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12/24/2020 9:09:00 AM \$40.00
Book - 11087 Pg - 6106-6121
RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 16 P.

When Recorded Return To:

Alex Westover
RICHARDS BRANDT MILLER NELSON
111 E. Broadway, Ste. 400
Salt Lake City, Utah 84111

Parcel No. 15-30-478-047

**AGREEMENT TO
WAIVE RIGHTS OF FIRST AND SECOND REFUSAL**

THIS AGREEMENT, made this 24th day of ~~November~~ ^{December}, 2020 by and among **Jordan West Valley Medical Office Building, LLC**, a Utah limited liability company ("**JWVMOB**"), 3665 S. 8400 W., Ste. 110, Magna, UT 84044, **DeZen Realty2, LLC**, a Utah limited liability company ("**DeZen**"), 3665 S. 8400 W., Ste. 110, Magna, UT 84044, **MPT of West Valley City, LLC**, a Delaware limited liability company ("**MPT**"), 1000 Urban Center Dr., Ste. 501, Birmingham, AL 35242, and **Jordan Valley Medical Center, LP**, a Delaware limited partnership, 117 Seaboard Ln., Bldg. E, Franklin, TN 37067, **Steward Health Care System, LLC**, a Texas limited liability company, 1900 N. Pearl St., Ste. 2400, Dallas, TX 75201, and/or any other affiliated entity, hospital, or hospital system of Steward Health Care System, LLC (collectively "**Steward Healthcare**").

WITNESSETH:

WHEREAS, JWVMOB is the owner of a parcel of land located in West Valley City, Salt Lake County, Utah, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (together with all hereditaments, easements, mineral rights, rights of way, and other appurtenances related thereto, along with all improvements located thereon) (the "**Property**").

WHEREAS, on September 25, 2020, MPT recorded a Declaration of Covenants and Restrictions and First and Second Rights to Purchase as Entry No. 13405364 in Book 11025 at Pages 9800–9810 with the Salt Lake County Recorder (the "**CC&Rs**"), which encumbers the Property, grants Steward Healthcare the first right to purchase the Property, and grants the Hospital Property Owner, as defined therein, the second right to purchase the Property.

WHEREAS, JWVMOB has determined to construct a medical office building ("**MOB**") on the Property (the "**Development**"). In order to construct the Development, JWVMOB has assigned and conveyed, or will convey, the Property to DeZen for the purposes of obtaining construction financing for the Development. That conveyance (the "**Conveyance**") is evidenced by a Special Warranty Deed, dated as of September 24, 2020, recorded on

December 24, 2020, as Entry No. 13511667 in Book 11087 at Pages 5927-5929 of the Official Records of Salt Lake County.

WHEREAS, at the conclusion of construction of the Development, JWVMOB and DeZen desire for DeZen to sell and convey the Property back to JWVMOB for the purposes of obtaining long-term financing (the "**Second Conveyance**").

WHEREAS, DeZen has executed or will execute a Construction Loan Agreement, a Deed of Trust, a Secured Promissory Note and other ancillary loan documents (collectively, the "**Loan Documents**"), in favor of Northwest Bank ("**Lender**"), pursuant to which Lender has made or will make a loan to JWVMOB in the maximum principal amount of \$6,900,000.00, payable with interest upon the terms and conditions described in the Loan Documents (the "**Loan**").

WHEREAS, the Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing has been or will be recorded against the Property (the "**Deed of Trust**") as security for the Loan.

NOW THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the Loan, MPT, Steward Healthcare, JWVMOB, and DeZen each hereby declare, agree, and acknowledge that:

- 1) As of the date hereof, Dr. Brian Zehnder ("**Zehnder**") directly owns at least fifty-one percent (51%) of the membership interests in JWVMOB and one hundred percent (100%) of the membership interests in DeZen.
- 2) MPT and Steward Healthcare each waive its respective right of first or second refusal under the CC&Rs with respect to the Conveyance.
- 3) Provided that at the time of the Second Conveyance, (a) DeZen is one hundred percent (100%) directly owned by Zehnder and JWVMOB is at least fifty-one percent (51%) directly owned by Zehnder (b) DeZen and JWVMOB provide MPT and Steward Healthcare with an executed Assignment and Assumption of Lease in the form attached hereto as Exhibit B, MPT and Steward Healthcare each waive its respective right of first or second refusal under the CC&Rs with respect to the Second Conveyance.
- 4) Lender in making disbursements pursuant to the Loan Documents is under no obligation or duty to, nor has Lender represented that it will, oversee the application of such proceeds, the persons to whom Lender disburses such proceeds, and any application or use of such proceeds, which shall not defeat the subordination herein made in whole or part.
- 5) Steward Healthcare is entering into this Agreement on behalf of itself and any other affiliated entity, hospital or hospital system of Steward Health Care System LLC.

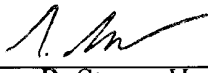
The parties hereto agree that this Agreement (i) shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, (ii) is subject to the laws of the State of Utah, and (iii) can be executed in counterparts each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. For the avoidance of doubt, this Agreement shall serve as a waiver of rights of refusal only with respect to the Conveyance and Second Conveyance as set forth in this Agreement. MPT and Steward Healthcare and their successors and/or assigns hereby retain their rights of refusal under the CC&Rs with respect to any future transaction. THIS AGREEMENT SHALL NOT SERVE AS A SUBORDINATION OF THE CC&RS TO THE LIEN OF LENDER'S DEED OF TRUST OR ANY OTHER FINANCING INSTRUMENT RECORDED AGAINST THE PROPERTY.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

MPT:

MPT OF WEST VALLEY CITY, LLC
a Delaware limited liability company

By: MPT Operating Partnership, L.P.,
a Delaware limited partnership
Its: Sole Member

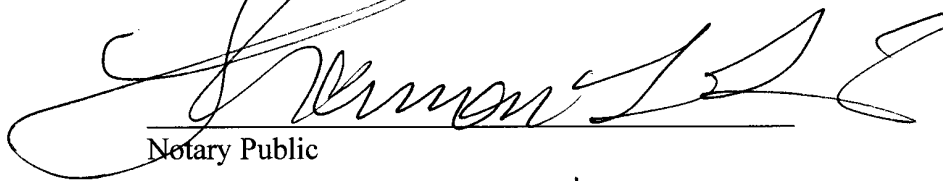
By: 
Name: R. Steven Hamner
Title: Executive Vice President & CFO

STATE OF ALABAMA)

:ss.

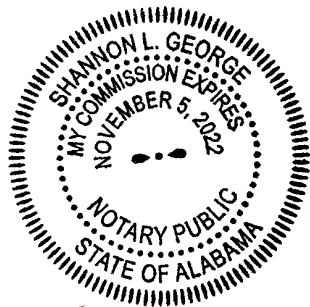
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 03 day of ^{Dec,} ~~November~~, 2020 by R. Steven Hamner in his capacity as the EVPR CFO of MPT Operating Partnership, L.P., a Delaware limited partnership, as the Sole Member of MPT of West Valley City, LLC, a Delaware limited liability company.


Notary Public

My Commission Expires: 11-5-22

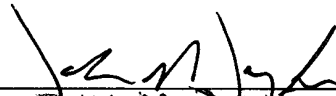
[AFFIX NOTARY SEAL]



STEWARD HEALTHCARE:

JORDAN VALLEY MEDICAL CENTER, LP
a Delaware limited partnership

STEWARD HEALTH CARE CENTER, LLC
a Texas limited liability company

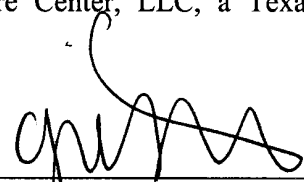
By: 
Name: JOHN M. DOYLE
Title: TREASURER

STATE OF TEXAS)

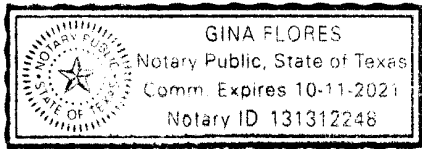
:SS.

COUNTY OF DALLAS

The foregoing instrument was acknowledged before me this 7th day of December, 2020 by John M. Doyle, in his/her capacity as the Treasurer of Jordan Valley Medical Center, LP, a Delaware limited partnership and as the Treasurer of Steward Health Care Center, LLC, a Texas limited liability company.


Notary Public

My Commission Expires: 10/11/2021



[AFFIX NOTARY SEAL]

JWVMOB:

**Jordan West Valley Medical Office Building,
LLC**
a Utah limited liability company

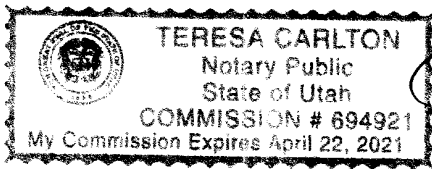
By: [Signature]
Name: Brian Zehnder, Mo
Title: MANAGER

STATE OF Utah)

:ss.

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 7 day of December, 2020 by Brian Zehnder, in his/her capacity as the Manager of Jordan West Valley Medical Office Building, LLC, a Utah limited liability company.



[Signature]
Notary Public

My Commission Expires: 4/22/2021

[AFFIX NOTARY SEAL]

EXHIBIT A

LOT 2B OF FMC WEST VALLEY SUBDIVISION LOT 2 AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AUGUST 20, 2020 AS ENTRY NO. 13367497 IN BOOK 2020P OF PLATS AT PAGE 209 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, UTAH.

EXHIBIT B
FORM OF ASSIGNMENT OF LEASE

EXHIBIT B

FORM OF ASSIGNMENT OF LEASE

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "**Agreement**") is entered into as of _____, 20____ (the "**Effective Date**"), by and between DEZEN REALTY2, LLC, a Utah limited liability company ("**Assignor**") and JORDAN WEST VALLEY MEDICAL OFFICE BUILDING, LLC, a Utah limited liability company ("**Assignee**"), who agree as follows:

1. **Recitals.** This Agreement is made with reference to the following recitals of fact, which recitals constitute an integral part of this Agreement.

1.1 Assignor currently owns a parcel of land located in West Valley City, Salt Lake County, Utah, as more particularly described on **Schedule A** attached hereto and incorporated herein by reference and depicted as Lot 2B on **Schedule A-1** attached hereto and incorporated herein by reference (together with all hereditaments, easements, mineral rights, rights of way, and other appurtenances related thereto, along with all improvements located thereon) together with a medical office building located on the parcel ("**Assignor's Property**").

1.2 Assignor is the current "Landlord" under all existing and/or future leases and rental agreements, including any and all extensions, renewals and modifications thereof and guaranties of performance or obligations of any tenants or lessees thereunder (said leases and agreements are hereinafter referred to collectively as the "**Leases**", and said tenants and lessees are hereinafter referred to collectively as "**Tenants**" or individually as "**Tenant**" as the context requires), which Leases cover portions of Assignor's Property (hereinafter referred to as the "**Premises**").

1.3 By this Agreement, Assignor intends to assign, and Assignee intends to accept and assume, all of Assignor's interests in and obligations under the Leases, including, without limitation, that certain Lease Agreement between Assignor, as successor-in-interest to Assignee, as landlord, and Jordan Valley Medical Center, LP, as tenant, dated as of March 1, 2019, all as more particularly provided below (the "**Assignment**").

2. **Assignment.** As of the Effective Date, for and in consideration of the sum of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of whereof are hereby acknowledged, Assignor does hereby grant, transfer and assign to Assignee, its successors, successors-in-title and assigns, absolutely and unconditionally, all of Assignor's right, title and interest in, to and under the Leases, together with all of Assignor's right, title, and interest in and to all rents, issues, and profits from the Leases and from the Premises.

3. **Assumption.** Assignee hereby accepts the foregoing assignment and, as of the Effective Date, assumes and agrees to perform and be bound by all of the terms, covenants, and conditions to be observed or performed by the landlord under or pursuant to the Leases.

4. Warranties of Assignor. Assignor hereby represents and warrants as follows:

4.1 Assignor is the sole holder of the landlord's interests under the Leases and is entitled to receive the rents, issues, and profits from the Leases and from the Premises, and has good right to sell, assign, transfer, and set over the same and to grant to and confer upon Assignee the rights, interests, powers and authorities herein granted and conferred;

4.2 Assignor has made no assignment other than this Assignment of any of the rights of Assignor under any of the Leases or with respect to any of said rents, issues, or profits;

4.3 Assignor has neither done any act nor failed to do any act which might prevent Assignee from, or limit Assignee in, acting under any of the provisions of this Agreement;

4.4 With limited exceptions, all Leases provide for rental to be paid monthly, in advance, and Assignor has not accepted payment of rental under any of the Leases for more than one (1) month in advance of the due date thereof;

4.5 So far as is known to Assignor, there exists no default or event of default or any state of facts which would, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Assignor or by any Tenant under the terms of any of the Leases;

4.6 The execution and delivery of this Assignment and any of the Leases, the performance of each and every covenant of Assignor under this Assignment and the Leases, and the meeting of each and every condition contained in this Assignment, does not conflict with, or constitute a breach or default under, any agreement, indenture, or other instrument to which Assignor is a party, or any law, ordinance, administrative regulation, or court decree which is applicable to Assignor;

4.7 No action has been brought or, so far as is known to Assignor, is threatened, which would interfere in any way with the right of Assignor to execute this Assignment and perform all of Assignor's obligations contained in this Assignment and in the Leases; and

4.8 The Leases are valid, enforceable and in full force an effect, and have not been modified or amended.

5. Covenants of Assignee. Assignee hereby covenants and agrees as follows:

5.1 Assignee shall (i) fulfill, perform and observe each and every condition and covenant of landlord or lessor contained in each of the Leases; (ii) enforce the performance and observance of each and every covenant and condition of each of the Leases to be performed or observed by the Tenant thereunder; and (iii) appear in and defend any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of the landlord thereunder, or of the Tenant or any guarantor thereunder;

5.2 Assignee shall take no action which will cause or permit the estate of the Tenant under any of the Leases to merge with the interest of Assignee in the Premises or any portion thereof;

5.3 Assignee shall authorize and direct, and does hereby authorize and direct each and every present and future Tenant of the whole or any part of the Premises to pay all rental to Assignee.

6. Modification. Except as modified herein as to Assignee, the Leases shall remain unmodified and in full force and effect. Nothing contained herein shall be deemed or construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Leases.

7. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors in interest, successors and assigns. Whenever a reference is made in this Assignment to one of the parties, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, and assigns of said party.

8. Notices. From and after the Effective Date, all notices, consents, requests, approvals, instructions and other communications which the Lease provides for, requires, or permits to be sent to the landlord under the Lease shall only be given in writing and shall be sent to Assignee at the following address:

Jordan West Valley Medical Office Building, LLC
Attn: Dr. Brian K. Zehnder
3665 S. 8400 W., Ste 110
Magna, UT 84044

9. Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the provisions of this Assignment.

10. Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

11. Applicable Law. This Assignment shall be interpreted, construed, and enforced according to the laws of the State of Utah.

12. No Third-Party Beneficiaries. This Assignment is made solely for the benefit of parties hereto.

13. No Oral Modifications. The provisions of this Agreement supersede all prior and/or contemporaneous negotiations and understandings of any kind with respect to the subject matter of this Agreement. This Agreement contains the full terms and provisions between the parties with respect to the subject matter hereof. There are no oral understandings, statements, or stipulations bearing upon the effect of this Agreement that have not been incorporated herein. This Agreement

may not be modified, amended, supplemented, or abrogated in any way other than by express written agreement executed by all parties.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. A signature received via facsimile or electronically via e-mail shall be as legally binding for all purposes as an original signature.

15. Further Acts. All parties shall, at any time, and from time to time, upon the reasonable request of another party hereto, execute, acknowledge, and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances, and take all such further actions as shall be necessary or, in the reasonable opinion of any party hereto, desirable to give effect to the transactions hereby consummated

16. Authority. Each person executing this Agreement on behalf of a party hereby represents and warrants to each of the other parties that he or she has full authority to execute this Agreement on behalf of such party and thereby to bind such party to this Agreement.

17. Attorneys' Fees. In the event of any legal or other action to enforce the terms of this Agreement or the Assignment, the prevailing party in such action shall have the right to recover reasonable attorneys' fees incurred in connection therewith from the other party.

18. Time is of the Essence. Time is of the essence with respect to each and every covenant, agreement, and obligation under this Assignment.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Leases and Rents as of the Effective Date.

ASSIGNOR:

DEZEN REALTY2, LLC,
a Utah limited liability company

By: Dr. Brian K. Zehnder
Its: Member/Manager

ASSIGNEE:

JORDAN WEST VALLEY MEDICAL OFFICE BUILDING, LLC,
a Utah limited liability company

By: Dr. Brian K. Zehnder
Its: Member/Manager

Schedule A

LOT 2B OF FMC WEST VALLEY SUBDIVISION LOT 2 AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AUGUST 20, 2020 AS ENTRY NO. 13367497 IN BOOK 2020P OF PLATS AT PAGE 209 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, UTAH.

Schedule A-1 (Depiction of Lot 2B)

