lenders" or "Required Revolving Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder; (vi) release all or substantially all of the guarantors, or limit the liability of all or substantially all of the guarantors, under any guaranty agreement guaranteeing any of the Obligations; or (vii) release all or substantially all collateral (if any) securing any of the Obligations. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19, and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant agrees to be subject to Section 2.24 as though it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.21 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(B) of the United States Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) A Participant shall not be entitled to receive any greater payment under <u>Sections</u> 2.18 and 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of <u>Section 2.20</u> unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with <u>Sections 2.20(e)</u> and <u>(f)</u> as though it were a Lender (it being understood that the documentation required under <u>Sections 2.20(e)</u> and <u>(f)</u> shall be delivered to the participating Lender).

- (f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank; <u>provided</u> that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
- (g) The Administrative Agent shall not have any responsibility for ensuring that an assignee of, or a participant in, a Loan or Commitment is not a Disqualified Institution, and shall not have any liability in the event that Loans or Commitments, or a participation therein, are transferred to any Disqualified Institution.
- (h) For the avoidance of doubt, the addition of any Person to the Disqualified Institution List shall solely apply prospectively and shall have no effect with respect to any assignment or participation that occurs or any Loans, Commitments or Revolving Credit Exposure acquired by such Person, in each case prior to the date such Person is added to the Disqualified Institution List.

#### Section 10.5. Governing Law; Jurisdiction; Consent to Service of Process.

- (a) This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law of the State of New York.
- (b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such District Court or New York state court or, to the extent permitted by applicable law, such appellate court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.
- (c) The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in subsection (b) of this Section and brought in any court referred to in subsection (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in <u>Section 10.1</u>. Nothing in this Agreement or in any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.6. WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.7. Right of Set-off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Lender and each Issuing Bank shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Borrower at any time held or other obligations at any time owing by such Lender and such Issuing Bank to or for the credit or the account of the Borrower against any and all Obligations held by such Lender or such Issuing Bank, as the case may be. irrespective of whether such Lender or such Issuing Bank shall have made demand hereunder and although such Obligations may be unmatured. Each Lender and each Issuing Bank agrees promptly to notify the Administrative Agent and the Borrower after any such set-off and any application made by such Lender or such Issuing Bank, as the case may be; provided that the failure to give such notice shall not affect the validity of such set-off and application. Each Lender and each Issuing Bank agrees to apply all amounts collected from any such set-off to the Obligations before applying such amounts to any other Indebtedness or other obligations owed by the Borrower and any of its Subsidiaries to such Lender or such Issuing Bank.

Section 10.8. <u>Counterparts; Integration</u>. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letter, the other Loan Documents, and any separate letter agreements relating to any fees payable to the Administrative Agent and its Affiliates constitute the entire agreement among the parties hereto and thereto and their Affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Loan Document by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

Section 10.9. <u>Survival</u>. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates, reports, notices or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or

warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.18, 2.19, 2.20, and 10.3 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 10.10. <u>Severability</u>. Any provision of this Agreement or any other Loan Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.11. Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of any information relating to the Borrower or any of its Subsidiaries or any of their respective businesses, to the extent designated in writing as confidential and provided to it by the Borrower or any of its Subsidiaries, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower or any of its Subsidiaries, except that such information may be disclosed (i) to any Related Party of the Administrative Agent, any such Issuing Bank or any such Lender including, without limitation, accountants, legal counsel and other advisors who need to know such information in connection with the Related Transactions and are informed of the confidential nature of such information, (ii) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or regulation or compulsory legal process (in which case such disclosing party agrees to inform the Borrower reasonably promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation), (iii) to the extent requested by any regulatory agency or authority purporting to have jurisdiction over such disclosing party or its Affiliates (including any self-regulatory authority such as the National Association of Insurance Commissioners) (in which case such disclosing party agrees to inform the Borrower reasonably promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation), (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or which becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Related Party of any of the foregoing on a non-confidential basis from a source other than the Borrower or any of its Subsidiaries that is not, to such disclosing party's knowledge, subject to confidentiality obligations to the Borrower and its Subsidiaries, (v) in connection with the exercise of any remedy hereunder or under any other Loan Documents or any suit, action or proceeding relating to this Agreement or any other Loan Documents or the enforcement of rights hereunder or thereunder, (vi) subject to execution by such Person of an agreement containing provisions substantially the same as those of this Section (or language substantially similar to this paragraph, including provisions customary in the syndicated loan market), to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of such disclosing party's rights or obligations under this Agreement, or (B) any direct or indirect actual or prospective contractual counterparty (and its Related Parties) to any swap, derivative or similar product that is to be secured by the Collateral, (vii) to the CUSIP Service Bureau or any similar organization, (viii) for purposes of establishing a "due diligence" defense, (ix) to the extent that such information is independently developed by such disclosing party (other than with confidential information provided to such disclosing party by the Borrower and its Subsidiaries), (x) to industry trade organizations, general information with respect to this Agreement that is customary for inclusion in league table measurements or (xi) with the consent of the Borrower. Any Person required to maintain the confidentiality of any information as provided for in this Section shall be considered to have complied with its obligation to do

so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord its own confidential information. In the event of any conflict between the terms of this Section and those of any other Contractual Obligation entered into with any Loan Party (whether or not a Loan Document), the terms of this Section shall govern.

Section 10.12. <u>Interest Rate Limitation</u>. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which may be treated as interest on such Loan under applicable law (collectively, the "<u>Charges</u>"), shall exceed the maximum lawful rate of interest (the "<u>Maximum Rate</u>") which may be contracted for, charged, taken, received or reserved by a Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment (to the extent permitted by applicable law), shall have been received by such Lender.

Section 10.13. <u>Waiver of Effect of Corporate Seal</u>. The Borrower represents and warrants that neither it nor any other Loan Party is required to affix its corporate seal to this Agreement or any other Loan Document pursuant to any Requirement of Law, agrees that this Agreement is delivered by the Borrower under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Loan Documents.

Section 10.14. Patriot Act and Beneficial Ownership Regulation. The Administrative Agent and each Lender hereby notifies the Loan Parties that, pursuant to the requirements of the Patriot Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation. The Borrower will, and will cause its Subsidiaries to, provide documentary and other evidence of the identity of the Loan Parties as may be requested by the Lenders or the Administrative Agent at any time to enable the Lenders or the Administrative Agent to verify the identity of the Loan Parties or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act at 31 U.S.C. Section 5318 and the Beneficial Ownership Regulation.

Section 10.15. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees and acknowledges its Affiliates' understanding that (i) (A) the services regarding this Agreement provided by the Administrative Agent and/or the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person, and (B) neither the Administrative Agent nor any Lender has any obligation to the Borrower, any

other Loan Party or any of their Affiliates with respect to the credit facilities contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and each of the Administrative Agent and the Lenders has no obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.16. <u>Location of Closing</u>. Each Lender and each Issuing Bank acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement to the Administrative Agent, c/o Latham & Watkins LLP, 885 3rd Ave, New York, NY 10022. The Borrower acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement and each other Loan Document, together with all other documents, instruments, opinions, certificates and other items required under <u>Section 3.1</u>, to the Administrative Agent, c/o Latham & Watkins LLP, 885 3rd Ave, New York, NY 10022. All parties agree that the closing of the transactions contemplated by this Agreement has occurred in New York.

Section 10.17. Releases of Collateral. The Administrative Agent agrees with the Borrower that the Administrative Agent shall:

(a) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon Payment in Full of all Obligations, (ii) when such property is sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (iii) if such release is approved, authorized or ratified in writing in accordance with Section 10.2 (including, for the avoidance of doubt, termination on or after the Closing Date of any Control Account Agreements or Sweep Agreements (each as defined in the Existing Credit Agreement) entered into in connection with the Existing Credit Agreement) or (iv) when such property is subject to Liens permitted under Section 7.2(d) (solely to the extent required by the holder of such Lien), (e), (f), and, to the extent relating to extensions, renewals or replacements of such Liens, Section 7.2(h);

# (b) [reserved];

- (c) release any Loan Party from its obligations under the applicable Collateral Documents (i) if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder (including, for the avoidance of doubt, the Pennant Subsidiaries upon consummation of the Pennant Transaction) or (ii) if such Subsidiary becomes an Excluded Subsidiary in accordance with the requirements set forth in Section 5.18;
- (d) release any Lien on any Capital Stock of any Subsidiary that (i) ceases to be a Subsidiary as a result of any transaction permitted hereunder (including, for the avoidance of doubt, the Pennant Subsidiaries upon consummation of the Pennant Transaction) or (ii) is an Excluded Subsidiary; and
- (e) subordinate the Liens and security interests of the Administrative Agent on any Collateral (other than Capital Stock and accounts receivable) to the extent contemplated by, and in accordance with the requirements of (including, without limitation, that any intercreditor agreement

entered into in connection therewith be reasonably satisfactory to the Administrative Agent), <u>Section 7.2(i)</u>;

in each case, upon delivery by the Borrower of a certificate of a Responsible Officer to the Administrative Agent requesting and certifying as to the grounds for such release or subordination pursuant to this Section 10.17, as applicable.

In each case as specified in this <u>Section 10.17</u>, the Administrative Agent is authorized by the Secured Parties and the Borrower and shall, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Collateral Documents, or release such Loan Party from its obligations under the applicable Collateral Documents, in each case in accordance with the terms of the Loan Documents and this Section. For the avoidance of doubt, the Secured Parties authorize and direct the Administrative Agent to, upon consummation of the Pennant Transaction, release each Pennant Subsidiary from its obligations under the Loan Documents and release the Liens granted under the Collateral Documents on the assets and Capital Stock of each Pennant Subsidiary.

Section 10.18. Amendment and Restatement. It is the intention of each of the parties hereto that (a) the Existing Credit Agreement be amended and restated in its entirety pursuant to this Agreement so as to preserve the perfection and priority of all security interests securing indebtedness and obligations under the Existing Credit Agreement, (b) that all Indebtedness and Obligations of the Borrower and the Guarantors hereunder and under the other Loan Documents shall be secured by the liens and security interests evidenced under the Loan Documents and (c) that this Agreement does not constitute a novation or termination of the obligations and liabilities existing under the Existing Credit Agreement (or serve to terminate Section 10.3 of the Existing Credit Agreement or any of the Borrower's obligations thereunder with respect to the Administrative Agent (as defined in the Existing Credit Agreement) or the Lenders (as defined in the Existing Credit Agreement) or any other Indemnitee (as defined in the Existing Credit Agreement)). The parties hereto further acknowledge and agree that this Agreement constitutes an amendment of the Existing Credit Agreement made under and in accordance with the terms of Section 10.2 of the Existing Credit Agreement. In addition, unless specifically amended hereby or in connection herewith, each of the Loan Documents shall continue in full force and effect. This Agreement restates and replaces, in its entirety, the Existing Credit Agreement; from and after the Closing Date, any reference in any of the other Loan Documents to the "Credit Agreement" or any like term shall be deemed to refer to this Agreement. Each Lender with a Revolving Commitment on the Closing Date shall be deemed to have agreed that its Revolving Commitment set forth on Schedule I hereto replaces in its entirety such Lender's "Revolving Commitment" under the Existing Credit Agreement (if any).

Section 10.19. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable (i) a reduction in full or in part or cancellation of any such liability, (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial

Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 10.20. <u>Acknowledgement Regarding Any Supported QFCs</u>. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any agreement providing for any Hedging Transactions or Hedging Obligations, or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported OFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States, Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(remainder of page left intentionally blank)

## **EXHIBIT B**

## Amended and Restated Schedules

## **EXHIBIT C**

## Joinder Documents

Legal Name	President Company/ Owner	Jurisdiction of Organization / Formation
2016 Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
2020 Health Holdings LLC	The Ensign Group, Inc.	Nevada
2410 Stillhouse Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
24th Street Healthcare Associates LLC	Bandera Healthcare LLC	Nevada
Adipiscor, LLC	The Ensign Group, Inc.	Nevada
Agape Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Alice Branch Healthcare LLC	Kevstone Care LLC	Nevada
Allen Creek Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Alvarado Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
American Lake Healthcare, Inc.	Pennant Healthcare LLC	Nevada
American Robin Healthcare, Inc.	Keystone Care LLC	Nevada
Ann Arbor Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Anza Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Apache Trail Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Appaloosa Healthcare, Inc.	Ellis Pointe Health Holdings LLC	Nevada
Apple Springs Healthcare, Inc.	Keystone Care LLC	Nevada
Arizona School of Nursing LLC	Insight Healthcare LLC	Nevada
Armstrong Healthcare, Inc.	Keystone Care LLC	Nevada
Arris Health Services LLC	Covalence Health Holdings LLC	Nevada
Arvada Healthcare, Inc.	Endura Healthcare LLC	Nevada
Ascent Health Services LLC	Covalence Health Holdings LLC	Nevada
Atlantic Memorial Healthcare Associates, Inc.	Flagstone Healthcare South LLC	Nevada
Avalanche Healthcare, Inc.	Endura Healthcare LLC	Nevada
Avenues Healthcare, Inc.	Milestone Healthcare LLC	Nevada
Avocado Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
AZ Nursing Careers, Inc.	Bandera Healthcare LLC	Nevada
Aztec Healthcare. Inc.	Bandera Healthcare LLC	Nevada
Bainbridge Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Bakorp, L.L.C.	PMD Investments, LLC	Arizona
Bandera Healthcare LLC	The Ensign Group, Inc.	Nevada
Banner Holdings LLC	The Ensign Group, Inc.	Nevada
Bannock Health Holdings LLC	The Ensign Group, Inc.	Nevada
Bardwell Healthcare, Inc.	Endura Healthcare LLC	Nevada
Baseline Healthcare, Inc.	Endura Healthcare LLC	Nevada
Bayshore Healthcare, Inc.	Flagstone Healthcare Central LLC	Nevada
Bayside Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Baywood Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Beacon Hill Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Beacon Purchasing LLC	Banner Holdings LLC	Nevada
Bear Creek Senior Living, Inc.	Pennant Healthcare LLC	Nevada
Bell Villa Care Associates LLC	Flagstone Healthcare South LLC	Nevada
Bennett Healthcare LLC	Pennant Healthcare LLC	Nevada
Bernardo Heights Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Bertetti Healthcare, Inc.	Keystone Care LLC	Nevada
Best SW Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Big Blue Healthcare LLC	Gateway Healthcare LLC	Nevada
Bijou Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Bijou Healthcare LLC	Endura Healthcare LLC	Nevada
Black Ridge Canyon Healthcare LLC	Keystone Care LLC	Nevada
Blackbird Senior Living, Inc.	Bandera Healthcare LLC	Nevada
Bouverie Healthcare Services, Inc.	Flagstone Healthcare North, Inc.	Nevada
Brackenridge Healthcare, Inc.	Keystone Care LLC	Nevada
Brenwood Park Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Bridgestone Living LLC	The Ensign Group, Inc.	Nevada
Brownsville Care Associates, Inc.	Keystone Care LLC	Nevada
Bruce Neenah Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Buffalo Creek Healthcare LLC	Keystone Care LLC	Nevada
Burch Creek Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
C Street Health Associates LLC	Flagstone Healthcare Central LLC	Nevada
Calavaras Creek Healthcare LLC	Keystone Care LLC	Nevada
California Nursing Academy, Inc.	Flagstone Healthcare South LLC	Nevada
Camarillo Community Care, Inc.	Flagstone Healthcare Central LLC	Nevada
Canary Bend Healthcare LLC	Keystone Care LLC	Nevada
Cane Island Healthcare, Inc.	Keystone Care LLC  Keystone Care LLC	Nevada
Canyon Springs Senior Living, Inc.	Bridgestone Living LLC	
Capstone Resources, Inc.	Capstone Transportation Investments, Inc.	Nevada Nevada
Capstone Resources, Inc.  Capstone Transportation Investments, Inc.	The Ensign Group, Inc.	Nevada Nevada
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Cardiff Healthcare, Inc. Carolina Healthcare LLC	Milestone Healthcare LLC Hopewell Healthcare LLC	Nevada Nevada
Carrollton Heights Healthcare, Inc.	Keystone Care LLC	Nevada Nevada
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Castle Pines Healthcare LLC Cedar City Healthcare LLC	Endura Healthcare LLC Milestone Healthcare LLC	Nevada Nevada
Central Avenue Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Chaparral Healthcare, Inc.	Keystone Care LLC	Nevada
Chateau Julia Healthcare, Inc.	Endura Healthcare LLC	Nevada
Cherokee Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Cherry Hills Healthcare, Inc.	Endura Healthcare LLC	Nevada
Chickadee Healthcare LLC	Keystone Care LLC	Nevada
Circle Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
City Heights Health Associates LLC	Flagstone Healthcare South LLC	Nevada
Claremont Foothills Health Associates LLC	Flagstone Healthcare Central LLC	Nevada
Clark Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Claydelle Healthcare LLC	Flagstone Healthcare South LLC	Nevada
Cloverleaf Healthcare LLC	Gateway Healthcare LLC	Nevada
Coldwater Springs Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Columbia River Healthcare, Inc. Concord Avenue Health Holdings LLC	Pennant Healthcare LLC Standard Bearer Healthcare OP, LP	Nevada Nevada
Congaree Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Conrad Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Constitution Road Healthcare, Inc.	Endura Healthcare LLC	Nevada
Conway Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Copeland Healthcare, Inc.	Keystone Care LLC	Nevada
Cornet Limited, Inc.	The Ensign Group, Inc.	Arizona
Costa Victoria Healthcare LLC	Flagstone Healthcare South LLC	Nevada
Covalence Health Holdings LLC	The Ensign Group, Inc.	Nevada
Cow Creek Healthcare, Inc.	Keystone Care LLC	Nevada
Cress Creek Healthcare LLC	Pennant Healthcare LLC	Nevada
Crown Hill Healthcare LLC	Endura Healthcare LLC	Nevada
Crystal Lake Healthcare, Inc.	Keystone Care LLC	Nevada
Cypress Creek Healthcare, Inc.	Keystone Care LLC	Nevada
Da Vinci Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Daffodil Healthcare, Inc.	Keystone Care LLC	Nevada
Davis Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
De Moisy Healthcare LLC	Milestone Healthcare LLC	Nevada
Deer Creek Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Desert Cove Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Dessau Healthcare, Inc.	Keystone Care LLC	Nevada
Devonshire Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Diamond Valley Health Holdings LLC	The Ensign Group, Inc.	Nevada
Discovery Trail Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Dorothy Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada Nevada
Downey Community Care LLC Duck Creek Healthcare, Inc.	Flagstone Healthcare South LLC Keystone Care LLC	Nevada
Eagle Harbor Healthcare LLC	Pennant Healthcare LLC	Nevada
East Mesa Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Echo Canyon Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Eiffel Healthcare LLC	Keystone Care LLC	Nevada
Elati Health Holdings LLC	Turnberry Health Holdings LLC	Nevada
Elkhorn Health Holdings LLC	The Ensign Group, Inc.	Nevada
Ellis Pointe Health Holdings LLC	Keystone Care LLC	Nevada
Empirecare Health Associates LLC	Flagstone Healthcare Central LLC	Nevada
Endura Healthcare LLC	The Ensign Group, Inc.	Nevada
Ensign Cloverdale LLC	Flagstone Healthcare North, Inc.	Nevada
Ensign Montgomery LLC	Flagstone Healthcare North, Inc.	Nevada
Ensign Palm I LLC	Flagstone Healthcare Central LLC	Nevada
Ensign Panorama LLC	Flagstone Healthcare Central LLC	Nevada
Ensign Pleasanton LLC	Flagstone Healthcare North, Inc.	Nevada
Ensign Sabino LLC	Bandera Healthcare LLC	Nevada
Ensign San Dimas LLC	Flagstone Healthcare Central LLC	Nevada
Ensign Santa Rosa LLC	Flagstone Healthcare North, Inc.	Nevada
Ensign Services, Inc.	The Ensign Group, Inc.	Nevada
Ensign Sonoma LLC	Flagstone Healthcare North, Inc.	Nevada
Ensign Whittier East LLC	Flagstone Healthcare South LLC	Nevada
Ensign Whittier West LLC	Flagstone Healthcare South LLC	Nevada
Ensign Willits LLC Fawn Meadows Health Holdings LLC	Flagstone Healthcare North, Inc. Standard Bearer Healthcare OP, LP	Nevada Nevada
Flagstone Healthcare Central LLC	The Ensign Group, Inc.	Nevada Nevada
Flagstone Healthcare Central LLC Flagstone Healthcare North, Inc.	The Ensign Group, Inc. The Ensign Group, Inc.	Nevada Nevada
Flagstone Healthcare South LLC	The Ensign Group, Inc.  The Ensign Group, Inc.	Nevada
Flintrock Falls Healthcare, Inc.	Keystone Care LLC	Nevada
	Standard Bearer Healthcare OP, LP	Nevada
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Floyde Health Holdings LLC	·	Nevada
Floyde Health Holdings LLC Forney Lake Healthcare, Inc.	Keystone Care LLC	Nevada Nevada
Floyde Health Holdings LLC	Keystone Care LLC Keystone Care LLC	Nevada Nevada Nevada
Floyde Health Holdings LLC Forney Lake Healthcare, Inc. Forrest Hill Healthcare LLC	Keystone Care LLC	Nevada
Floyde Health Holdings LLC Forney Lake Healthcare, Inc. Forrest Hill Healthcare LLC Fossil Creek Healthcare, Inc.	Keystone Care LLC Keystone Care LLC Keystone Care LLC	Nevada Nevada

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Fullerton Healthcare, Inc. Garwood Health Holdings II LLC	Flagstone Healthcare South LLC Standard Bearer Healthcare OP, LP	Nevada Nevada
Gate Three Healthcare LLC	Flagstone Healthcare South LLC	Nevada
Gateway Healthcare LLC	The Ensign Group, Inc.	Nevada
Gem Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Getzendaner Healthcare, Inc.	Keystone Care LLC	Nevada
Glendale Healthcare Associates LLC	Bandera Healthcare LLC	Nevada
Golden Eagle Senior Living, Inc.	Flagstone Healthcare Central LLC	Nevada
Golden Oaks Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Golden Years Program, Inc.	Milestone Healthcare LLC	Nevada
Goldfield Mountain Healthcare LLC	Bandera Healthcare LLC	Nevada
Good Hope Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Gooding Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Graceland Senior Living, Inc.	Gateway Healthcare, Inc. Operated, Bridgestone Living LLC	Nevada
	Owned	
Grand Avenue Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Grand Villa PHX, Inc.	Keystone Care LLC	Nevada
Grassland Healthcare and Rehabilitation, Inc.	Keystone Care LLC	Nevada
Green Bay Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Green Heron Senior Living, Inc.	Bandera Healthcare LLC	Nevada
Green Mountain Healthcare LLC	Keystone Care LLC	Nevada
Green Mountain Personalized Care, Inc.	Keystone Care LLC	Nevada
Gypsum Creek Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Harlan Heights Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Harlingen Healthcare, Inc.	Keystone Care LLC	Nevada
Harmony Health Holdings LLC	The Ensign Group, Inc.	Nevada
Harrison Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
HB Healthcare Associates LLC	Flagstone Healthcare South LLC	Nevada
Healthlift Medical Transportation, Inc.	Capstone Transportation Investments, Inc.	Nevada Nevada
Heartland Health Holdings II LLC	Standard Bearer Healthcare OP, LP	Nevada
Highland Healthcare LLC	Bandera Healthcare LLC	Nevada
Higley Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Hill Country Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Holford Health Holdings LLC	Standard Bearer Healthcare OP, LP Pennant Healthcare LLC	Nevada
Homedale Healthcare, Inc.		Nevada
Hopewell Healthcare LLC	The Ensign Group, Inc.	Nevada
Hoquiam Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Hub City Healthcare LLC Hueneme Healthcare, Inc.	Keystone Care LLC Milestone Healthcare LLC	Nevada Nevada
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Hentington Deeple Consultation Henrital Asset LLC	I amaka and Haaldh Haldin and LLC	D-1
Huntington Beach Convalescent Hospital Asset LLC	Longboard Health Holdings LLC	Delaware Novedo
Hutchins Healthcare, Inc.	Keystone Care LLC	Nevada
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC	Keystone Care LLC Standard Bearer Healthcare OP, LP	Nevada Nevada
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc.	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC	Nevada Nevada Nevada
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc. Insight Healthcare LLC	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC The Ensign Group, Inc.	Nevada Nevada Nevada Nevada
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc. Insight Healthcare LLC Ionic Health Services LLC	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC The Ensign Group, Inc. Covalence Health Holdings LLC	Nevada Nevada Nevada Nevada California
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc. Insight Healthcare LLC Ionic Health Services LLC Iron Health Holdings LLC	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC The Ensign Group, Inc. Covalence Health Holdings LLC Standard Bearer Healthcare OP, LP	Nevada Nevada Nevada Nevada California Nevada
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc. Insight Healthcare LLC Ionic Health Services LLC Iron Health Holdings LLC Iron Horse Healthcare LLC	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC The Ensign Group, Inc. Covalence Health Holdings LLC Standard Bearer Healthcare OP, LP Gateway Healthcare LLC	Nevada Nevada Nevada Nevada California Nevada Nevada
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Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc. Insight Healthcare LLC Ionic Health Services LLC Iron Health Holdings LLC Iron Horse Healthcare LLC Jack Finney Healthcare, Inc. JARR Transportation Group, Inc. Jefferson Healthcare LLC Jordan Health Associates, Inc. JRT Healthcare, Inc.	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC The Ensign Group, Inc. Covalence Health Holdings LLC Standard Bearer Healthcare OP, LP Gateway Healthcare LLC Keystone Care LLC Capstone Transportation Investments, Inc. Flagstone Healthcare South LLC Milestone Healthcare LLC Pennant Healthcare LLC	Nevada Nevada Nevada Nevada California Nevada
Hutchins Healthcare, Inc. Hyrum Health Holdings LLC Immediate Clinic Seattle, Inc. Insight Healthcare LLC Ionic Health Services LLC Iron Health Holdings LLC Iron Horse Healthcare LLC Jack Finney Healthcare, Inc. JARR Transportation Group, Inc. Jefferson Healthcare LLC Jordan Health Associates, Inc. JRT Healthcare, Inc. Kenosha Health Holdings LLC	Keystone Care LLC Standard Bearer Healthcare OP, LP Immediate Clinic, LLC The Ensign Group, Inc. Covalence Health Holdings LLC Standard Bearer Healthcare OP, LP Gateway Healthcare LLC Keystone Care LLC Capstone Transportation Investments, Inc. Flagstone Healthcare South LLC Milestone Healthcare LLC Pennant Healthcare LLC Standard Bearer Healthcare OP, LP	Nevada Nevada Nevada Nevada California Nevada
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Lone Pine Ridge Healthcare, Inc.	Milestone Healthcare LLC	Nevada
Lone Star MTC, Inc.	Capstone Transportation Investments, Inc.	Nevada
Longboard Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Lookout Mountain Healthcare LLC	Bandera Healthcare LLC	Nevada
Lowell Healthcare, Inc.	Endura Healthcare LLC	Nevada
Lucky Peak Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Ludden Healthcare LLC	Bandera Healthcare LLC	Nevada
Lynnwood Health Services, Inc.	Pennant Healthcare LLC	Nevada
Madison Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Madison Pointe Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Magic Valley Senior Living, Inc.	Bridgestone Living LLC	Nevada
Manitowoc Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Manor Park Healthcare LLC	Pennant Healthcare LLC	Nevada
	Gateway Healthcare LLC	
Maple Hills Healthcare, Inc.		Nevada
Marguerite Holdings LLC	The Ensign Group, Inc.	Nevada
Marion Health Associates, Inc.	Endura Healthcare LLC Operated, Bridgestone Living LLC Owned	C Nevada
Market Bayou Healthcare, Inc.	Keystone Care LLC	Nevada
MavStar Medical Transportation, Inc.	Capstone Transportation Investments, Inc.	Nevada
McAllen Care Associates, Inc.	Keystone Care LLC	Nevada
McAllen Community Healthcare LLC	Keystone Care LLC	Nevada
McCall Healthcare LLC	Pennant Healthcare LLC	Nevada
McFarland Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
MedStar Medical Transportation, LLC	JARR Transportation Group, Inc.	Arizona
Menomonee Health Holdings LLC	The Ensign Group, Inc.	Nevada
Meridian Healthcare LLC	Pennant Healthcare LLC	Nevada Nevada
Midland Nampa Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Midland Nampa Healthcare LLC	Pennant Healthcare LLC	Nevada
Milestone Healthcare LLC	The Ensign Group, Inc.	Nevada
Mission Trails Healthcare LLC	Flagstone Healthcare South LLC	Nevada
Misty Willow Healthcare, Inc.	Keystone Care LLC	Nevada
Mockingbird Healthcare, Inc.	Keystone Care LLC	Nevada
Monroe Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Montebella Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Mountain View Retirement, Inc.	Milestone Healthcare LLC Operated, Bridgestone Living LLC Owned	Nevada
Murphy Health Holdings II LLC	Standard Bearer Healthcare OP, LP	Nevada
Mustang Ridge Healthcare, Inc.	Keystone Care LLC	Nevada
Myrtle Springs Healthcare, Inc.	Ellis Pointe Health Holdings LLC	Nevada
Nautilus Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
NB Brown Rock Healthcare, Inc.	Keystone Care LLC	Nevada
New England Medical Transportation, Inc.	Capstone Transportation Investments, Inc.	Nevada
Nobel Health Properties LLC	Standard Bearer Healthcare OP, LP	Nevada
Nordic Valley Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
North Mountain Healthcare LLC	Bandera Healthcare LLC	Nevada
North Parkway Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
North Parkway Healthcare LLC	Milestone Healthcare LLC	Nevada
Northern Oaks Healthcare, Inc.	Keystone Care LLC	Nevada
Oak Point Healthcare, Inc.	Keystone Care LLC	Nevada
Oceanview Healthcare, Inc.	Keystone Care LLC	Nevada
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Ocotillo Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Olmstead Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Olympus Health, Inc.	Milestone Healthcare LLC	Nevada
Ottawa Healthcare LLC	Gateway Healthcare LLC	Nevada
Pacific Mobile Diagnostics Holdings, LLC	PMD Investments, LLC	Nevada
Padua Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Panorama Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Park Waverly Healthcare LLC	Bandera Healthcare LLC	Nevada
Parkside Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Pennant Healthcare LLC	The Ensign Group, Inc.	Nevada
Peoria Healthcare LLC	Bandera Healthcare LLC	Nevada
Percheron Healthcare, Inc.	Ellis Pointe Health Holdings LLC	Nevada
Permunitum LLC	The Ensign Group, Inc.	Nevada
Perris Hills Healthcare LLC	Flagstone Healthcare Central LLC	Nevada
Pikes Peak Healthcare, Inc.	Endura Healthcare LLC	Nevada
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Pine Forest Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Piney Lufkin Healthcare, Inc.	Keystone Care LLC	Nevada
Pleasant Run Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
PMD Investments, LLC	The Ensign Group, Inc.	Nevada
PMD X-Ray Services, LLC	Bakorp L.L.C.	Nevada
PMDAZ, LLC	Bakorp L.L.C.	Nevada
PMDCO, LLC	Bakorp L.L.C.	Nevada
PMDTC, LLC	Bakorp L.L.C.	Nevada
PMDUT, LLC	Bakorp L.L.C.	Nevada
Pocatello Health Services, Inc.	Pennant Healthcare LLC	Nevada
Pointe Meadow Healthcare, Inc.	Milestone Healthcare LLC	Nevada
Pomerado Ranch Healthcare LLC	Keystone Care LLC	Nevada
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Powderhorn Mountain Healthcare LLC Powers Park Healthcare, Inc.	Keystone Care LLC Flagstone Healthcare Central LLC	Nevada Nevada
Prairie Creek Healthcare, Inc.	Gateway Healthcare LLC	Nevada Nevada
Prairie Ridge Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Presidio Health Associates LLC	Bandera Healthcare LLC	Nevada
Price Healthcare, Inc.	Milestone Healthcare LLC	Nevada
Primrose Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Quail Creek Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Queenston Healthcare, Inc.	Keystone Care LLC	Nevada
Quorum Services, Inc.	The Ensign Group, Inc.	Nevada
Quorum Ventures, Inc.	The Ensign Group, Inc.	Nevada
Racine Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Radiant Hills Health Associates LLC	Bandera Healthcare LLC	Nevada
Ramon Healthcare Associates LLC	Flagstone Healthcare Central LLC	Nevada
Randolph Healthcare, Inc.  Red Cliffs Healthcare, Inc.	Gateway Healthcare LLC Milestone Healthcare LLC	Nevada Nevada
Red Mountain Healthcare LLC	Bandera Healthcare LLC	Nevada
Redbrook Healthcare Associates LLC	Flagstone Healthcare Central LLC	Nevada
RenewCare of Scottsdale, Inc.	Bandera Healthcare LLC	Nevada
Richmond Senior Services, Inc.	Keystone Care LLC	Nevada
Rio Hondo Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Rio Mesa Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Riverside Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Riverview Healthcare, Inc.	Milestone Healthcare LLC	Nevada
Riverview Village Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Riverwalk Healthcare, Inc.	Keystone Care LLC	Nevada
Roadrunner Healthcare, Inc.	Keystone Care LLC	Nevada
Rock Canyon Healthcare LLC	Endura Healthcare LLC	Nevada
Rock Hill Healthcare LLC	Hopewell Healthcare LLC	Nevada
Rocky Mountain Medical Transportation Company, Inc.	Capstone Transportation Investments, Inc.	Nevada
Rose Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Rose Park Healthcare Associates, Inc.	Flagstone Healthcare South LLC	Nevada
Rosemead Health Holdings LLC	The Ensign Group, Inc.	Nevada
Rowlett Creek Healthcare LLC	Keystone Care LLC	Nevada
Royal View Healthcare LLC	Bandera Healthcare LLC	Nevada
Sage Terrace Healthcare LLC	Keystone Care LLC	Nevada
Salado Creek Senior Care, Inc. Sand Hollow Healthcare LLC	Keystone Care LLC Milestone Healthcare LLC	Nevada
Sandpiper Senior Living LLC	Flagstone Healthcare South LLC	Nevada Nevada
Santa Catalina Healthcare. Inc.	Flagstone Healthcare South LLC	Nevada
Santa Maria Healthcare, Inc.	Flagstone Healthcare Central LLC	Nevada
Santiago Healthcare LLC	Keystone Care LLC	Nevada
Santiago Personal Care, Inc.	Keystone Care LLC	Nevada
Savoy Healthcare, Inc.	Keystone Care LLC	Nevada
Sawtooth Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Scandinavian Court Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Second West Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Sedgewood Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Sentinel Peak Healthcare LLC	Bandera Healthcare LLC	Nevada
Sheboygan Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Sherman Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Sherwood Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Shoshone Health Holdings LLC	The Ensign Group, Inc.	Nevada
Somers Kenosha Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Songbird Healthcare, Inc. South C Health Holdings LLC	Keystone Care LLC	Nevada Nevada
South Valley Healthcare, Inc.	The Ensign Group, Inc. Milestone Healthcare LLC	Nevada
Southern Charm Healthcare LLC	Hopewell Healthcare LLC	Nevada
Southern Oaks Healthcare LLC	Keystone Care LLC	Nevada
Southland Management LLC	Flagstone Healthcare South LLC	Nevada
Southside Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Spring Creek Healthcare, Inc.	Keystone Care LLC	Nevada
Stagecoach Healthcare, Inc.	Flagstone Healthcare Central LLC	Nevada
Standard Bearer Healthcare OP GP, LLC	The Ensign Group, Inc.	Delaware
Standard Bearer Healthcare OP, LP	Standard Bearer Healthcare REIT, Inc.Owned; Standard	Delaware
2 1 12 17 17 17	Bearer Healthcare OP GP, LLC Operated	
Standard Bearer Healthcare REIT, Inc.	The Ensign Group, Inc.	Maryland
Standardbearer Insurance Company, Inc.	The Ensign Group, Inc.	Arizona
Stanton Lake Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Statler Health Holdings LLC Statlead Healthage Inc.	Standard Bearer Healthcare OP, LP Pennant Healthcare LLC	Nevada Nevada
Steelhead Healthcare, Inc.	Standard Bearer Healthcare OP, LP	Nevada Nevada
Stevens Point Health Holdings LLC Stoney Hill Healthcare LLC	Hopewell Healthcare LLC	Nevada Nevada
Stoughton Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada Nevada
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	Gateway Healthcare LLC	Nevada
Subacute Facility Services, Inc. Successor Healthcare LLC	Gateway Healthcare LLC Milestone Healthcare LLC	Nevada Nevada
Subacute Facility Services, Inc.	Gateway Healthcare LLC Milestone Healthcare LLC The Ensign Group, Inc.	
Subacute Facility Services, Inc. Successor Healthcare LLC	Milestone Healthcare LLC	Nevada

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Sunflower Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Sunland Health Associates LLC	Bandera Healthcare LLC	Nevada
Sunny Acres Health Holdings LLC	The Ensign Group, Inc.	Nevada
Sunny Acres Healthcare LLC	Endura Healthcare LLC	Nevada
Sunrise Mountain Healthcare LLC	Bandera Healthcare LLC	Nevada
Terrace Court Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
The Ensign Group, Inc.	N/A	Delaware
TheraTroopers CA, Inc.	Theratroopers Holdings LLC	Nevada
Theratroopers Holdings LLC	The Ensign Group, Inc.	Nevada
TheraTroopers, Inc.	Theratroopers Holdings LLC	
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Thorncreek Health Holdings LLC	The Ensign Group, Inc.	Nevada
Thorntree Healthcare, Inc.	Keystone Care LLC	Nevada
Thunderbird Health Holdings LLC	The Ensign Group, Inc.	Nevada
Top City Healthcare LLC	Gateway Healthcare LLC	Nevada
Tortolita Healthcare, Inc.	Bandera Healthcare LLC	Nevada
Towers Park Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Towers Park Healthcare LLC	Keystone Care LLC	Nevada
Towers Park Personal Care, Inc.	Keystone Care LLC	Nevada
Town East Healthcare, Inc.	Keystone Care LLC	Nevada
Tradewind Healthcare. Inc.	Keystone Care LLC	Nevada
Treasure Hills Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada Nevada
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Treasure Valley Senior Living, Inc.	Bridgestone Living LLC	Nevada
Treaty Healthcare, Inc.	Keystone Care LLC	Nevada
Tree City Healthcare, Inc.	Keystone Care LLC	Nevada
Tulip Healthcare LLC	Gateway Healthcare LLC	Nevada
Turnberry Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Tustin Hills Healthcare, Inc.	Flagstone Healthcare South LLC	Nevada
Two Rivers Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Two Trails Healthcare, Inc.	Gateway Healthcare LLC	Nevada
Union Hill Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Upland Community Care, Inc.	Flagstone Healthcare Central LLC	Nevada
1 2 ,	Pennant Healthcare LLC	
Valley View Health Services, Inc.		Nevada
Velda Rose Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Victoria Ventura Healthcare LLC	Flagstone Healthcare Central LLC	Nevada
Victory Medical Transportation, Inc.	Capstone Transportation Investments, Inc.	Nevada
Viewpoint Healthcare LLC	Bandera Healthcare LLC	Nevada
Vista Woods Health Associates LLC	Flagstone Healthcare South LLC	Nevada
Wallsville Healthcare LLC	Keystone Care LLC	Nevada
Washington Heights Healthcare LLC	Milestone Healthcare LLC	Nevada
Waterfall Canvon Healthcare LLC	Milestone Healthcare LLC	Nevada
Watson Woods Healthcare Inc.	Bandera Healthcare LLC	Nevada
Wellington Healthcare, Inc.	Keystone Care LLC	Nevada
West 5600 Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
West 5000 Health Holdings ELC West 5600 Healthcare LLC	,	
	Milestone Healthcare LLC	Nevada
West Ashby Healthcare, Inc.	Keystone Care LLC	Nevada
West Escondido Healthcare LLC	Flagstone Healthcare South LLC	Nevada
West Meadow Health Holdings II LLC	Standard Bearer Healthcare OP, LP	Nevada
West Olive Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
West Owyhee Health Holdings LLC	The Ensign Group, Inc.	Nevada
West Pine Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
West Van Buren Healthcare, Inc.	Endura Healthcare LLC	Nevada
Western Canal Healthcare LLC	Bandera Healthcare LLC	Nevada
Western Edge Health Holdings LLC	Turnberry Health Holdings LLC	Nevada
Whispering Pines Healthcare, Inc.	Keystone Care LLC	Nevada
1 1	Pennant Healthcare LLC	
Wildcreek Healthcare, Inc.	<del>-</del>	Nevada
Wildwood Healthcare, Inc.	Pennant Healthcare LLC	Nevada
Willow Canyon Healthcare LLC	Bandera Healthcare LLC	Nevada
Willow Springs Creek Healthcare, Inc.	Keystone Care LLC	Nevada
Windsor Lake Healthcare, Inc.	Endura Healthcare LLC Operated, Bridgestone Living LLC	Nevada
	Owned	
Wisconsin Rapids Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Wolf Point Health Holdings LLC	Standard Bearer Healthcare OP, LP	Nevada
Wolf River Healthcare LLC	Gateway Healthcare LLC	Nevada
Wood Bayou Healthcare, Inc.	Keystone Care LLC	Nevada
Woodard Creek Healthcare LLC	Pennant Healthcare LLC	Nevada
Yellow Rose Health Holdings LLC	The Ensign Group, Inc.	Nevada
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	Bandera Healthcare LLC	Nevada
Youngtown Health, Inc.	Bandera Healthcare LLC Standard Bearer Healthcare OP LP	Nevada Nevada
	Bandera Healthcare LLC Standard Bearer Healthcare OP, LP Milestone Healthcare LLC	Nevada Nevada Nevada

### CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-219666 on Form S-8 of our reports dated February 9, 2022, relating to the financial statements of The Ensign Group, Inc. and the effectiveness of The Ensign Group, Inc.'s internal control over financial reporting, appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California February 9, 2022

#### I, Barry R. Port, certify that:

- 1. I have reviewed this Annual Report on Form 10-K of The Ensign Group, Inc.;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2022

/s/ Barry R. Port

Name: Barry R. Por

Title: Chief Executive Officer and Director (principal executive

officer)

#### I, Suzanne D. Snapper, certify that:

- 1. I have reviewed this Annual Report on Form 10-K of The Ensign Group, Inc.;
- Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report:
- The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2022

#### /s/ Suzanne D. Snapper

Name: Suzanne D. Snapper

Chief Financial Officer, Executive Vice President and Director Title: (principal financial officer and accounting officer and duly

authorized officer)

## CERTIFICATION PURSUANT TO 18 U.S.C. §1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of The Ensign Group, Inc. (the Company) on Form 10-K for the period ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Barry R. Port, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- 1 The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Barry R. Port

Name: Barry R. Port

Title: Chief Executive Officer and Director (principal executive

officer)

February 9, 2022

A signed original of this written statement required by 18 U.S.C. Section 1350 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

# CERTIFICATION PURSUANT TO 18 U.S.C. §1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of The Ensign Group, Inc. (the Company) on Form 10-K for the period ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Suzanne D. Snapper, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- 1 The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2 The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Suzanne D. Snapper

Name: Suzanne D. Snapper

Chief Financial Officer, Executive Vice President and Title: Director (principal financial officer and accounting officer

and duly authorized officer)

February 9, 2022

A signed original of this written statement required by 18 U.S.C. Section 1350 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.