

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, DC 20549
FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2021

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number 1-15319

DIVERSIFIED HEALTHCARE TRUST

(Exact Name of Registrant as Specified in Its Charter)

Maryland

(State or Other Jurisdiction of Incorporation or
Organization)

04-3445278

(IRS Employer Identification No.)

Two Newton Place, 255 Washington Street, Suite 300, Newton, MA 02458-1634

(Address of Principal Executive Offices) (Zip Code)

617 - 796 - 8350

(Registrant's Telephone Number, Including Area Code)

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

Title Of Each Class	Trading Symbol(s)	Name Of Each Exchange On Which Registered
Common Shares of Beneficial Interest	DHC	The Nasdaq Stock Market LLC
5.625% Senior Notes due 2042	DHCNI	The Nasdaq Stock Market LLC
6.25% Senior Notes due 2046	DHCNL	The Nasdaq Stock Market LLC

Indicate by check mark 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. Yes ☒ No ☐

Indicate by check mark 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). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "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 by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Number of registrant's common shares outstanding as of November 1, 2021: 238,994,894

DIVERSIFIED HEALTHCARE TRUST
FORM 10-Q

September 30, 2021

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References in this Quarterly Report on Form 10-Q to the Company, we, us or our include Diversified Healthcare Trust and its consolidated subsidiaries unless otherwise expressly stated or the context indicates otherwise.

PART I. Financial Information
Item 1. Financial Statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED BALANCE SHEETS
(dollars in thousands, except share data)
(unaudited)

	September 30, 2021	December 31, 2020
<u>Assets</u>		
Real estate properties:		
Land	\$ 793,555	\$ 789,125
Buildings and improvements	6,760,990	6,621,605
Total real estate properties, gross	7,554,545	7,410,730
Accumulated depreciation	(1,841,172)	(1,694,901)
Total real estate properties, net	5,713,373	5,715,829
Assets of properties held for sale	—	112,437
Cash and cash equivalents	794,739	74,417
Restricted cash	16,698	16,432
Acquired real estate leases and other intangible assets, net	252,629	286,513
Other assets, net	288,609	270,796
Total assets	\$ 7,066,048	\$ 6,476,424
<u>Liabilities and Equity</u>		
Revolving credit facility	\$ 800,000	\$ —
Term loan, net	—	199,049
Senior unsecured notes, net	2,805,154	2,608,189
Secured debt and finance leases, net	689,044	691,573
Liabilities of properties held for sale	—	3,525
Accrued interest	47,234	23,772
Assumed real estate lease obligations, net	61,335	67,830
Other liabilities	253,624	263,264
Total liabilities	4,656,391	3,857,202
Commitments and contingencies		
<u>Equity:</u>		
Equity attributable to common shareholders:		
Common shares of beneficial interest, \$.01 par value: 300,000,000 shares authorized, 238,995,435 and 238,268,478 shares issued and outstanding, respectively	2,390	2,383
Additional paid in capital	4,615,162	4,613,904
Cumulative net income	1,722,039	1,913,109
Cumulative distributions	(4,040,709)	(4,033,559)
Total equity attributable to common shareholders	2,298,882	2,495,837
Noncontrolling interest:		
Total equity attributable to noncontrolling interest	110,775	123,385
Total equity	2,409,657	2,619,222
Total liabilities and equity	\$ 7,066,048	\$ 6,476,424

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(amounts in thousands, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Rental income	\$ 101,403	\$ 104,238	\$ 306,555	\$ 320,943
Residents fees and services	236,013	290,101	739,926	926,174
Total revenues	337,416	394,339	1,046,481	1,247,117
Expenses:				
Property operating expenses	266,073	315,650	818,096	934,150
Depreciation and amortization	68,702	67,211	202,743	204,466
General and administrative	8,870	6,988	25,538	23,132
Acquisition and certain other transaction related costs	3,108	53	15,179	803
Impairment of assets	—	64,202	(174)	106,611
Total expenses	346,753	454,104	1,061,382	1,269,162
Gain (loss) on sale of properties	200	(211)	30,838	2,403
Gains and losses on equity securities, net	(14,755)	12,510	(26,943)	14,541
Interest and other income	976	134	19,849	8,008
Interest expense (including net amortization of debt premiums, discounts and issuance costs of \$3,948, \$2,448, \$9,777 and \$5,574, respectively)	(64,493)	(58,091)	(192,241)	(143,715)
Gain on lease termination	—	—	—	22,896
Loss on early extinguishment of debt	—	—	(2,410)	(427)
Loss from continuing operations before income tax expense	(87,409)	(105,423)	(185,808)	(118,339)
Income tax expense	(595)	(365)	(1,024)	(1,048)
Net loss	(88,004)	(105,788)	(186,832)	(119,387)
Net income attributable to noncontrolling interest	(1,339)	(1,100)	(4,238)	(3,838)
Net loss attributable to common shareholders	<u>\$ (89,343)</u>	<u>\$ (106,888)</u>	<u>\$ (191,070)</u>	<u>\$ (123,225)</u>
Weighted average common shares outstanding (basic)	<u>238,008</u>	<u>237,752</u>	<u>237,905</u>	<u>237,707</u>
Weighted average common shares outstanding (diluted)	<u>238,008</u>	<u>237,752</u>	<u>237,905</u>	<u>237,707</u>
Per common share amounts (basic and diluted):				
Net loss attributable to common shareholders	<u>\$ (0.38)</u>	<u>\$ (0.45)</u>	<u>\$ (0.80)</u>	<u>\$ (0.52)</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(dollars in thousands)
(unaudited)

	Number of Shares	Common Shares	Additional Paid In Capital	Cumulative Net Income	Cumulative Distributions	Total Equity Attributable to Common Shareholders	Total Equity Attributable to Noncontrolling Interest	Total Equity
Balance at December 31, 2020:	238,268,478	\$ 2,383	\$ 4,613,904	\$ 1,913,109	\$ (4,033,559)	\$ 2,495,837	\$ 123,385	\$ 2,619,222
Net (loss) income	—	—	—	(67,505)	—	(67,505)	1,322	(66,183)
Distributions	—	—	—	—	(2,383)	(2,383)	—	(2,383)
Share grants	—	—	228	—	—	228	—	228
Distributions to noncontrolling interest	—	—	—	—	—	—	(5,694)	(5,694)
Balance at March 31, 2021:	238,268,478	2,383	4,614,132	1,845,604	(4,035,942)	2,426,177	119,013	2,545,190
Net (loss) income	—	—	—	(34,222)	—	(34,222)	1,577	(32,645)
Distributions	—	—	—	—	(2,383)	(2,383)	—	(2,383)
Share grants	120,000	1	675	—	—	676	—	676
Share repurchases	(13,906)	—	(59)	—	—	(59)	—	(59)
Distributions to noncontrolling interest	—	—	—	—	—	—	(5,630)	(5,630)
Balance at June 30, 2021:	238,374,572	2,384	4,614,748	1,811,382	(4,038,325)	2,390,189	114,960	2,505,149
Net (loss) income	—	—	—	(89,343)	—	(89,343)	1,339	(88,004)
Distributions	—	—	—	—	(2,384)	(2,384)	—	(2,384)
Share grants	718,000	7	738	—	—	745	—	745
Share repurchases	(94,937)	(1)	(321)	—	—	(322)	—	(322)
Share forfeitures	(2,200)	—	(3)	—	—	(3)	—	(3)
Distributions to noncontrolling interest	—	—	—	—	—	—	(5,524)	(5,524)
Balance at September 30, 2021:	238,995,435	\$ 2,390	\$ 4,615,162	\$ 1,722,039	\$ (4,040,709)	\$ 2,298,882	\$ 110,775	\$ 2,409,657

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (CONTINUED)
(dollars in thousands)
(unaudited)

	Number of Shares	Common Shares	Additional Paid In Capital	Cumulative Net Income	Cumulative Distributions	Total Equity Attributable to Common Shareholders	Total Equity Attributable to Noncontrolling Interest	Total Equity
Balance at December 31, 2019:	237,897,163	\$ 2,379	\$ 4,612,511	\$ 2,052,562	\$ (3,930,933)	\$ 2,736,519	\$ 140,531	\$ 2,877,050
Net income	—	—	—	9,735	—	9,735	1,408	11,143
Distributions	—	—	—	—	(35,684)	(35,684)	—	(35,684)
Distribution to common shareholders of the right to receive Five Star Senior Living Inc. common stock	—	—	—	—	(59,801)	(59,801)	—	(59,801)
Share grants	—	—	249	—	—	249	—	249
Share repurchases	(3,438)	—	(21)	—	—	(21)	—	(21)
Distributions to noncontrolling interest	—	—	—	—	—	—	(5,767)	(5,767)
Balance at March 31, 2020:	237,893,725	2,379	4,612,739	2,062,297	(4,026,418)	2,650,997	136,172	2,787,169
Net (loss) income	—	—	—	(26,072)	—	(26,072)	1,330	(24,742)
Distributions	—	—	—	—	(2,379)	(2,379)	—	(2,379)
Share grants	60,000	1	415	—	—	416	—	416
Share repurchases	(1,757)	—	(8)	—	—	(8)	—	(8)
Distributions to noncontrolling interest	—	—	—	—	—	—	(5,616)	(5,616)
Balance at June 30, 2020:	237,951,968	2,380	4,613,146	2,036,225	(4,028,797)	2,622,954	131,886	2,754,840
Net (loss) income	—	—	—	(106,888)	—	(106,888)	1,100	(105,788)
Distributions	—	—	—	—	(2,380)	(2,380)	—	(2,380)
Share grants	360,000	3	503	—	—	506	—	506
Share repurchases	(42,180)	—	(142)	—	—	(142)	—	(142)
Share forfeitures	(1,310)	—	(6)	—	—	(6)	—	(6)
Distributions to noncontrolling interest	—	—	—	—	—	—	(5,324)	(5,324)
Balance at September 30, 2020:	238,268,478	\$ 2,383	\$ 4,613,501	\$ 1,929,337	\$ (4,031,177)	\$ 2,514,044	\$ 127,662	\$ 2,641,706

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(dollars in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2021	2020
Cash flows from operating activities:		
Net loss	\$ (186,832)	\$ (119,387)
Adjustments to reconcile net loss to cash (used in) provided by operating activities:		
Depreciation and amortization	202,743	204,466
Net amortization of debt premiums, discounts and issuance costs	9,777	5,574
Straight line rental income	(3,804)	(3,029)
Amortization of acquired real estate leases	(5,563)	(5,559)
Loss on early extinguishment of debt	2,410	51
Gain on lease termination	—	(22,896)
Impairment of assets	(174)	106,611
Gain on sale of properties	(30,838)	(2,403)
Gains and losses on equity securities, net	26,943	(14,541)
Other non-cash adjustments, net	(1,183)	(1,662)
Change in assets and liabilities:		
Deferred leasing costs, net	(11,736)	(5,522)
Other assets	(29,227)	(35,417)
Accrued interest	23,462	29,604
Other liabilities	(9,176)	23,089
Net cash (used in) provided by operating activities	(13,198)	158,979
Cash flows from investing activities:		
Real estate acquisitions and deposits	—	(2,526)
Real estate improvements	(126,142)	(118,141)
Proceeds from sale of properties, net	103,257	78,244
Distributions in excess of earnings from Affiliates Insurance Company	—	287
Net cash used in investing activities	(22,885)	(42,136)
Cash flows from financing activities:		
Proceeds from issuance of senior unsecured notes, net	492,500	985,000
Proceeds from borrowings on revolving credit facility	800,000	430,500
Repayments of borrowings on revolving credit facility	—	(968,000)
Repayment of senior unsecured notes	(300,000)	(200,000)
Repayment of term loan	(200,000)	(250,000)
Repayment of other debt	(2,349)	(5,189)
Loss on early extinguishment of debt settled in cash	—	(376)
Payment of debt issuance costs	(9,101)	(5,306)
Repurchase of common shares	(381)	(171)
Distributions to noncontrolling interest	(16,848)	(16,707)
Distributions to shareholders	(7,150)	(40,443)
Net cash provided by (used in) financing activities	756,671	(70,692)
Increase in cash and cash equivalents and restricted cash	720,588	46,151
Cash and cash equivalents and restricted cash at beginning of period	90,849	52,224
Cash and cash equivalents and restricted cash at end of period	\$ 811,437	\$ 98,375

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)
(dollars in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2021	2020
Supplemental cash flow information:		
Interest paid	\$ 160,091	\$ 109,689
Income taxes paid	\$ 1,985	\$ 381
Non-cash investing activities:		
Five Star Senior Living Inc. common stock	\$ —	\$ 97,896
Restructuring transaction additional consideration	\$ —	\$ (75,000)
Real estate improvements accrued, not paid	\$ 15,751	\$ 21,342
Capitalized interest	\$ 1,089	\$ 1,152
Non-cash financing activities:		
Distribution to common shareholders of the right to receive Five Star Senior Living Inc. common stock	\$ —	\$ (59,801)

Supplemental disclosure of cash and cash equivalents and restricted cash:

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within our condensed consolidated balance sheets to the amount shown in our condensed consolidated statements of cash flows:

	As of September 30,	
	2021	2020
Cash and cash equivalents	\$ 794,739	\$ 82,241
Restricted cash ⁽¹⁾	16,698	16,134
Total cash and cash equivalents and restricted cash shown in our condensed consolidated statements of cash flows	<u>\$ 811,437</u>	<u>\$ 98,375</u>

(1) Restricted cash consists of amounts escrowed for real estate taxes, insurance and capital expenditures at certain of our mortgaged properties and cash held for the operations of the life science property that is owned in a joint venture arrangement in which we own a 55% equity interest.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

DIVERSIFIED HEALTHCARE TRUST
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
(dollar amounts in thousands, except per share data or as otherwise stated)

Note 1. Basis of Presentation

The accompanying condensed consolidated financial statements of Diversified Healthcare Trust and its subsidiaries, or we, us, or our, are unaudited. Certain information and disclosures required by U.S. generally accepted accounting principles, or GAAP, for complete financial statements have been condensed or omitted. We believe the disclosures made are adequate to make the information presented not misleading. However, the accompanying condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes contained in our Annual Report on Form 10-K for the year ended December 31, 2020, or our Annual Report.

In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair statement of results for the interim period have been included. All intercompany transactions and balances with or among our consolidated subsidiaries have been eliminated. Operating results for interim periods are not necessarily indicative of the results that may be expected for the full year.

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect reported amounts. Actual results could differ from those estimates. Significant estimates in our condensed consolidated financial statements include purchase price allocations, useful lives of fixed assets and impairments of real estate and intangible assets.

We have been, are currently, and expect in the future to be involved in claims, lawsuits, and regulatory and other governmental audits, investigations and proceedings arising in the ordinary course of our business, some of which may involve material amounts. Also, the defense and resolution of these claims, lawsuits, and regulatory and other governmental audits, investigations and proceedings may require us to incur significant expense. We account for claims and litigation losses in accordance with the Financial Accounting Standards Board, or FASB, Accounting Standards Codification Topic 450, *Contingencies*, or ASC 450. Under ASC 450, loss contingency provisions are recorded for probable and estimable losses at our best estimate of a loss or, when a best estimate cannot be made, at our estimate of the minimum loss. These estimates are often developed prior to knowing the amount of the ultimate loss, require the application of considerable judgment, and are refined as additional information becomes known. Accordingly, we are often initially unable to develop a best estimate of loss and therefore the estimated minimum loss amount, which could be zero, is recorded; and then, as information becomes known, the minimum loss amount is updated, as appropriate. A minimum or best estimate amount may be increased or decreased when events result in a changed expectation.

We are party to a joint venture arrangement with an institutional investor. This joint venture arrangement owns a life science property located in Boston, Massachusetts. The investor owns a 45% equity interest in the joint venture, and we own the remaining 55% equity interest in the joint venture. We have determined that this joint venture is a variable interest entity, or VIE, as defined under the Consolidation Topic of the FASB Accounting Standards Codification. We concluded that we must consolidate this VIE because we are the entity with the power to direct the activities that most significantly impact the VIE's economic performance and we have the obligation to absorb losses of, and the right to receive benefits from, the VIE that could be significant to the VIE, and therefore are the primary beneficiary of the VIE. The assets of this VIE were \$935,340 and \$970,142 as of September 30, 2021 and December 31, 2020, respectively, and consist primarily of the net real estate owned by the joint venture. The liabilities of this VIE were \$690,714 and \$697,129 as of September 30, 2021 and December 31, 2020, respectively, and consist primarily of mortgage debts secured by the property. The investor's interest in this consolidated entity is reflected as a noncontrolling interest in our condensed consolidated financial statements. See Note 6 for further information about this joint venture.

Note 2. Real Estate Properties

As of September 30, 2021, we owned 392 properties located in 36 states and Washington, D.C., including one life science property owned in a joint venture arrangement in which we own a 55% equity interest.

We regularly evaluate our assets for indicators of impairment. Impairment indicators may include declining tenant or resident occupancy, weak or declining profitability from the property, decreasing tenant cash flows or liquidity, our decision to dispose of an asset before the end of its estimated useful life, and legislative, market or industry changes that could permanently reduce the value of an asset. If indicators of impairment are present, we evaluate the carrying value of the affected assets by

DIVERSIFIED HEALTHCARE TRUST
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
(dollar amounts in thousands, except per share data or as otherwise stated)

comparing it to the expected future cash flows to be generated from those assets. The future cash flows are subjective and are based in part on assumptions regarding hold periods, market rents and terminal capitalization rates. If the sum of these expected future cash flows is less than the carrying value, we reduce the net carrying value of the asset to its estimated fair value.

During the nine months ended September 30, 2021, we recorded a reversal of impairment charges of \$174 related to the estimated costs to sell 10 senior living communities that were classified as held for sale as of December 31, 2020 and changed the status of those communities from held for sale to held and used as of March 31, 2021.

Acquisitions and Dispositions:

During the nine months ended September 30, 2021, we sold five properties for an aggregate sales price of \$104,500, excluding closing costs, as presented in the table below. The sales of these properties do not represent significant dispositions, individually or in the aggregate, and we do not believe these sales represent a strategic shift in our business. As a result, the results of operations for these properties are included in continuing operations through the date of sale of such properties in our condensed consolidated statements of comprehensive income (loss).

Date of Sale	Location	Type of Property	Number of Properties	Square Feet	Sales Price ⁽¹⁾	Gain (Loss) on Sale
February 2021	Pennsylvania	Medical Office	1	92,000	\$ 9,000	\$ (122)
April 2021	Florida	Life Science and Medical Office	4	263,656	95,500	30,760
			<u>5</u>		<u>\$ 104,500</u>	<u>\$ 30,638</u>

(1) Sales price excludes closing costs.

During the nine months ended September 30, 2021, we recognized a gain of \$200 related to the sales of skilled nursing bed licenses at certain of our senior living communities.

Note 3. Leases

We are a lessor of medical office and life science properties, senior living communities and other healthcare related properties. Our leases provide our tenants with the contractual right to use and economically benefit from all of the premises demised under the leases; therefore, we have determined to evaluate our leases as lease arrangements.

Certain of our leases provide for base rent payments and in addition may include variable payments. Rental income from operating leases, including any payments derived by index or market based indices, is recognized on a straight line basis over the lease term when we have determined that the collectability of substantially all of the lease payments is probable. Some of our leases have options to extend or terminate the lease exercisable at the option of our tenants, which are considered when determining the lease term.

We increased rental income to record revenue on a straight line basis by \$1,679 and \$491 for the three months ended September 30, 2021 and 2020, respectively, and \$3,804 and \$3,029 for the nine months ended September 30, 2021 and 2020, respectively. Rents receivable, excluding receivables related to our properties classified as held for sale, if any, include \$108,180 and \$104,803 of straight line rent receivables at September 30, 2021 and December 31, 2020, respectively, and are included in other assets, net in our condensed consolidated balance sheets.

We do not include in our measurement of our lease receivables certain variable payments, including changes in the index or market based indices after the inception of the lease, certain tenant reimbursements and other income until the specific events that trigger the variable payments have occurred. Such payments totaled \$17,930 and \$18,501 for the three months ended September 30, 2021 and 2020, respectively, of which tenant reimbursements totaled \$17,875 and \$18,550, respectively, and \$54,634 and \$56,792 for the nine months ended September 30, 2021 and 2020, respectively, of which tenant reimbursements totaled \$54,495 and \$56,742, respectively.

Certain of our tenants requested relief from their obligations to pay rent due to us in response to the current economic conditions resulting from the COVID-19 pandemic. In most cases, these tenants granted deferrals were obligated to pay the deferred rents in 12 equal monthly installments beginning in September 2020. As of September 30, 2021 and December 31, 2020, deferred payments totaling \$84 and \$1,486, respectively, are included in other assets, net in our condensed consolidated

DIVERSIFIED HEALTHCARE TRUST
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
(dollar amounts in thousands, except per share data or as otherwise stated)

balance sheets. These deferred amounts did not negatively impact our operating results for the three or nine months ended September 30, 2021 or 2020.

Right of Use Asset and Lease Liability. For leases where we are the lessee, we recognized a right of use asset and a lease liability equal to the present value of the minimum lease payments with rental payments being applied to the lease liability and the right of use asset being amortized over the term of the lease. The values of the right of use asset and related liability representing our future obligation under the lease arrangement for which we are the lessee were \$4,174 and \$4,366, respectively, as of September 30, 2021, and \$4,237 and \$4,410, respectively, as of December 31, 2020. The right of use asset and related lease liability are included within other assets, net and other liabilities, respectively, within our condensed consolidated balance sheets. In addition, we lease equipment at certain of our managed senior living communities. These leases are short term in nature, are cancelable with no fee or do not result in an annual expense in excess of our capitalization policy and, as a result, are not recorded on our condensed consolidated balance sheets.

Note 4. Indebtedness

Our principal debt obligations at September 30, 2021 were: (1) outstanding borrowings under our \$800,000 revolving credit facility; (2) \$2,850,000 outstanding principal amount of senior unsecured notes; and (3) \$683,008 aggregate principal amount of mortgage notes secured by seven properties, of which \$620,000 is related to the life science property owned by a joint venture arrangement in which we own a 55% equity interest. These seven mortgaged properties had a gross book value of \$948,813 at September 30, 2021. We also had two properties subject to finance leases with lease obligations totaling \$6,937 at September 30, 2021; these two properties had gross book value and accumulated depreciation of \$36,319 and \$18,014, respectively, at September 30, 2021, and \$35,676 and \$17,579, respectively, at December 31, 2020, and the finance leases expire in 2026.

We have a \$800,000 revolving credit facility that is available for general business purposes. As of September 30, 2021, the maturity date of our revolving credit facility was January 2022. In October 2021, we exercised our option to extend the maturity date of our revolving credit facility by one year to January 2023. Subject to the payment of an extension fee and meeting other conditions, we have an additional option to extend the maturity date of the facility by one year to January 2024. Our revolving credit facility provides that we can borrow, repay and re-borrow funds available under our revolving credit facility until maturity, and no principal repayment is due until maturity. As of September 30, 2021, our revolving credit facility required interest to be paid on borrowings at the annual rate of 2.9%, plus a facility fee of 30 basis points per annum on the total amount of lending commitments under the facility.

The weighted average annual interest rates for borrowings under our revolving credit facility were 2.9% and 2.6% for the three months ended September 30, 2021 and 2020, respectively, and 2.9% and 2.2% for the nine months ended September 30, 2021 and 2020, respectively. The interest rate premium and facility fee are each subject to adjustment based upon changes to our credit ratings. On March 31, 2021, we borrowed \$800,000 under our revolving credit facility as a precautionary measure to increase our cash position and preserve financial flexibility in light of continued uncertainties related to the COVID-19 pandemic. As of September 30, 2021 and November 1, 2021, we were fully drawn under our revolving credit facility.

In February 2021, we issued \$500,000 aggregate principal amount of our 4.375% senior notes due 2031 in an underwritten public offering raising net proceeds of \$491,357, after deducting estimated offering expenses and underwriters' discounts. These notes are guaranteed by all of our subsidiaries, except for certain excluded subsidiaries, including pledged subsidiaries under the agreement governing our revolving credit facility, or our credit agreement, and require semi-annual interest payments through maturity. We used the net proceeds from this offering to prepay in full in February 2021 our \$200,000 term loan which was scheduled to mature in September 2022. The weighted average interest rate under our \$200,000 term loan was 2.9% for the period from January 1, 2021 to February 7, 2021 and 2.7% for each of the three and nine months ended September 30, 2020. As a result of the prepayment of our \$200,000 term loan, we recorded a loss on early extinguishment of debt of \$1,477 for the nine months ended September 30, 2021. In June 2021, we used the remaining net proceeds from this offering and cash on hand to redeem all of our outstanding 6.75% senior notes due 2021 for a redemption price equal to the principal amount of \$300,000 plus accrued and unpaid interest of \$10,125, when these notes became redeemable with no prepayment premium. In connection with this redemption, we recorded a loss on early extinguishment of debt of \$370 for the nine months ended September 30, 2021.

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In January 2021, we and our lenders amended the agreements governing our revolving credit facility and our \$200,000 term loan, or collectively, our credit and term loan agreements, in order to provide us with certain flexibility in light of continued uncertainties related to the COVID-19 pandemic. Pursuant to the amendments:

- certain of the financial covenants under our credit and term loan agreements, including covenants that require us to maintain certain financial ratios, have been waived through June 2022, or the Amendment Period;
- the revolving credit facility commitments have been reduced from \$1,000,000 to \$800,000, and as a result of the reduction in commitments, we recorded a loss on early extinguishment of debt of \$563 for the nine months ended September 30, 2021;
- we pledged certain equity interests of subsidiaries owning properties to secure our obligations under our credit and term loan agreements and agreed to provide, and as of September 2021 had provided, first mortgage liens on 61 medical office and life science properties with an aggregate gross book value of real estate assets of \$991,074 as of September 30, 2021 to secure our obligations, which pledges and/or mortgage liens may be removed or new ones may be added during the Amendment Period based on outstanding debt amounts, among other things;
- we had the ability to fund \$250,000 of capital expenditures per year, which increased to \$350,000 per year following the repayment of our term loan in February 2021, and are restricted in our ability to acquire real property as defined in our credit agreement;
- the interest rate premium over LIBOR under our revolving credit facility and term loan increased by 30 basis points;
- certain covenants and restrictions on distributions to common shareholders, share repurchases, capital expenditures, acquiring additional properties and incurring additional indebtedness (in each case subject to various exceptions), and the minimum liquidity requirement of \$200,000 will remain in place during the Amendment Period; and
- we are generally required to apply the net cash proceeds from the disposition of assets, capital markets transactions, and debt financings to the repayment of any amounts outstanding under our revolving credit facility.

In September 2021, we and our lenders further amended our credit agreement. Among other things, the amendment sets forth the mechanics for establishing a replacement benchmark rate under our credit agreement at such time as LIBOR is no longer available to calculate interest payable on amounts outstanding thereunder.

Our credit agreement and our senior unsecured notes indentures and their supplements provide for acceleration of payment of all amounts due thereunder upon the occurrence and continuation of certain events of default, such as, in the case of our credit agreement, a change of control of us, as defined, which includes The RMR Group LLC, or RMR LLC, ceasing to act as our business and property manager. Our credit agreement and our senior unsecured notes indentures and their supplements also contain covenants, including covenants that restrict our ability to incur debts, and generally require us to maintain certain financial ratios, and our credit agreement restricts our ability to make distributions under certain circumstances. As of September 30, 2021, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our revolving credit facility and our public debt covenants as the effects of the COVID-19 pandemic continued to adversely impact our operations. We are not allowed to incur additional debt while this ratio is below 1.5x on a pro forma basis. We believe we were in compliance with the remaining terms and conditions of the respective covenants under our credit agreement and our senior unsecured notes indentures and their supplements at September 30, 2021. Although we have taken steps to enhance our ability to maintain sufficient liquidity, as noted elsewhere in this Quarterly Report on Form 10-Q, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from the COVID-19 pandemic may cause increased pressure on our ability to satisfy financial and other covenants. Continued availability of borrowings under our revolving credit facility is subject to our satisfying certain financial covenants and other credit facility conditions. If our operating results and financial condition are significantly negatively impacted by economic conditions or otherwise, we may fail to satisfy covenants and conditions under our credit agreement or fail to satisfy our public debt covenants.

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Note 5. Fair Value of Assets and Liabilities

The following table presents certain of our assets that are measured at fair value at September 30, 2021, categorized by the level of inputs as defined in the fair value hierarchy under GAAP, used in the valuation of each asset.

Description	Total	Fair Value at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<i>Recurring Fair Value Measurements Assets:</i>				
Investment in Five Star ⁽¹⁾	\$ 46.829	\$ 46.829	\$ —	\$ —

- (1) Our 10,691,658 shares of common stock of Five Star Senior Living Inc., or Five Star, are included in other assets, net in our condensed consolidated balance sheets, and are reported at fair value, which is based upon quoted market prices on The Nasdaq Stock Market LLC, or Nasdaq, (Level 1 inputs). Our adjusted cost basis for these shares was \$44,448 as of September 30, 2021. During the three months ended September 30, 2021 and 2020, we recorded an unrealized loss of \$14,755 and an unrealized gain of \$12,510, respectively, and during the nine months ended September 30, 2021 and 2020, we recorded an unrealized loss of \$26,943 and an unrealized gain of \$14,541, respectively, which are included in gains and losses on equity securities, net in our condensed consolidated statements of comprehensive income (loss), to adjust the carrying value of our investment in Five Star common shares to their fair value. See Note 11 for further information about our investment in Five Star.

In addition to the assets described in the table above, our financial instruments at September 30, 2021 and December 31, 2020 included cash and cash equivalents, restricted cash, other assets, our revolving credit facility, term loan, senior unsecured notes, secured debt and finance leases and other unsecured obligations and liabilities. The fair values of these financial instruments approximated their carrying values in our condensed consolidated financial statements as of such dates, except as follows:

Description	As of September 30, 2021		As of December 31, 2020	
	Carrying Amount ⁽¹⁾	Estimated Fair Value	Carrying Amount ⁽¹⁾	Estimated Fair Value
Senior unsecured notes, 6.750% coupon rate, due 2021	\$ —	\$ —	\$ 299,273	\$ 303,8
Senior unsecured notes, 4.750% coupon rate, due 2024	249,278	258,096	249,068	256,2
Senior unsecured notes, 9.750% coupon rate, due 2025	987,017	1,094,415	984,359	1,135,8
Senior unsecured notes, 4.750% coupon rate, due 2028	491,881	505,630	490,925	502,6
Senior unsecured notes, 4.375% coupon rate, due 2031	491,913	485,743	—	—
Senior unsecured notes, 5.625% coupon rate, due 2042	342,088	337,540	341,802	330,1
Senior unsecured notes, 6.250% coupon rate, due 2046	242,977	250,300	242,762	245,0
Secured debts ^{(2) (3)}	689,044	707,026	691,573	716,1
	<u>\$ 3,494,198</u>	<u>\$ 3,638,750</u>	<u>\$ 3,299,762</u>	<u>\$ 3,489,9</u>

- (1) Includes unamortized net debt issuance costs, premiums and discounts.
- (2) We assumed certain of these secured debts in connection with our acquisition of certain properties. We recorded the assumed mortgage notes at estimated fair value on the date of acquisition and we are amortizing the fair value adjustments, if any, to interest expense over the respective terms of the mortgage notes to adjust interest expense to the estimated market interest rates as of the date of acquisition.
- (3) Includes secured debts for the life science property owned by a joint venture arrangement in which we own a 55% equity interest. The amounts listed in the table for these debts have not been adjusted to reflect the equity interests in the joint venture that we do not own.

We estimated the fair value of our two issuances of senior unsecured notes due 2042 and 2046 based on the closing price on Nasdaq (Level 1 input) as of September 30, 2021. We estimated the fair values of our four issuances of senior unsecured notes due 2024, 2025, 2028 and 2031 using an average of the bid and ask price on Nasdaq on or about September 30, 2021.

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(Level 2 inputs as defined in the fair value hierarchy under GAAP). We estimated the fair values of our secured debts by using discounted cash flows analyses and currently prevailing market terms as of the measurement date (Level 3 inputs as defined in the fair value hierarchy under GAAP). Because Level 3 inputs are unobservable, our estimated fair values may differ materially from the actual fair values.

Note 6. Noncontrolling Interest

We are party to a joint venture arrangement with an institutional investor for one of our life science properties located in Boston, Massachusetts. The investor owns a 45% equity interest in the joint venture, and we own the remaining 55% equity interest in the joint venture. We continue to control this property and therefore continue to account for this property on a consolidated basis in our condensed consolidated financial statements under the VIE model. The portion of the joint venture's net income and comprehensive income not attributable to us, or \$1,339 and \$1,100 for the three months ended September 30, 2021 and 2020, respectively, and \$4,238 and \$3,838 for the nine months ended September 30, 2021 and 2020, respectively, is reported as a noncontrolling interest in our condensed consolidated statements of comprehensive income (loss). The joint venture made aggregate cash distributions to the other joint venture investor of \$5,524 and \$5,324 for the three months ended September 30, 2021 and 2020, respectively, and \$16,848 and \$16,707 for the nine months ended September 30, 2021 and 2020, respectively, which are reflected as a decrease in total equity attributable to noncontrolling interest in our condensed consolidated balance sheets. As of September 30, 2021, this joint venture held real estate assets with an aggregate net book value of \$690,382, subject to mortgage notes of \$620,000.

In assessing whether we have a controlling interest in this joint venture arrangement and are required to consolidate the accounts of the joint venture entity, we considered the members' rights to residual gains and obligations to absorb losses, which activities most significantly impact the economic performance of the entity and which member has the power to direct those activities.

Note 7. Shareholders' Equity

Common Share Awards:

On June 3, 2021, in accordance with our Trustee compensation arrangements, we awarded to each of our six Trustees 20,000 of our common shares, valued at \$3.70 per share, the closing price of our common shares on Nasdaq on that day.

On September 15, 2021, we awarded under our equity compensation plan an aggregate of 718,000 of our common shares, valued at \$3.41 per share, the closing price of our common shares on Nasdaq on that day, to our officers and certain other employees of RMR LLC.

Common Share Repurchases:

During the three and nine months ended September 30, 2021, we purchased an aggregate of 94,937 and 108,843 of our common shares, respectively, valued at a weighted average share price of \$3.39 and \$3.49 per share, respectively, from our officers and certain current and former officers and employees of RMR LLC in satisfaction of tax withholding and payment obligations in connection with the vesting of awards of our common shares.

Distributions:

During the nine months ended September 30, 2021, we declared and paid quarterly distributions to common shareholders as follows:

Declaration Date	Record Date	Payment Date	Distribution Per Share	Total Distributions
January 14, 2021	January 25, 2021	February 18, 2021	\$ 0.01	\$ 2,383
April 15, 2021	April 26, 2021	May 20, 2021	0.01	2,383
July 15, 2021	July 26, 2021	August 19, 2021	0.01	2,384
			<u>\$ 0.03</u>	<u>\$ 7,150</u>

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On October 14, 2021, we declared a quarterly distribution to common shareholders of record on October 25, 2021 of \$0.01 per share, or approximately \$2,390 in aggregate. We expect to pay this distribution on or about November 18, 2021.

Note 8. Segment Reporting

We operate in, and report financial information for, the following two segments: Office Portfolio and senior housing operating portfolio, or SHOP. We aggregate each of these two reporting segments based on their similar operating and economic characteristics. Our Office Portfolio segment consists of medical office properties leased to medical providers and other medical related businesses, as well as life science properties leased to biotech laboratories and other similar tenants. Our SHOP segment consists of managed senior living communities that provide short term and long term residential living and in some instances care and other services for residents where we pay fees to managers to operate the communities.

We also report “non-segment” operations, which consists of triple net leased senior living communities that are leased to operators from which we receive rents, and wellness centers, which we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.

	For the Three Months Ended September 30, 2021			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 91,520	\$ —	\$ 9,883	\$ 101,403
Residents fees and services	—	236,013	—	236,013
Total revenues	91,520	236,013	9,883	337,416
Expenses:				
Property operating expenses	32,386	233,687	—	266,073
Depreciation and amortization	32,142	33,688	2,872	68,702
General and administrative	—	—	8,870	8,870
Acquisition and certain other transaction related costs	—	—	3,108	3,108
Total expenses	64,528	267,375	14,850	346,753
Gain on sale of properties	—	200	—	200
Losses on equity securities, net	—	—	(14,755)	(14,755)
Interest and other income	—	786	190	976
Interest expense	(6,053)	(523)	(57,917)	(64,493)
Income (loss) from continuing operations before income tax expense	20,939	(30,899)	(77,449)	(87,409)
Income tax expense	—	—	(595)	(595)
Net income (loss)	20,939	(30,899)	(78,044)	(88,004)
Net income attributable to noncontrolling interest	(1,339)	—	—	(1,339)
Net income (loss) attributable to common shareholders	\$ 19,600	\$ (30,899)	\$ (78,044)	\$ (89,343)

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	For the Nine Months Ended September 30, 2021			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 277,647	\$ —	\$ 28,908	\$ 306,555
Residents fees and services	—	739,926	—	739,926
Total revenues	277,647	739,926	28,908	1,046,481
Expenses:				
Property operating expenses	95,000	723,096	—	818,096
Depreciation and amortization	96,577	97,587	8,579	202,743
General and administrative	—	—	25,538	25,538
Acquisition and certain other transaction related costs	—	—	15,179	15,179
Impairment of assets	—	(174)	—	(174)
Total expenses	191,577	820,509	49,296	1,061,382
Gain on sale of properties	30,638	200	—	30,838
Losses on equity securities, net	—	—	(26,943)	(26,943)
Interest and other income	—	18,967	882	19,849
Interest expense	(17,984)	(1,576)	(172,681)	(192,241)
Loss on early extinguishment of debt	—	—	(2,410)	(2,410)
Income (loss) from continuing operations before income tax expense	98,724	(62,992)	(221,540)	(185,808)
Income tax expense	—	—	(1,024)	(1,024)
Net income (loss)	98,724	(62,992)	(222,564)	(186,832)
Net income attributable to noncontrolling interest	(4,238)	—	—	(4,238)
Net income (loss) attributable to common shareholders	\$ 94,486	\$ (62,992)	\$ (222,564)	\$ (191,070)

Under the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, the U.S. Department of Health and Human Services, or HHS, established a Provider Relief Fund. Retention and use of the funds received under the CARES Act are subject to certain terms and conditions. The terms and conditions require that the funds be utilized to compensate for lost revenues that are attributable to the COVID-19 pandemic and for eligible costs to prevent, prepare for and respond to the COVID-19 pandemic that are not covered by other sources. Further, fund recipients are required to be participating in Medicare at the time of distribution and are subject to certain other terms and conditions, including quarterly reporting requirements. In addition, fund recipients are required to have billed Medicare during 2019 and to continue to provide care after January 31, 2020 for diagnosis, testing or care for individuals with possible or actual COVID-19 cases. Any funds not used in accordance with the terms and conditions must be returned to HHS. We have recognized \$18,967 and \$7,346 as other income with respect to our SHOP segment for the nine months ended September 30, 2021 and 2020, respectively. We have applied for additional funds that may be available under the CARES Act Provider Relief Fund; however, we may not receive any additional funding.

	As of September 30, 2021			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 2,990,711	\$ 2,948,995	\$ 1,126,342	\$ 7,066,048

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	For the Three Months Ended September 30, 2020			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 94,235	\$ —	\$ 10,003	\$ 104,238
Residents fees and services	—	290,101	—	290,101
Total revenues	94,235	290,101	10,003	394,339
Expenses:				
Property operating expenses	33,448	282,202	—	315,650
Depreciation and amortization	32,816	31,570	2,825	67,211
General and administrative	—	—	6,988	6,988
Acquisition and certain other transaction related costs	—	—	53	53
Impairment of assets	1,334	62,868	—	64,202
Total expenses	67,598	376,640	9,866	454,104
Loss on sale of properties	(169)	(42)	—	(211)
Gains on equity securities, net	—	—	12,510	12,510
Interest and other income	—	—	134	134
Interest expense	(6,068)	(552)	(51,471)	(58,091)
Income (loss) from continuing operations before income tax expense	20,400	(87,133)	(38,690)	(105,423)
Income tax expense	—	—	(365)	(365)
Net income (loss)	20,400	(87,133)	(39,055)	(105,788)
Net income attributable to noncontrolling interest	(1,100)	—	—	(1,100)
Net income (loss) attributable to common shareholders	\$ 19,300	\$ (87,133)	\$ (39,055)	\$ (106,888)

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	For the Nine Months Ended September 30, 2020			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Revenues:				
Rental income	\$ 288,515	\$ —	\$ 32,428	\$ 320,943
Residents fees and services	—	926,174	—	926,174
Total revenues	288,515	926,174	32,428	1,247,117
Expenses:				
Property operating expenses	97,047	837,103	—	934,150
Depreciation and amortization	97,213	98,385	8,868	204,466
General and administrative	—	—	23,132	23,132
Acquisition and certain other transaction related costs	—	—	803	803
Impairment of assets	8,090	98,521	—	106,611
Total expenses	202,350	1,034,009	32,803	1,269,162
Gain (loss) on sale of properties	2,613	(210)	—	2,403
Gains on equity securities, net	—	—	14,541	14,541
Interest and other income	—	7,346	662	8,008
Interest expense	(18,140)	(1,676)	(123,899)	(143,715)
Gain on lease termination	—	—	22,896	22,896
Loss on early extinguishment of debt	(401)	—	(26)	(427)
Income (loss) from continuing operations before income tax expense	70,237	(102,375)	(86,201)	(118,339)
Income tax expense	—	—	(1,048)	(1,048)
Net income (loss)	70,237	(102,375)	(87,249)	(119,387)
Net income attributable to noncontrolling interest	(3,838)	—	—	(3,838)
Net income (loss) attributable to common shareholders	\$ 66,399	\$ (102,375)	\$ (87,249)	\$ (123,225)

	As of December 31, 2020			
	Office Portfolio	SHOP	Non-Segment	Consolidated
Total assets	\$ 3,092,289	\$ 2,912,570	\$ 471,565	\$ 6,476,424

Note 9. Leases and Management Agreements with Five Star

2020 Restructuring of our Business Arrangements with Five Star. Effective as of January 1, 2020:

- our previously existing master leases with Five Star for all of our senior living communities that Five Star leased, as well as our previously existing management agreements and pooling agreements with Five Star for our senior living communities that Five Star managed, were terminated and replaced with new management agreements and a related omnibus agreement. These new management and omnibus agreements were subsequently replaced in June 2021, as described below;
- Five Star issued to us 10,268,158 Five Star common shares and an aggregate of 16,118,849 Five Star common shares to our shareholders of record as of December 13, 2019;
- as consideration for these share issuances, we provided Five Star with \$75,000 of additional consideration by assuming certain of Five Star's working capital liabilities and through cash payments, resulting in a gain on lease termination of

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\$22,896 for the nine months ended September 30, 2020 in our condensed consolidated statements of comprehensive income (loss); and

- pursuant to a guaranty agreement dated as of January 1, 2020 made by Five Star in favor of our applicable subsidiaries, Five Star has guaranteed the payment and performance of each of its applicable subsidiary's obligations under our applicable management agreements with Five Star.

Effective January 1, 2020, we determined that Five Star was not a VIE and we continue to account for our 33.7% investment in Five Star using the equity method of accounting because we are deemed to exert significant influence, but not control, over Five Star's most significant activities. We have elected to use the fair value option to account for our investment in Five Star.

2021 Amendments to our Management Arrangements with Five Star. On June 9, 2021, we and Five Star amended our management arrangements. The principal changes to the management arrangements include:

- that Five Star is cooperating with us in transitioning 108 of our senior living communities with approximately 7,500 living units to other third party managers without our payment of any termination fee to Five Star;
- that we no longer have the right to sell up to an additional \$682,000 of senior living communities currently managed by Five Star and terminate Five Star's management of those communities without our payment of a fee to Five Star upon sale;
- that Five Star is continuing to manage 120 of our senior living communities with approximately 18,000 living units, and that the skilled nursing units in all of our continuing care retirement communities that Five Star is continuing to manage, which then included approximately 1,500 living units, have been closed and are in the process of being evaluated and repositioned;
- that beginning in 2025, we will have the right to terminate up to 10% of the senior living communities that Five Star is continuing to manage, based on total revenues per year for failure to meet 80% of a target earnings before interest, taxes, depreciation and amortization, or EBITDA, for the applicable period;
- that the incentive fee that Five Star may earn in any calendar year for the senior living communities that Five Star is continuing to manage is no longer subject to a cap and that any senior living communities that are undergoing a major renovation or repositioning are excluded from the calculation of the incentive fee;
- that RMR LLC will oversee any major renovation or repositioning activities at the senior living communities that Five Star is continuing to manage; and
- that the term of our management agreements with Five Star for our senior living communities that Five Star is continuing to manage was extended by two years to December 31, 2036.

Pursuant to these changes, we and Five Star entered into an amended and restated master management agreement, or the Master Management Agreement, for the senior living communities that Five Star is continuing to manage and interim management agreements for the senior living communities that we and Five Star agreed to transition to new operators. These agreements replaced our prior management and omnibus agreements with Five Star. In addition, Five Star delivered to us a related amended and restated guaranty agreement pursuant to which Five Star is continuing to guarantee the payment and performance of each of its applicable subsidiary's obligations under the applicable management agreements.

As of September 30, 2021, we transitioned 69 of the 108 senior living communities containing 4,755 living units to new third party managers. From September 30, 2021 to November 3, 2021, we completed the transition of 30 senior living communities containing 1,845 living units to new third party managers. As of November 3, 2021, we have entered into agreements to transition eight of the remaining nine senior living communities to be transitioned containing 819 living units to new third party managers. We expect to complete the transition of 107 senior living communities from Five Star by December 31, 2021 and we currently intend to close the remaining senior living community that we and Five Star agreed to transition and are assessing opportunities to redevelop that community. We lease our senior living communities that have been transitioned to new managers to our taxable REIT subsidiaries, or TRSs. We have incurred and expect to continue to incur costs related to

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(dollar amounts in thousands, except per share data or as otherwise stated)

retention and other transition costs for these communities. For the three and nine months ended September 30, 2021, we recorded \$3,123 and \$15,037, respectively, of these costs to acquisition and certain other transaction related costs in our condensed consolidated statements of comprehensive income (loss).

Pursuant to the terms of the management agreements with the new third party managers, the terms are generally as follows: the new third party managers will receive a management fee equal to 5% to 6% of the gross revenues realized at the applicable senior living communities plus reimbursement for direct costs and expenses related to such communities. These agreements generally also provide for the new third party managers to earn a minimum base fee for a portion of the term of the agreement. Additionally, the new third party managers have the ability to earn incentive fees equal to 15% to 25% of the amount by which EBITDA of the communities exceeds the target EBITDA. The new third party managers can also earn a construction supervision fee ranging between 3% and 5% of construction costs.

The initial terms of the management agreements with the new third party managers are generally five years, subject to automatic extensions of successive terms of two years each unless earlier terminated or timely notice of nonrenewal is delivered. The management agreements with the new third party managers also generally provide us with the right to terminate the management agreements for communities that do not earn 70% to 80% of the target EBITDA for such communities, after an agreed upon stabilized period.

Our Senior Living Communities Managed by Five Star. Five Star managed 159 and 239 of our senior living communities as of September 30, 2021 and 2020, respectively. We lease our senior living communities that are managed by Five Star to our TRSs.

We incurred management fees payable to Five Star of \$11,220 and \$15,182 for the three months ended September 30, 2021 and 2020, respectively, and \$37,997 and \$47,937 for the nine months ended September 30, 2021 and 2020, respectively. For the three months ended September 30, 2021 and 2020, \$10,518 and \$14,609, respectively, of the total management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$702 and \$573, respectively, were capitalized in our condensed consolidated balance sheets. For the nine months ended September 30, 2021 and 2020, \$35,746 and \$46,458, respectively, of the total management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$2,251 and \$1,479, respectively, were capitalized in our condensed consolidated balance sheets. The amounts capitalized are being depreciated over the estimated useful lives of the related capital assets.

We incurred fees of \$1,508 and \$5,972 for the three months ended September 30, 2021 and 2020, respectively, and \$9,579 and \$19,843 for the nine months ended September 30, 2021 and 2020, respectively, with respect to rehabilitation services Five Star provided at senior living communities that are payable by us. These amounts are included in property operating expenses in our condensed consolidated statements of comprehensive income (loss).

As a result of routine monitoring protocols that are a part of Five Star's compliance program activities related to Medicare billing, Five Star discovered potentially inadequate documentation at one of our senior living communities that Five Star manages. This monitoring was not initiated in response to any specific complaint or allegation but rather was of the type that Five Star periodically undertakes to test its compliance with applicable Medicare billing rules. We and Five Star voluntarily disclosed this matter to the United States Department of Health and Human Services, Office of the Inspector General, or the OIG, pursuant to the OIG's Provider Self-Disclosure Protocol. In January 2021, we and Five Star settled this matter with the OIG and we agreed to pay approximately \$5,763 in exchange for a customary release, but we and Five Star did not admit any liability. We recognized that amount in our consolidated statement of comprehensive income (loss) during the year ended December 31, 2020 and paid that amount to the OIG in January 2021. Five Star refunded to us approximately \$115 of management fees it previously received relating to the Medicare payments we refunded to the OIG.

Since January 1, 2020, we sold certain senior living communities that were then managed by Five Star. We and Five Star terminated our management agreements for these senior living communities in connection with these sales. See Note 3 to the consolidated financial statements contained in our Annual Report for further information regarding these sales.

We lease to Five Star space at certain of our senior living communities, which it uses to provide certain outpatient rehabilitation and wellness services. We recorded \$399 and \$393 for the three months ended September 30, 2021 and 2020, respectively, and \$1,194 and \$1,175 for the nine months ended September 30, 2021 and 2020, respectively, with respect to these leases.

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(dollar amounts in thousands, except per share data or as otherwise stated)

The following table presents residents fees and services revenue from our managed senior living communities disaggregated by type of contract and payer:

Revenue from contracts with customers:	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Basic housing and support services	\$ 188,381	\$ 208,941	\$ 564,579	\$ 659,240
Medicare and Medicaid programs	18,948	38,882	79,803	131,460
Private pay and other third party payer SNF services	28,684	42,278	95,544	135,474
Total residents fees and services	\$ 236,013	\$ 290,101	\$ 739,926	\$ 926,174

Note 10. Business and Property Management Agreements with RMR LLC

We have no employees. The personnel and various services we require to operate our business are provided to us by RMR LLC. We have two agreements with RMR LLC to provide management services to us: (1) a business management agreement, which relates to our business generally; and (2) a property management agreement, which relates to the property level operations of our medical office and life science properties and major renovation or repositioning activities at our senior living communities. We also have a subsidiary level management agreement with RMR LLC related to the life science property located in Boston, Massachusetts, which we entered in connection with the joint venture arrangement for that life science property. Under that agreement, our subsidiary pays RMR LLC certain management fees directly, which fees are credited against the business management fees payable by us to RMR LLC. See Note 11 for further information regarding our relationship, agreements and transactions with RMR LLC.

We recognized net business management fees of \$5,986 and \$5,004 for the three months ended September 30, 2021 and 2020, respectively, and \$17,627 and \$15,614 for the nine months ended September 30, 2021 and 2020, respectively. The net business management fees we recognized include \$725 and \$2,175 of management fees related to our subsidiary level management agreement with RMR LLC entered in connection with our joint venture arrangement for the three and nine months ended September 30, 2021 and 2020, respectively. Based on our common share total return, as defined in our business management agreement, as of each of September 30, 2021 and 2020, no estimated incentive fees are included in the net business management fees we recognized for the three or nine months ended September 30, 2021 or 2020. The actual amount of annual incentive fees for 2021, if any, will be based on our common share total return as defined in our business management agreement, for the three-year period ending December 31, 2021, and will be payable in January 2022. We did not incur any incentive fee payable for the year ended December 31, 2020. We recognize business management and incentive fees in general and administrative expenses in our condensed consolidated statements of comprehensive income (loss).

We and RMR LLC amended our business management agreement effective August 1, 2021 to replace the benchmark index used in the calculation of incentive management fees. Pursuant to the amendment, for periods beginning on and after August 1, 2021, the MSCI U.S. REIT/Health Care REIT Index will replace the discontinued SNL U.S. REIT Healthcare Index and be used to calculate benchmark returns per share for purposes of determining any incentive management fee payable by us to RMR LLC. For periods prior to August 1, 2021, the SNL U.S. REIT Healthcare Index will continue to be used. Accordingly, the calculation of incentive management fees for the next three measurement periods will continue to use the SNL U.S. REIT Healthcare Index in calculating the benchmark returns for periods through July 31, 2021. This change of index was due to S&P Global ceasing to publish the SNL U.S. REIT Healthcare Index.

We recognized aggregate net property management and construction supervision fees of \$2,931 and \$3,477 for the three months ended September 30, 2021 and 2020, respectively. Of those amounts, for the three months ended September 30, 2021 and 2020, \$2,410 and \$2,496, respectively, of property management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$521 and \$981, respectively, were capitalized as building improvements in our condensed consolidated balance sheets. We recognized aggregate net property management and construction supervision fees of \$9,276 and \$10,076 for the nine months ended September 30, 2021 and 2020, respectively. Of those amounts, for the nine months ended September 30, 2021 and 2020, \$7,360 and \$7,573, respectively, of property management fees were expensed to property operating expenses in our condensed consolidated statements of comprehensive income (loss) and \$1,916 and \$2,503, respectively, were capitalized as building improvements in our condensed consolidated balance sheets. The amounts capitalized are being depreciated over the estimated useful lives of the related capital assets.

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We are generally responsible for all our operating expenses, including certain expenses incurred or arranged by RMR LLC on our behalf. We are generally not responsible for payment of RMR LLC's employment, office or administrative expenses incurred to provide management services to us, except for the employment and related expenses of RMR LLC's employees assigned to work exclusively or partly at our properties, our share of the wages, benefits and other related costs of RMR LLC's centralized accounting personnel, our share of RMR LLC's costs for providing our internal audit function, or as otherwise agreed. Our property level operating expenses are generally incorporated into the rents charged to our tenants, including certain payroll and related costs incurred by RMR LLC. We reimbursed RMR LLC \$3,121 and \$3,571 for these expenses and costs for the three months ended September 30, 2021 and 2020, respectively, and \$9,620 and \$10,433 for the nine months ended September 30, 2021 and 2020, respectively. These amounts are included in property operating expenses and general and administrative expenses, as applicable, in our condensed consolidated statements of comprehensive income (loss).

On June 9, 2021, we and RMR LLC amended our property management agreement to, among other things, provide for RMR LLC's oversight of any major capital projects and repositionings at our senior living communities, including our senior living communities which Five Star is continuing to manage, and that RMR LLC will receive the same fee previously paid to Five Star for such services, which is equal to 3% of the cost of any such major capital project or repositioning.

Note 11. Related Person Transactions

We have relationships and historical and continuing transactions with RMR LLC, The RMR Group Inc., or RMR Inc., Five Star and others related to them, including other companies to which RMR LLC or its subsidiaries provide management services and some of which have trustees, directors or officers who are also our Trustees or officers. RMR Inc. is the managing member of RMR LLC. The Chair of our Board and one of our Managing Trustees, Adam D. Portnoy, is the sole trustee, an officer and the controlling shareholder of ABP Trust, which is the controlling shareholder of RMR Inc., a managing director and the president and chief executive officer of RMR Inc., an officer and employee of RMR LLC and the chair of the board of directors and a managing director of Five Star. Jennifer F. Francis, our other Managing Trustee and our President and Chief Executive Officer is an executive vice president of RMR Inc. and she and our Chief Financial Officer and Treasurer are also employees and officers of RMR LLC. Jennifer B. Clark, our Secretary and former Managing Trustee, also serves as a managing director and the executive vice president, general counsel and secretary of RMR Inc., an officer and employee of RMR LLC, an officer of ABP Trust and a managing director and the secretary of Five Star. Certain of Five Star's officers are officers and employees of RMR LLC. Some of our Independent Trustees also serve as independent trustees or independent directors of other public companies to which RMR LLC or its subsidiaries provide management services. Adam Portnoy serves as the chair of the boards of trustees or boards of directors and as a managing trustee or managing director of those companies. Other officers of RMR LLC, including Ms. Clark and certain of our officers, serve as managing trustees, managing directors or officers of certain of these companies. In addition, officers of RMR LLC and RMR Inc. serve as our officers and officers of other companies to which RMR LLC or its subsidiaries provide management services.

See Note 7 for information relating to the annual share awards we made in September 2021 to our officers and certain other employees of RMR LLC and common shares we purchased from our officers and certain current and former officers and employees of RMR LLC in satisfaction of tax withholding and payment obligations in connection with the vesting of awards of our common shares to them. We include amounts recognized as expense for share awards to RMR LLC employees in general and administrative expenses in our condensed consolidated statements of comprehensive income (loss).

Five Star. We are currently Five Star's largest stockholder. As of September 30, 2021, we owned 10,691,658 Five Star common shares, or approximately 33.7% of Five Star's outstanding common shares. Five Star manages certain of the senior living communities we own. RMR LLC provides management services to both us and Five Star. See Note 9 for further information regarding our relationships, agreements and transactions with Five Star and Note 5 for further information regarding our investment in Five Star.

As of September 30, 2021, ABP Acquisition LLC, a subsidiary of ABP Trust, the controlling shareholder of RMR Inc., together with ABP Trust, owned approximately 6.4% of Five Star's outstanding common shares.

Our Manager, RMR LLC. We have two agreements with RMR LLC to provide management services to us. See Note 10 for further information regarding our management agreements with RMR LLC.

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(dollar amounts in thousands, except per share data or as otherwise stated)

For further information about these and other such relationships and certain other related person transactions, see our Annual Report.

Note 12. Income Taxes

We have elected to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, and, as such, are generally not subject to federal and most state income taxation on our operating income provided we distribute our taxable income to our shareholders and meet certain organization and operating requirements. We do, however, lease our managed senior living communities to our wholly owned TRSs that, unlike most of our subsidiaries, file a separate consolidated federal corporate income tax return and are subject to federal and state income taxes. Our consolidated income tax provision includes the income tax provision related to the operations of our TRSs and certain state income taxes we incur despite our taxation as a REIT. During the three months ended September 30, 2021 and 2020, we recognized income tax expense of \$595 and \$365, respectively, and during the nine months ended September 30, 2021 and 2020, we recognized income tax expense of \$1,024 and \$1,048, respectively.

Note 13. Weighted Average Common Shares (share amounts in thousands)

We calculate basic earnings per common share by dividing net income (loss) by the weighted average number of our common shares outstanding during the period. We calculate diluted earnings per share using the more dilutive of the two class method or the treasury stock method. Unvested share awards and other potentially dilutive common shares, and the related impact on earnings, are considered when calculating diluted earnings per share. For the three months ended September 30, 2021 and 2020, 39 and 237 unvested common shares, respectively, and for the nine months ended September 30, 2021 and 2020, 25 and 235 unvested common shares, respectively, were not included in the calculation of diluted earnings per share because to do so would have been antidilutive.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with our condensed consolidated financial statements and notes thereto included in this Quarterly Report on Form 10-Q and with our Annual Report.

OVERVIEW

We are a REIT that was organized under Maryland law and which owns medical office and life science properties, senior living communities and other healthcare related properties throughout the United States. As of September 30, 2021, we owned 392 properties located in 36 states and Washington, D.C., including one life science property owned in a joint venture arrangement in which we own a 55% equity interest. At September 30, 2021, the gross book value of our real estate assets at cost plus certain acquisition costs, before depreciation and purchase price allocations and less impairment write downs, was \$8.2 billion.

Our business is focused on healthcare related properties, including medical office and life science properties, senior living communities, wellness centers and other medical and healthcare related properties. We believe that the healthcare sector and many of our tenants, managers and operators provide essential services across the United States. Due to restrictions intended to prevent the spread of the virus that causes COVID-19, certain of our medical office and wellness center tenants, which include physician practices that had discontinued non-essential surgeries and procedures and fitness centers, that had been ordered closed by state executive orders experienced disruptions to their businesses. Our senior living community operators also experienced disruptions, including limitations on in-person tours and new admissions, and experienced challenges in attracting new residents to their communities in addition to experiencing increased expenses due to increased labor costs, including higher health benefits costs, and increased costs and consumption of supplies, including personal protective equipment. There will be lasting impacts of the COVID-19 pandemic, even as states and municipalities have eased and may further ease restrictions. Our tenants and their businesses may become increasingly negatively impacted, which may result in our tenants seeking assistance from us regarding their rent obligations owed to us, their being unable or unwilling to pay us rent, their ceasing to pay us rent and their ceasing to continue as going concerns.

We are closely monitoring the impacts of the COVID-19 pandemic on all aspects of our business, including, but not limited to, labor availability and cost pressures from supply chain disruptions and commodity price inflation in our SHOP segment.

With respect to our SHOP segment, we expect that our senior living community managers will be operating our communities at lower average occupancy with higher operating expenses per resident as a result of the COVID-19 pandemic, which will likely lead to decreased returns to us. Our managers continue to follow federal, state and local health department guidelines and their own infection prevention protocols but we expect to see additional cases of COVID-19 in our senior living communities.

Throughout the first quarter of 2021, Five Star coordinated multiple COVID-19 vaccination clinics at all senior living communities in our SHOP segment for residents and staff. As previously disclosed, all of the communities in our SHOP segment have completed vaccination clinics and are accepting new residents. On September 13, 2021, Five Star reported full compliance with its previously announced requirement that all of its team members at our communities managed by Five Star be fully vaccinated.

We also believe that we and our managers, operators and impacted tenants have and may continue to benefit from provisions of the CARES Act, signed into law in March 2020 and further supplemented by the Consolidated Appropriations Act, 2021, or other federal or state relief programs allowing them to continue or resume business activity. During the nine months ended September 30, 2021, we recognized \$19.0 million in interest and other income in our condensed consolidated statement of comprehensive income (loss) related to funds received under the CARES Act.

We believe that we are well positioned to weather the present disruptions facing the real estate industry and, in particular, the real estate healthcare industry, including senior living. In the first quarter of 2021, following the holiday season, the reopening of economies and the easing of restrictions, the United States experienced peak numbers of COVID-19 infections. In some cases, certain states and municipalities again required the closure of certain business activities and imposed certain other restrictions. It is unclear whether the number of COVID-19 infections will further increase or amplify in the United States or elsewhere and, if so, what the impact of that would be on human health and safety, the economy, or our managers', operators' and tenants' businesses. As a result of these uncertainties, we are unable to determine what the ultimate impacts will be on our, our tenants', our managers', our operators' and other stakeholders' businesses, operations, financial results and financial position. For further information and risks relating to the COVID-19 pandemic and its aftermath on us and our business, see Part I, Item 1, "Business—COVID-19 Pandemic" and Part I, Item 1A, "Risk Factors" in our Annual Report.

2021 Amendments to our Management Arrangements with Five Star

On June 9, 2021, we and Five Star amended our management arrangements. The principal changes to the management arrangements include:

- that Five Star is cooperating with us in transitioning 108 of our senior living communities with approximately 7,500 living units to other third party managers without our payment of any termination fee to Five Star;
- that we no longer have the right to sell up to an additional \$682 million of senior living communities currently managed by Five Star and terminate Five Star's management of those communities without our payment of a fee to Five Star upon sale;
- that Five Star is continuing to manage 120 of our senior living communities with approximately 18,000 living units, and that the skilled nursing units in all of our continuing care retirement communities that Five Star is continuing to manage, which then included approximately 1,500 living units, have been closed and are in the process of being evaluated and repositioned;
- that beginning in 2025, we will have the right to terminate up to 10% of the senior living communities that Five Star is continuing to manage, based on total revenues per year for failure to meet 80% of a target EBITDA for the applicable period;
- that the incentive fee that Five Star may earn in any calendar year for the senior living communities that Five Star is continuing to manage is no longer subject to a cap and that any senior living communities that are undergoing a major renovation or repositioning are excluded from the calculation of the incentive fee;
- that RMR LLC will oversee any major renovation or repositioning activities at the senior living communities that Five Star is continuing to manage; and
- that the term of our management agreements with Five Star for our senior living communities that Five Star is continuing to manage was extended by two years to December 31, 2036.

Pursuant to these changes, we and Five Star entered into the Master Management Agreement for the senior living communities that Five Star is continuing to manage and interim management agreements for the senior living communities that we and Five Star agreed to transition to new operators. These agreements replaced our prior management and omnibus agreements with Five Star. In addition, Five Star delivered to us a related amended and restated guaranty agreement pursuant to which Five Star is continuing to guarantee the payment and performance of each of its applicable subsidiary's obligations under the applicable management agreements.

As of September 30, 2021, we transitioned 69 of the 108 senior living communities containing 4,755 living units to new third party managers. From September 30, 2021 to November 3, 2021, we completed the transition of 30 senior living communities containing 1,845 living units to new third party managers. As of November 3, 2021, we have entered into agreements to transition eight of the remaining nine senior living communities to be transitioned containing 819 living units to new third party managers. We expect to complete the transition of 107 senior living communities from Five Star by December 31, 2021 and we currently intend to close the remaining senior living community that we and Five Star agreed to transition and are assessing opportunities to redevelop that community. We lease our senior living communities that have been transitioned to new managers to our TRSs. We have incurred and expect to continue to incur costs related to retention and other transition costs for these communities. For the three and nine months ended September 30, 2021, we recorded \$3.1 million and \$15.0 million, respectively, of these costs to acquisition and certain other transaction related costs in our condensed consolidated statements of comprehensive income (loss).

Pursuant to the terms of the management agreements with the new third party managers, the terms are generally as follows: the new third party managers will receive a management fee equal to 5% to 6% of the gross revenues realized at the applicable senior living communities plus reimbursement for direct costs and expenses related to such communities. These agreements generally also provide for the new third party managers to earn a minimum base fee for a portion of the term of the agreement. Additionally, the new third party managers have the ability to earn incentive fees equal to 15% to 25% of the amount by which EBITDA of the communities exceeds the target EBITDA. The new third party managers can also earn a construction supervision fee ranging between 3% and 5% of construction costs.

The initial terms of the management agreements with the new third party managers are generally five years, subject to automatic extensions of successive terms of two years each unless earlier terminated or timely notice of nonrenewal is delivered. The management agreements with the new third party managers also generally provide us with the right to terminate the management agreements for communities that do not earn 70% to 80% of the target EBITDA for such communities, after an agreed upon stabilized period.

The following table presents a breakout of communities that Five Star is continuing to manage and communities that we are in the process of transitioning from Five Star to other third party managers (dollars in thousands):

	As of and For the Three Months Ended September 30, 2021			As of and For the Nine Months Ended September 30, 2021		
	Five Star Retained Communities	Operator Transition Communities	Total	Five Star Retained Communities	Operator Transition Communities	Total
Communities	120	107	227	120	107	227
Number of units ⁽¹⁾	17,899	7,419	25,318	17,899	7,419	25,318
Occupancy	73.4 %	66.8 %	71.4 %	73.0 %	66.5 %	71.1 %
Residents fees and services	\$ 158,509	\$ 76,635	\$ 235,144	\$ 512,480	\$ 224,755	\$ 737,235
NOI ⁽²⁾	\$ 7,481	\$ (4,227)	\$ 3,254	\$ 30,530	\$ (10,943)	\$ 19,587

(1) Excludes skilled nursing units that have been closed or are being closed and repositioned.

(2) Our definition of NOI and our reconciliation of net income (loss) to NOI and a description of why we believe NOI is an appropriate supplemental measure are included below under the heading “Non-GAAP Financial Measures.”

See Notes 9 and 11 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information regarding our management arrangements with Five Star.

PORTFOLIO OVERVIEW

The following tables present an overview of our portfolio (dollars in thousands, except investment per square foot or unit data):

As of September 30, 2021	Number of Properties	Square Feet or Number of Units	Gross Book Value of Real Estate Assets ⁽¹⁾	% of Total Gross Book Value of Real Estate Assets	Investment per Square Foot or Unit ⁽²⁾	Q3 2021 Revenues	% of Q3 2021 Revenues	Q3 2021 NOI ⁽³⁾	% of Q3 2021 NOI
Office Portfolio ⁽⁴⁾	118	10,927,405 sq. ft.	\$ 3,730,249	45.2 %	\$ 341	\$ 91,520	27.1 %	\$ 59,134	82.9 %
SHOP	235	25,424 units	4,089,259	49.6 %	\$ 160,842	236,013	69.9 %	2,326	3.3 %
Other triple net leased senior living communities	29	2,327 units	250,273	3.0 %	\$ 107,552	6,239	1.9 %	6,239	8.7 %
Wellness centers	10	812,000 sq. ft.	178,110	2.2 %	\$ 219	3,644	1.1 %	3,644	5.1 %
Total	392		\$ 8,247,891	100.0 %		\$ 337,416	100.0 %	\$ 71,343	100.0 %

	Occupancy	
	As of and For the Three Months Ended September 30,	
	2021	2020
Office Portfolio ⁽⁵⁾	91.3 %	91.3 %
SHOP	71.3 %	75.2 %
Other triple net leased senior living communities ⁽⁶⁾⁽⁷⁾	75.7 %	81.1 %
Wellness centers	100.0 %	100.0 %

(1) Represents gross book value of real estate assets at cost plus certain acquisition costs, before depreciation and purchase price allocations and less impairment write downs, if any.

(2) Represents gross book value of real estate assets divided by number of rentable square feet or living units, as applicable, at September 30, 2021.

(3) We calculate our NOI on a consolidated basis and by reportable segment. Our definition of NOI and our reconciliation of net income (loss) to NOI are included below under the heading “Non-GAAP Financial Measures”.

- (4) Our medical office and life science property leases include some triple net leases where, in addition to paying fixed rents, the tenants assume the obligation to operate and maintain the properties at their expense, and some net and modified gross leases where we are responsible for the operation and maintenance of the properties and we charge tenants for some or all of the property operating costs. A small percentage of our medical office and life science property leases are full-service leases where we receive fixed rent from our tenants and no reimbursement for our property operating costs.
- (5) Medical office and life science property occupancy data is as of September 30, 2021 and 2020 and includes (i) out of service assets undergoing redevelopment, (ii) space which is leased but is not occupied or is being offered for sublease by tenants and (iii) space being fitted out for occupancy.
- (6) Excludes data for periods prior to our ownership of certain properties, data for properties sold or classified as held for sale, if any, and data for which there was a transfer of operations during the periods presented.
- (7) Operating data for other triple net leased senior living communities leased to third party operators and wellness centers are presented based upon the operating results provided by our tenants for the three months ended June 30, 2021 and 2020, or the most recent prior period for which tenant operating results are made available to us. We have not independently verified tenant operating data.

During the three and nine months ended September 30, 2021, we entered into new and renewal leases at our medical office and life science properties in our Office Portfolio segment as summarized in the following tables (dollars and square feet in thousands, except per square foot amounts):

Three Months Ended September 30, 2021					
	New Leases		Renewals		Total
Square feet leased during the quarter	101		271		372
Weighted average rental rate change (by rentable square feet)	38.3	%	21.5	%	28.1
Weighted average lease term (years) ⁽¹⁾	9.1		7.5		8.2
Total leasing costs and concession commitments ⁽²⁾	\$ 15,645		\$ 8,647		\$ 24,292
Total leasing costs and concession commitments per square foot ⁽²⁾	\$ 155.24		\$ 31.87		\$ 65.28
Total leasing costs and concession commitments per square foot per year ⁽²⁾	\$ 17.09		\$ 4.25		\$ 7.99

Nine Months Ended September 30, 2021					
	New Leases		Renewals		Total
Square feet leased during the period	318		898		1,216
Weighted average rental rate change (by rentable square feet)	25.2	%	8.7	%	14.3
Weighted average lease term (years) ⁽¹⁾	10.1		8.6		9.2
Total leasing costs and concession commitments ⁽²⁾	\$ 53,086		\$ 30,446		\$ 83,532
Total leasing costs and concession commitments per square foot ⁽²⁾	\$ 167.18		\$ 33.86		\$ 68.65
Total leasing costs and concession commitments per square foot per year ⁽²⁾	\$ 16.50		\$ 3.92		\$ 7.46

- (1) Weighted based on annualized rental income pursuant to existing leases as of September 30, 2021, including straight line rent adjustments and estimated recurring expense reimbursements, and excluding lease value amortization.
- (2) Includes commitments made for leasing expenditures and concessions, such as tenant improvements, leasing commissions, tenant reimbursements and free rent.

Lease Expiration Schedules

As of September 30, 2021, lease expirations at our medical office and life science properties in our Office Portfolio segment are as follows (dollars in thousands):

Year	Number of Tenants	Square Feet Leased	Percent of Total		Cumulative Percent of Total		Annualized Rental Income ⁽¹⁾	Percent of Total		Cumulative Percent of Total	
2021	42	217,612	2.2	%	2.2	%	\$ 7,674	2.1	%	2.1	%
2022	99	1,017,888	10.2	%	12.4	%	26,715	7.2	%	9.3	%
2023	57	1,122,592	11.3	%	23.7	%	21,212	5.7	%	15.0	%
2024	85	1,797,794	18.0	%	41.7	%	49,788	13.4	%	28.4	%
2025	77	910,758	9.1	%	50.8	%	24,377	6.6	%	35.0	%
2026	71	808,918	8.1	%	58.9	%	26,029	7.0	%	42.0	%
2027	39	619,779	6.2	%	65.1	%	15,216	4.1	%	46.1	%
2028	32	1,483,126	14.9	%	80.0	%	116,842	31.5	%	77.6	%
2029	30	347,653	3.5	%	83.5	%	12,919	3.5	%	81.1	%
2030 and thereafter	66	1,645,337	16.5	%	100.0	%	70,142	18.9	%	100.0	%
Total	598	9,971,457	100.0	%			\$ 370,914	100.0	%		
Weighted average remaining lease term (in years)		5.0					6.0				

- (1) Annualized rental income is based on rents pursuant to existing leases as of September 30, 2021, including straight line rent adjustments and estimated recurring expense reimbursements for certain net and modified gross leases and excluding lease value amortization at certain of our medical office and life science properties. Annualized rental income also includes 100% of rental income as reported under GAAP from the life science property owned in a joint venture arrangement in which we own a 55% equity interest.

Lease expiration data for our other triple net leased senior living communities leased to third party operators and wellness centers has not been provided because there were no changes to the lease expiration schedules from those reported in our Annual Report, except for the renewal of leases with the tenant of six of our wellness centers for a five year term expiring in 2028.

RESULTS OF OPERATIONS (dollars and square feet in thousands, unless otherwise noted)

We operate in, and report financial information for, the following two segments: Office Portfolio and SHOP. We aggregate each of these two reporting segments based on their similar operating and economic characteristics. Our Office Portfolio segment consists of medical office properties leased to medical providers and other medical related businesses, as well as life science properties leased to biotech laboratories and other similar tenants. Our SHOP segment consists of managed senior living communities that provide short term and long term residential living and in some instances care and other services for residents where we pay fees to managers to operate the communities.

We also report “non-segment” operations, which consists of triple net leased senior living communities that are leased to operators from which we receive rents, and wellness centers, which we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.

The following table summarizes the results of operations of each of our segments for the three and nine months ended September 30, 2021 and 2020:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Office Portfolio	\$ 91,520	\$ 94,235	\$ 277,647	\$ 288,515
SHOP	236,013	290,101	739,926	926,174
Non-Segment	9,883	10,003	28,908	32,428
Total revenues	<u>\$ 337,416</u>	<u>\$ 394,339</u>	<u>\$ 1,046,481</u>	<u>\$ 1,247,117</u>
Net income (loss) attributable to common shareholders:				
Office Portfolio	\$ 19,600	\$ 19,300	\$ 94,486	\$ 66,399
SHOP	(30,899)	(87,133)	(62,992)	(102,375)
Non-Segment	(78,044)	(39,055)	(222,564)	(87,249)
Net income (loss) attributable to common shareholders	<u>\$ (89,343)</u>	<u>\$ (106,888)</u>	<u>\$ (191,070)</u>	<u>\$ (123,225)</u>

The following sections analyze and discuss the results of operations of each of our segments for the periods presented.

Three Months Ended September 30, 2021 Compared to Three Months Ended September 30, 2020 (dollars and square feet in thousands, except average monthly rate):

Unless otherwise indicated, references in this section to changes or comparisons of results, income or expenses refer to comparisons of the results for the three months ended September 30, 2021 to the three months ended September 30, 2020. Our definition of NOI and our reconciliation of net income (loss) to NOI and a description of why we believe NOI is an appropriate supplemental measure are included below under the heading “Non-GAAP Financial Measures.”

	Three Months Ended September 30,			
	2021	2020	\$ Change	% Change
NOI by segment:				
Office Portfolio	\$ 59,134	\$ 60,787	\$ (1,653)	(2.7) %
SHOP	2,326	7,899	(5,573)	(70.6) %
Non-Segment	9,883	10,003	(120)	(1.2) %
Total NOI	71,343	78,689	(7,346)	(9.3) %
Depreciation and amortization	68,702	67,211	1,491	2.2 %
General and administrative	8,870	6,988	1,882	26.9 %
Acquisition and certain other transaction related costs	3,108	53	3,055	nm
Impairment of assets	—	64,202	(64,202)	(100.0) %
Gain (loss) on sale of properties	200	(211)	411	(194.8) %
Gains and losses on equity securities, net	(14,755)	12,510	(27,265)	(217.9) %
Interest and other income	976	134	842	nm
Interest expense	(64,493)	(58,091)	(6,402)	11.0 %
Loss from continuing operations before income tax expense	(87,409)	(105,423)	18,014	(17.1) %
Income tax expense	(595)	(365)	(230)	63.0 %
Net loss	(88,004)	(105,788)	17,784	(16.8) %
Net income attributable to noncontrolling interest	(1,339)	(1,100)	(239)	21.7 %
Net loss attributable to common shareholders	\$ (89,343)	\$ (106,888)	\$ 17,545	(16.4) %

nm - not meaningful

Office Portfolio:

	Comparable Properties ⁽¹⁾		All Properties	
	As of September 30,		As of September 30,	
	2021	2020	2021	2020
Total buildings	112	112	118	126
Total square feet ⁽²⁾	10,512	10,507	10,927	11,573
Occupancy ⁽³⁾	92.7 %	93.2 %	91.3 %	91.3 %

(1) Consists of medical office and life science properties that we have owned and which have been in service continuously since July 1, 2020, including the life science property owned in a joint venture arrangement in which we own a 55% equity interest; excludes properties classified as held for sale or out of service undergoing redevelopment, if any.

(2) Prior periods exclude space remeasurements made subsequent to those periods.

(3) Medical office and life science property occupancy includes (i) out of service assets undergoing redevelopment, (ii) space which is leased but is not occupied or is being offered for sublease by tenants, and (iii) space being fitted out for occupancy. Comparable property occupancy excludes out of service assets undergoing redevelopment.

	Three Months Ended September 30,									
	Comparable ⁽¹⁾				Non-Comparable		Consolidated Properties Results			
	Properties Results				Properties Results					
	2021	2020	\$ Change	% Change	2021	2020	2021	2020	\$ Change	% Change
Rental income	\$ 90,871	\$ 89,544	\$ 1,327	1.5 %	\$ 649	\$ 4,691	\$ 91,520	\$ 94,235	\$ (2,715)	(2.9) %
Property operating expenses	(31,426)	(31,802)	(376)	(1.2) %	(960)	(1,646)	(32,386)	(33,448)	(1,062)	(3.2) %
NOI	\$ 59,445	\$ 57,742	\$ 1,703	2.9 %	\$ (311)	\$ 3,045	\$ 59,134	\$ 60,787	\$ (1,653)	(2.7) %

- (1) Consists of medical office and life science properties that we have owned and which have been in service continuously since July 1, 2020, including the life science property owned in a joint venture arrangement in which we own a 55% equity interest; excludes properties classified as held for sale or out of service undergoing redevelopment, if any.

Rental income. Rental income decreased primarily due to our disposition of 11 properties since July 1, 2020 and assets being taken out of service and/or undergoing redevelopment, partially offset by an increase in rental income at our comparable properties. Rental income increased at our comparable properties primarily due to higher average rents achieved from our new and renewal leasing activity and increased parking revenue at certain of our comparable properties as states and municipalities have eased restrictions related to the COVID-19 pandemic and tenants' employees have increasingly returned to the office and commercial activity has increased, partially offset by decreases in occupancy and tax escalation income at certain of our comparable properties.

Property operating expenses. Property operating expenses consist of real estate taxes, utility expenses, insurance, management fees, salaries and benefit costs of property level personnel, repairs and maintenance expense, cleaning expense and other direct costs of operating these properties. The decrease in property operating expenses is primarily due to our disposition of 11 properties since July 1, 2020 and a decrease in property operating expenses at our comparable properties. Property operating expenses at our comparable properties decreased primarily due to certain repairs that occurred in the 2020 period and decreases in other direct costs at certain of our comparable properties.

Net operating income. The change in NOI reflects the net changes in rental income and property operating expenses described above.

SHOP:

	Comparable Properties ⁽¹⁾		All Properties	
	As of and For the Three Months Ended September 30,		As of and For the Three Months Ended September 30,	
	2021	2020	2021	2020
Total properties	159	159	235	239
Number of units	20,669	20,669	25,424	28,232
Occupancy	72.5 %	77.9 %	71.3 %	75.2 %
Average monthly rate ⁽²⁾	\$ 4,023	\$ 4,112	\$ 4,234	\$ 4,508

- (1) Consists of senior living communities that we have owned and which have been operated by the same operator continuously since July 1, 2020; excludes communities classified as held for sale or closed, if any.

- (2) Average monthly rate is calculated by taking the average daily rate, which is defined as total residents fees and services divided by occupied units during the period, and multiplying it by 30 days.

	Three Months Ended September 30,									
	Comparable ⁽¹⁾				Non-Comparable		Consolidated Properties Results			
	Properties Results				Properties Results					
			\$	%					\$	%
	2021	2020	Change	Change	2021	2020	2021	2020	Change	Change
Residents fees and services	\$ 184,932	\$ 223,575	\$ (38,643)	(17.3)%	\$ 51,081	\$ 66,526	\$ 236,013	\$ 290,101	\$ (54,088)	(18.6)%
Property operating expenses	(179,400)	(210,069)	(30,669)	(14.6)%	(54,287)	(72,133)	(233,687)	(282,202)	(48,515)	(17.2)%
NOI	\$ 5,532	\$ 13,506	\$ (7,974)	(59.0)%	\$ (3,206)	\$ (5,607)	\$ 2,326	\$ 7,899	\$ (5,573)	(70.6)%

- (1) Consists of senior living communities that we have owned and which have been operated by the same operator continuously since July 1, 2020; excludes communities classified as held for sale or closed, if any.

Residents fees and services. Residents fees and services are the revenues earned at our managed senior living communities. We recognize these revenues as services are provided and related fees are accrued. Residents fees and services decreased primarily due to our disposition of six properties since July 1, 2020 and decreases in occupancy primarily due to the continued impact of the COVID-19 pandemic at both comparable and non-comparable properties for the three months ended September 30, 2021 compared to the three months ended September 30, 2020, along with decreases in average monthly rates at certain of our comparable properties. Additionally, residents fees and services at our comparable properties decreased due to the closure of skilled nursing units during the three months ended June 30, 2021.

Property operating expenses. Property operating expenses consist of real estate taxes, utility expenses, insurance, salaries and benefit costs of property level personnel, repairs and maintenance expense, management fees, cleaning expense and other direct costs of operating these communities. Property operating expenses decreased primarily due to our disposition of six properties since

July 1, 2020 and a decrease in property operating expenses at our comparable properties. Property operating expenses at our comparable properties decreased primarily due to decreases in costs associated with staffing and dietary expenses primarily due to reduced occupancy at our comparable properties as a result of the continued impact of the COVID-19 pandemic and the closure of skilled nursing units during the three months ended June 30, 2021.

Net operating income. The change in NOI reflects the net changes in residents fees and services and property operating expenses described above.

Non-Segment⁽¹⁾:

	Comparable Properties ⁽²⁾		All Properties	
	As of and For the Three Months Ended September 30,		As of and For the Three Months Ended September 30,	
	2021	2020	2021	2020
Total properties:				
Other triple net leased senior living communities	29	29	29	32
Wellness centers	10	10	10	10
Rent coverage:				
Other triple net leased senior living communities ⁽³⁾	1.27 x	1.63 x	1.27 x	1.63 x
Wellness centers ⁽³⁾	1.17 x	1.30 x	1.17 x	1.30 x

- (1) Non-segment operations consists of all of our other operations, including certain senior living communities leased to third party operators and wellness centers, which segment we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.
- (2) Comparable properties consists of properties that we have owned and which have been leased to the same operator continuously since July 1, 2020; excludes properties classified as held for sale, if any.
- (3) All tenant operating data presented is based upon the operating results provided by our tenants for the 12 months ended June 30, 2021 and 2020 or the most recent prior period for which tenant operating results are available to us. Rent coverage is calculated using the operating cash flows from our triple net lease tenants' operations of our properties, before subordinated charges, if any, divided by triple net lease minimum rents payable to us. We have not independently verified tenant operating data. Excludes data for historical periods prior to our ownership of certain properties, as well as data for properties sold or classified as held for sale, if any, during the periods presented.

	Three Months Ended September 30,									
	Comparable ⁽¹⁾					Non-Comparable		Consolidated Properties Results		
	Properties Results				Properties Results					
		\$						\$		
	2021	2020	Change	% Change	2021	2020	2021	2020	Change	% Change
Rental income	\$ 9,883	\$ 9,044	\$ 839	9.3 %	\$ —	\$ 959	\$ 9,883	\$ 10,003	\$ (120)	(1.2) %
NOI	\$ 9,883	\$ 9,044	\$ 839	9.3 %	\$ —	\$ 959	\$ 9,883	\$ 10,003	\$ (120)	(1.2) %

- (1) Consists of properties that we have owned and which have been leased to the same operator continuously since July 1, 2020; excludes properties classified as held for sale, if any.

Rental income. Rental income decreased primarily due to the sale of three senior living communities leased to private operators since July 1, 2020, partially offset by an increase in rental income at our comparable properties and increased rents resulting from our purchase of improvements at our comparable properties since July 1, 2020. Rental income increased at our comparable properties primarily due to higher cash rents received from a tenant of six of our wellness centers during the 2021 period, partially offset by lease renewals with tenants of certain of our wellness centers at lower average rental rates. As a result of the COVID-19 pandemic, in 2020 many of our wellness centers had been ordered closed by state or local executive orders. We have elected to recognize rental income from a tenant of six of our wellness centers as rent payments are received.

Net operating income. The change in NOI reflects the net changes in rental income described above.

Consolidated:

References to changes in the income and expense categories below relate to the comparison of consolidated results for the three months ended September 30, 2021, compared to the three months ended September 30, 2020.

Depreciation and amortization expense. Depreciation and amortization expense increased primarily due to the purchase of capital improvements at certain of our properties since July 1, 2020, partially offset by our disposition of 20 properties, certain

depreciable leasing related assets becoming fully depreciated and certain of our acquired resident agreements becoming fully amortized since July 1, 2020.

General and administrative expense. General and administrative expense consists of fees paid to RMR LLC under our business management agreement, legal and accounting fees, fees and expenses of our Trustees, equity compensation expense and other costs relating to our status as a publicly traded company. General and administrative expense increased primarily due to an increase in our base business management fees expense as a result of higher consolidated indebtedness during the three months ended September 30, 2021 compared to the three months ended September 30, 2020.

Acquisition and certain other transaction related costs. For the three months ended September 30, 2021, acquisition and certain other transaction related costs primarily represent costs incurred in connection with costs related to the transition of certain senior living communities to new third party managers and the Master Management Agreement. For the three months ended September 30, 2020, acquisition and certain other transaction related costs primarily represent costs incurred in connection with the 2020 restructuring of our business arrangements with Five Star, or the 2020 Restructuring Transaction. For information regarding the Master Management Agreement or the 2020 Restructuring Transaction, see Note 9 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Impairment of assets. For information about our asset impairment charges, see Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Gain (loss) on sale of properties. Gain (loss) on sale of properties is the net result of our sale of certain of our properties during the three months ended September 30, 2021 and 2020. For further information regarding gain (loss) on sale of properties, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q and Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Gains and losses on equity securities, net. Gains and losses on equity securities, net, represent the net unrealized gains and losses to adjust our investment in Five Star to its fair value. For further information regarding our investment in Five Star, see Note 5 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Interest and other income. The increase in interest and other income is primarily due to \$786 of funds we received from the U.S. government pursuant to the CARES Act during the three months ended September 30, 2021.

Interest expense. Interest expense increased primarily due to our issuance in February 2021 of \$500,000 aggregate principal amount of our 4.375% senior notes due 2031 and an increase in average borrowings under our revolving credit facility. This increase was partially offset by our prepayment in February 2021 of our \$200,000 term loan and our redemption in June 2021 of all \$300,000 of our 6.75% senior notes due 2021.

Income tax expense. Income tax expense is the result of operating income we earned in certain jurisdictions where we are subject to state income taxes.

Nine Months Ended September 30, 2021 Compared to Nine Months Ended September 30, 2020 (dollars and square feet in thousands, except average monthly rate):

Unless otherwise indicated, references in this section to changes or comparisons of results, income or expenses refer to comparisons of the results for the nine months ended September 30, 2021 to the nine months ended September 30, 2020. Our definition of NOI and our reconciliation of net income (loss) to NOI and a description of why we believe NOI is an appropriate supplemental measure are included below under the heading “Non-GAAP Financial Measures.”

	Nine Months Ended September 30,			
	2021	2020	\$ Change	% Change
NOI by segment:				
Office Portfolio	\$ 182,647	\$ 191,468	\$ (8,821)	(4.6) %
SHOP	16,830	89,071	(72,241)	(81.1) %
Non-Segment	28,908	32,428	(3,520)	(10.9) %
Total NOI	228,385	312,967	(84,582)	(27.0) %
Depreciation and amortization	202,743	204,466	(1,723)	(0.8) %
General and administrative	25,538	23,132	2,406	10.4 %
Acquisition and certain other transaction related costs	15,179	803	14,376	nm
Impairment of assets	(174)	106,611	(106,785)	(100.2) %
Gain on sale of properties	30,838	2,403	28,435	nm
Gains and losses on equity securities, net	(26,943)	14,541	(41,484)	(285.3) %
Interest and other income	19,849	8,008	11,841	147.9 %
Interest expense	(192,241)	(143,715)	(48,526)	33.8 %
Gain on lease termination	—	22,896	(22,896)	(100.0) %
Loss on early extinguishment of debt	(2,410)	(427)	(1,983)	nm
Loss from continuing operations before income tax expense	(185,808)	(118,339)	(67,469)	57.0 %
Income tax expense	(1,024)	(1,048)	24	(2.3) %
Net loss	(186,832)	(119,387)	(67,445)	56.5 %
Net income attributable to noncontrolling interest	(4,238)	(3,838)	(400)	10.4 %
Net loss attributable to common shareholders	\$ (191,070)	\$ (123,225)	\$ (67,845)	55.1 %

nm - not meaningful

Office Portfolio:

	Comparable Properties ⁽¹⁾		All Properties	
	As of September 30,		As of September 30,	
	2021	2020	2021	2020
Total buildings	112	112	118	126
Total square feet ⁽²⁾	10,512	10,507	10,927	11,573
Occupancy ⁽³⁾	92.7 %	93.2 %	91.3 %	91.3 %

(1) Consists of medical office and life science properties that we have owned and which have been in service continuously since January 1, 2020, including the life science property owned in a joint venture arrangement in which we own a 55% equity interest; excludes properties classified as held for sale or out of service undergoing redevelopment, if any.

(2) Prior periods exclude space remeasurements made subsequent to those periods.

(3) Medical office and life science property occupancy includes (i) out of service assets undergoing redevelopment, (ii) space which is leased but is not occupied or is being offered for sublease by tenants, and (iii) space being fitted out for occupancy. Comparable property occupancy excludes out of service assets undergoing redevelopment.

Nine Months Ended September 30,										
Comparable ⁽¹⁾ Properties Results					Non-Comparable Properties Results		Consolidated Properties Results			
	2021	2020	\$ Change	% Change			2021	2020	\$ Change	% Change
Rental income	\$ 272,479	\$ 271,466	\$ 1,013	0.4 %	\$	\$ 5,168	\$ 17,049	\$ 277,647	\$ 288,515	\$ (10,868) (3.8) %
Property operating expenses	(92,172)	(91,566)	606	0.7 %		(2,828)	(5,481)	(95,000)	(97,047)	(2,047) (2.1) %
NOI	\$ 180,307	\$ 179,900	\$ 407	0.2 %	\$	\$ 2,340	\$ 11,568	\$ 182,647	\$ 191,468	\$ (8,821) (4.6) %

- (1) Consists of medical office and life science properties that we have owned and which have been in service continuously since January 1, 2020, including the life science property owned in a joint venture arrangement in which we own a 55% equity interest; excludes properties classified as held for sale or out of service undergoing redevelopment, if any.

Rental income. Rental income decreased primarily due to our disposition of 20 properties since January 1, 2020 and assets being taken out of service and/or undergoing redevelopment, partially offset by an increase in rental income at our comparable properties. Rental income increased at our comparable properties primarily due to higher average rents achieved from our new and renewal leasing activity and increased parking revenue at certain of our comparable properties as states and municipalities have eased restrictions related to the COVID-19 pandemic and tenants' employees have increasingly returned to the office and commercial activity has increased, partially offset by decreases in occupancy and tax escalation income at certain of our comparable properties.

Property operating expenses. The decrease in property operating expenses is primarily due to our disposition of 20 properties since January 1, 2020, partially offset by an increase in property operating expenses at our comparable properties. Property operating expenses at our comparable properties increased primarily due to increases in utility expenses, landscaping expenses and other direct costs, partially offset by decreases in real estate taxes at certain of our comparable properties.

Net operating income. The change in NOI reflects the net changes in rental income and property operating expenses described above.

SHOP:

	Comparable Properties ⁽¹⁾		All Properties	
	As of and For the Nine Months Ended September 30,		As of and For the Nine Months Ended September 30,	
	2021	2020	2021	2020
Total properties	159	159	235	239
Number of units	20,669	20,669	25,424	28,232
Occupancy	72.1 %	81.7 %	70.6 %	78.9 %
Average monthly rate ⁽²⁾	\$ 4,084	\$ 4,071	\$ 4,389	\$ 4,526

- (1) Consists of senior living communities that we have owned and which have been operated by the same operator continuously since January 1, 2020; excludes communities classified as held for sale or closed, if any.
- (2) Average monthly rate is calculated by taking the average daily rate, which is defined as total residents fees and services divided by occupied units during the period, and multiplying it by 30 days.

Nine Months Ended September 30,										
Comparable ⁽¹⁾ Properties Results					Non-Comparable Properties Results		Consolidated Properties Results			
	2021	2020	\$ Change	% Change			2021	2020	\$ Change	% Change
Residents fees and services	\$ 590,534	\$ 712,981	\$ (122,447)	(17.2)%	\$	\$ 149,392	\$ 213,193	\$ 739,926	\$ 926,174	\$ (186,248) (20.1)%
Property operating expenses	(565,516)	(620,597)	(55,081)	(8.9)%		(157,580)	(216,506)	(723,096)	(837,103)	(114,007) (13.6)%
NOI	\$ 25,018	\$ 92,384	\$ (67,366)	(72.9)%	\$	\$ (8,188)	\$ (3,313)	\$ 16,830	\$ 89,071	\$ (72,241) (81.1)%

- (1) Consists of senior living communities that we have owned and which have been operated by the same operator continuously since January 1, 2020; excludes communities classified as held for sale or closed, if any.

Residents fees and services. Residents fees and services decreased primarily due to our disposition of nine properties since January 1, 2020 and decreases in occupancy primarily due to the continued impact of the COVID-19 pandemic at both comparable

and non-comparable properties for the nine months ended September 30, 2021 compared to the nine months ended September 30, 2020, partially offset by increases in average monthly rates at certain of our comparable properties. Additionally, residents fees and services at our comparable properties decreased due to the closure of skilled nursing units during the nine months ended September 30, 2021.

Property operating expenses. Property operating expenses decreased primarily due to our disposition of nine properties since January 1, 2020 and a decrease in property operating expenses at our comparable properties. Property operating expenses at our comparable properties decreased primarily due to decreases in costs associated with staffing and dietary expenses primarily due to reduced occupancy at our comparable properties as a result of the continued impact of the COVID-19 pandemic and the closure of skilled nursing units during the nine months ended September 30, 2021.

Net operating income. The change in NOI reflects the net changes in residents fees and services and property operating expenses described above.

Non-Segment⁽¹⁾:

	Comparable Properties ⁽²⁾		All Properties	
	As of and For the Nine Months Ended September 30,		As of and For the Nine Months Ended September 30,	
	2021	2020	2021	2020
Total properties:				
Other triple net leased senior living communities	29	29	29	32
Wellness centers	10	10	10	10
Rent coverage:				
Other triple net leased senior living communities ⁽³⁾	1.27 x	1.63 x	1.27 x	1.63 x
Wellness centers ⁽³⁾	1.17 x	1.30 x	1.17 x	1.30 x

- (1) Non-segment operations consists of all of our other operations, including certain senior living communities leased to third party operators and wellness centers, which segment we do not consider to be sufficiently material to constitute a separate reporting segment, and any other income or expenses that are not attributable to a specific reporting segment.
- (2) Comparable properties consists of properties that we have owned and which have been leased to the same operator continuously since January 1, 2020; excludes properties classified as held for sale, if any.
- (3) All tenant operating data presented is based upon the operating results provided by our tenants for the 12 months ended June 30, 2021 and 2020 or the most recent prior period for which tenant operating results are available to us. Rent coverage is calculated using the operating cash flows from our triple net lease tenants' operations of our properties, before subordinated charges, if any, divided by triple net lease minimum rents payable to us. We have not independently verified tenant operating data. Excludes data for historical periods prior to our ownership of certain properties, as well as data for properties sold or classified as held for sale, if any, during the periods presented.

	Nine Months Ended September 30,							
	Comparable ⁽¹⁾ Properties Results				Non-Comparable Properties Results		Consolidated Properties Results	
	2021	2020	\$ Change	% Change	2021	2020	2021	2020
Rental income	\$ 28,909	\$ 29,549	\$ (640)	(2.2) %	\$ (1)	\$ 2,879	\$ 28,908	\$ 32,428
NOI	\$ 28,909	\$ 29,549	\$ (640)	(2.2) %	\$ (1)	\$ 2,879	\$ 28,908	\$ 32,428
							\$ (3,520)	(10.9)%

- (1) Consists of properties that we have owned and which have been leased to the same operator continuously since January 1, 2020; excludes properties classified as held for sale, if any.

Rental income. Rental income decreased primarily due to the sale of three senior living communities leased to private operators since January 1, 2020 and a decrease in rental income at our comparable properties, partially offset by increased rents resulting from our purchase of improvements at our comparable properties since January 1, 2020. Rental income decreased at our comparable properties primarily due to lease renewals with tenants of certain of our wellness centers at lower average rental rates, partially offset by a tenant default under leases for six of our wellness centers during the 2020 period. As a result of the COVID-19 pandemic, in 2020 many of our wellness centers had been ordered closed by state or local executive orders. We have elected to recognize rental income from a tenant of six of our wellness centers as rent payments are received.

Net operating income. The change in NOI reflects the net changes in rental income described above.

Consolidated:

References to changes in the income and expense categories below relate to the comparison of consolidated results for the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020.

Depreciation and amortization expense. Depreciation and amortization expense decreased primarily due to our disposition of 32 properties, certain depreciable leasing related assets becoming fully depreciated and certain of our acquired resident agreements becoming fully amortized since January 1, 2020, partially offset by the purchase of capital improvements at certain of our properties since January 1, 2020.

General and administrative expense. General and administrative expense increased primarily due to an increase in our base business management fees expense as a result of higher consolidated indebtedness during the nine months ended September 30, 2021 compared to the nine months ended September 30, 2020.

Acquisition and certain other transaction related costs. For the nine months ended September 30, 2021, acquisition and certain other transaction related costs primarily represent costs related to the transition of certain senior living communities to new third party managers and costs incurred in connection with the Master Management Agreement. For the nine months ended September 30, 2020, acquisition and certain other transaction related costs primarily represent costs incurred in connection with the 2020 Restructuring Transaction. For information regarding the Master Management Agreement or the 2020 Restructuring Transaction, see Note 9 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Impairment of assets. For information about our asset impairment charges, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q and Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Gain on sale of properties. Gain on sale of properties is the net result of our sale of certain of our properties during the nine months ended September 30, 2021 and 2020. For further information regarding gain on sale of properties, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q and Note 3 to our consolidated financial statements included in Part IV, Item 15 of our Annual Report.

Gains and losses on equity securities, net. Gains and losses on equity securities, net, represent the net unrealized gains and losses to adjust our investment in Five Star to its fair value. For further information regarding our investment in Five Star, see Note 5 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Interest and other income. The increase in interest and other income is primarily due to \$18,967 of funds we received from the U.S. government pursuant to the CARES Act during the nine months ended September 30, 2021 compared to \$7,346 received during the nine months ended September 30, 2020.

Interest expense. Interest expense increased primarily due to our issuance in June 2020 of \$1,000,000 aggregate principal amount of our 9.75% senior notes due 2025, our issuance in February 2021 of \$500,000 aggregate principal amount of our 4.375% senior notes due 2031 and an increase in average borrowings under our revolving credit facility. This increase was partially offset by our redemption in April 2020 of all \$200,000 of our 6.75% senior notes due 2020, our prepayment in June 2020 of our \$250,000 term loan, our prepayment in February 2021 of our \$200,000 term loan and our redemption in June 2021 of all \$300,000 of our 6.75% senior notes due 2021.

Gain on lease termination. Gain on lease termination represents the gain recognized in connection with the 2020 Restructuring Transaction. For information regarding the 2020 Restructuring Transaction, see Note 9 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Loss on early extinguishment of debt. We recorded a loss on early extinguishment of debt in connection with the amendments to our credit and term loan agreements, our prepayment of our \$200,000 term loan and our redemption of all \$300,000 of our 6.75% senior notes due 2021 during the nine months ended September 30, 2021. We recorded a loss on early extinguishment of debt in connection with our prepayment of our \$250,000 term loan and mortgage notes during the nine months ended September 30, 2020.

Income tax expense. Income tax expense is the result of operating income we earned in certain jurisdictions where we are subject to state income taxes.

Non-GAAP Financial Measures (dollars in thousands, except per share amounts)

We present certain "non-GAAP financial measures" within the meaning of applicable rules of the Securities and Exchange Commission, or SEC, including funds from operations attributable to common shareholders, or FFO attributable to common shareholders, normalized funds from operations attributable to common shareholders, or Normalized FFO attributable to common shareholders, and NOI for the three and nine months ended September 30, 2021 and 2020. These measures do not represent cash generated by operating activities in accordance with GAAP and should not be considered alternatives to net income (loss) or net income (loss) attributable to common shareholders as indicators of our operating performance or as measures of our liquidity. These measures should be considered in conjunction with net income (loss) and net income (loss) attributable to common shareholders as presented in our condensed consolidated statements of comprehensive income (loss). We consider these non-GAAP measures to be appropriate supplemental measures of operating performance for a REIT, along with net income (loss) and net income (loss) attributable to common shareholders. We believe these measures provide useful information to investors because by excluding the effects of certain historical amounts, such as depreciation and amortization, they may facilitate a comparison of our operating performance between periods and with other REITs and, in the case of NOI, reflecting only those income and expense items that are generated and incurred at the property level may help both investors and management to understand the operations of our properties.

Funds From Operations and Normalized Funds From Operations Attributable to Common Shareholders

We calculate FFO attributable to common shareholders and Normalized FFO attributable to common shareholders as shown below. FFO attributable to common shareholders is calculated on the basis defined by the National Association of Real Estate Investment Trusts, which is net income (loss) attributable to common shareholders, calculated in accordance with GAAP, excluding any gain or loss on sale of properties, loss on impairment of real estate assets and gains or losses on equity securities, net, if any, including adjustments to reflect our proportionate share of FFO of our equity method investment in Five Star, plus real estate depreciation and amortization and minus FFO adjustments attributable to noncontrolling interest, as well as certain other adjustments currently not applicable to us. In calculating Normalized FFO attributable to common shareholders, we adjust for the items shown below. FFO attributable to common shareholders and Normalized FFO attributable to common shareholders are among the factors considered by our Board of Trustees when determining the amount of distributions to our shareholders. Other factors include, but are not limited to, requirements to maintain our qualification for taxation as a REIT, limitations in the agreements governing our debt, the availability to us of debt and equity capital, our expectation of our future capital requirements and operating performance, and our expected needs for and availability of cash to pay our obligations. Other real estate companies and REITs may calculate FFO attributable to common shareholders and Normalized FFO attributable to common shareholders differently than we do.

Our calculations of FFO attributable to common shareholders and Normalized FFO attributable to common shareholders for the three and nine months ended September 30, 2021 and 2020 and reconciliations of net income (loss) attributable to common shareholders, the most directly comparable financial measure under GAAP reported in our condensed consolidated financial statements, to FFO attributable to common shareholders and Normalized FFO attributable to common shareholders appear in the following table. This table also provides a comparison of distributions to shareholders, FFO attributable to common shareholders and Normalized FFO attributable to common shareholders and net income (loss) attributable to common shareholders per share for these periods.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net loss attributable to common shareholders	\$ (89,343)	\$ (106,888)	\$ (191,070)	\$ (123,225)
Depreciation and amortization	68,702	67,211	202,743	204,466
(Gain) loss on sale of properties	(200)	211	(30,838)	(2,403)
Impairment of assets	—	64,202	(174)	106,611
Losses (gains) on equity securities, net	14,755	(12,510)	26,943	(14,541)
FFO adjustments attributable to noncontrolling interest	(5,273)	(5,275)	(15,821)	(15,825)
Adjustments to reflect our share of FFO attributable to an equity method investment	(2,440)	1,910	(3,409)	(904)
FFO attributable to common shareholders	(13,799)	8,861	(11,626)	154,179
Acquisition and certain other transaction related costs	3,108	53	15,179	803
Costs and payment obligations related to compliance assessment at one of our senior living communities	—	6,172	—	6,172
Gain on lease termination	—	—	—	(22,896)
Loss on early extinguishment of debt	—	—	2,410	427
Adjustments to reflect our share of Normalized FFO attributable to an equity method investment	1,242	48	2,626	9,175
Normalized FFO attributable to common shareholders	\$ (9,449)	\$ 15,134	\$ 8,589	\$ 147,860
Weighted average common shares outstanding (basic)	238,008	237,752	237,905	237,707
Weighted average common shares outstanding (diluted)	238,008	237,752	237,905	237,707
Per common share data (basic and diluted):				
Net loss attributable to common shareholders	\$ (0.38)	\$ (0.45)	\$ (0.80)	\$ (0.52)
FFO attributable to common shareholders	\$ (0.06)	\$ 0.04	\$ (0.05)	\$ 0.65
Normalized FFO attributable to common shareholders	\$ (0.04)	\$ 0.06	\$ 0.04	\$ 0.62
Distributions declared	\$ 0.01	\$ 0.01	\$ 0.03	\$ 0.17

Property Net Operating Income (NOI)

We calculate NOI as shown below. The calculation of NOI excludes certain components of net income (loss) in order to provide results that are more closely related to our property level results of operations. We define NOI as income from our real estate less our property operating expenses. NOI excludes amortization of capitalized tenant improvement costs and leasing commissions that we record as depreciation and amortization. We use NOI to evaluate individual and company-wide property level performance. Other real estate companies and REITs may calculate NOI differently than we do.

The calculation of NOI by reportable segment is included above in this Item 2. The following table includes the reconciliation of net income (loss) to NOI for the three and nine months ended September 30, 2021 and 2020, respectively.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Reconciliation of Net Income (Loss) to NOI:				
Net loss	\$ (88,004)	\$ (105,788)	\$ (186,832)	\$ (119,331)
Income tax expense	595	365	1,024	1,024
Loss from continuing operations before income tax expense	(87,409)	(105,423)	(185,808)	(118,355)
Loss on early extinguishment of debt	—	—	2,410	4,100
Gain on lease termination	—	—	—	(22,800)
Interest expense	64,493	58,091	192,241	143,700
Interest and other income	(976)	(134)	(19,849)	(8,000)
Losses (gains) on equity securities, net	14,755	(12,510)	26,943	(14,500)
(Gain) loss on sale of properties	(200)	211	(30,838)	(2,400)
Impairment of assets	—	64,202	(174)	106,600
Acquisition and certain other transaction related costs	3,108	53	15,179	8,000
General and administrative	8,870	6,988	25,538	23,100
Depreciation and amortization	68,702	67,211	202,743	204,400
Total NOI	\$ 71,343	\$ 78,689	\$ 228,385	\$ 312,900
Office Portfolio NOI	\$ 59,134	\$ 60,787	\$ 182,647	\$ 191,400
SHOP NOI	2,326	7,899	16,830	89,000
Non-Segment NOI	9,883	10,003	28,908	32,400
Total NOI	\$ 71,343	\$ 78,689	\$ 228,385	\$ 312,900

LIQUIDITY AND CAPITAL RESOURCES

Our principal sources of cash to meet operating and capital expenses, pay debt service obligations and make distributions to our shareholders are the operating cash flows we generate as rental income from our leased properties, residents fees and services revenues from our managed communities, borrowings under our revolving credit facility and proceeds from the disposition of certain properties. We believe that these sources will be sufficient to meet our operating and capital expenses, pay debt service obligations and make distributions to our shareholders for the next 12 months and for the foreseeable future thereafter. Our future cash flows from operating activities will depend primarily upon:

- our ability to receive rents from our tenants, including in light of the COVID-19 pandemic and its impact on our tenants' businesses;
- our ability to maintain or increase the occupancy of, and the rental rates at, our properties or reduce the extent of the declines in occupancy and rental rates in response to the COVID-19 pandemic and current economic conditions, particularly at our senior living communities;
- our ability to control operating expenses and capital expenses at our properties, including increased operating expenses that we may incur in response to the COVID-19 pandemic; and
- our managers' abilities to manage our managed senior living communities, including throughout the COVID-19 pandemic, to maintain or increase our returns and to reduce the extent of the declines in our returns.

We continue to carefully monitor the developments of the COVID-19 pandemic and the resulting economic conditions and their impact on our tenants, managers, operators and other stakeholders, including at our senior living communities.

In February 2021, we issued \$500.0 million aggregate principal amount of 4.375% senior notes due 2031. We used net proceeds from this offering to prepay in full our \$200.0 million term loan and used the remaining net proceeds and cash on hand to redeem all of our outstanding 6.75% senior notes due 2021 for a redemption price equal to the principal amount of \$300.0 million plus accrued and unpaid interest of \$10.1 million in June 2021, when these notes became redeemable with no prepayment premium. In addition, on March 31, 2021, we borrowed \$800.0 million under our revolving credit facility as a precautionary measure to increase our cash position and preserve financial flexibility in light of continued uncertainties related to the COVID-19 pandemic. Although we have taken steps to enhance our ability to maintain sufficient liquidity, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from the COVID-19 pandemic may cause further increased pressure on our ability to satisfy financial and other covenants. We may fail to satisfy covenants and conditions under our credit agreement or fail to satisfy our public debt covenants. As of September 30, 2021, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our revolving credit facility and our public debt covenants as the effects of the COVID-19 pandemic continued to adversely impact our operations. We are not allowed to incur additional debt while this ratio is below 1.5x on a pro forma basis. For additional responses and measures taken relating to the COVID-19 pandemic, see Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" in our Annual Report and Note 4 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

During the nine months ended September 30, 2021, we sold five properties for an aggregate sales price of \$104.5 million, excluding closing costs. The measures we have taken to enhance our ability to maintain sufficient liquidity may not sufficiently offset the decrease in cash flows from operations and capital investments we make, particularly during the COVID-19 pandemic, in which case our liquidity would be negatively impacted.

The following is a summary of our sources and uses of cash flows for the periods presented, as reflected in our condensed consolidated statements of cash flows (dollars in thousands):

	Nine Months Ended September 30,	
	2021	2020
Cash and cash equivalents and restricted cash at beginning of period	\$ 90,849	\$ 52,224
Net cash provided by (used in):		
Operating activities	(13,198)	158,979
Investing activities	(22,885)	(42,136)
Financing activities	756,671	(70,692)
Cash and cash equivalents and restricted cash at end of period	\$ 811,437	\$ 98,375

Our Operating Liquidity and Resources

We generally receive minimum rents from our tenants monthly or quarterly, we receive residents fees and services revenues, net of expenses, from our managed senior living communities monthly and we receive percentage rents from certain of our senior living community tenants monthly, quarterly or annually.

The change in cash (used in) provided by operating activities for the nine months ended September 30, 2021 compared to the prior period was primarily due to the continued impact of the COVID-19 pandemic on the senior living communities in our SHOP segment, along with reduced NOI as a result of dispositions of properties during 2020 and 2021. As it relates to our SHOP segment, in September 2021, we paid approximately \$22.2 million of payroll taxes reimbursed to Five Star pursuant to our management agreements with Five Star that were deferred as allowed under the CARES Act as previously disclosed. As noted elsewhere in this Quarterly Report on Form 10-Q, we expect that the transition of the management of the 107 senior living communities from Five Star to other third party managers will be completed by December 31, 2021 and we currently intend to close the remaining senior living community that we and Five Star agreed to transition and are assessing opportunities to redevelop that community. We have incurred and expect to continue to incur costs related to retention and other transition costs for these communities. For the three and nine months ended September 30, 2021, we recorded \$3.1 million and \$15.0 million, respectively, of these costs to acquisition and certain other transaction related costs in our condensed consolidated statements of comprehensive income (loss).

As noted elsewhere in this Quarterly Report on Form 10-Q and in our Annual Report, the COVID-19 pandemic has had a substantial adverse impact on our industries. Depending on the duration and severity of this pandemic and the resulting economic conditions, our tenants', managers' and operators' businesses may become significantly adversely affected, which may result in our tenants failing to pay rent to us or not renewing their leases upon expiration and in our senior living community managers realizing decreased returns from our senior living communities. Specifically as it relates to our SHOP segment, we face and may continue to face issues with labor availability and cost pressures from supply chain disruptions and commodity

price inflation. As of November 1, 2021, we granted requests for certain of our tenants to defer rent payments totaling \$1.8 million. As of September 30, 2021, we recognized an increase in our accounts receivable balance related to these deferred rent payments of \$0.1 million. These tenants are obligated to pay, in most cases, the deferred rents in 12 equal monthly installments, which payments have commenced. For the three months ended September 30, 2021, we collected approximately 99% of our contractual rents due from tenants in our Office Portfolio segment. While these deferred amounts have not negatively impacted our results of operations, the deferred rents have temporarily reduced our operating cash flows. We are handling requests from our tenants for relief on an individual basis.

Our Investing Liquidity and Resources

The decrease in cash used in investing activities for the nine months ended September 30, 2021 compared to the prior period was primarily due to higher proceeds from the sale of real estate properties in the 2021 period compared to the 2020 period, partially offset by an increase in real estate improvements in the 2021 period compared to the 2020 period.

The following is a summary of capital expenditures, development, redevelopment and other activities for the periods presented (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Office Portfolio segment capital expenditures:				
Lease related costs ⁽¹⁾	\$ 5,910	\$ 4,411	\$ 24,312	\$ 13,293
Building improvements ⁽²⁾	3,332	4,990	9,945	11,363
SHOP segment fixed assets and capital improvements	23,270	15,988	65,083	37,411
Recurring capital expenditures	\$ 32,512	\$ 25,389	\$ 99,340	\$ 62,067
Development, redevelopment and other activities - Office Portfolio segment ⁽³⁾	\$ 6,824	\$ 14,832	\$ 29,231	\$ 37,987
Development, redevelopment and other activities - SHOP segment ⁽³⁾	2,217	4,927	13,654	19,926
Total development, redevelopment and other activities	\$ 9,041	\$ 19,759	\$ 42,885	\$ 57,913

- (1) Office Portfolio segment lease related costs generally include capital expenditures to improve tenants' space or amounts paid directly to tenants to improve their space and other leasing related costs, such as brokerage commissions and tenant inducements.
- (2) Office Portfolio segment building improvements generally include expenditures to replace obsolete building components that extend the useful life of existing assets or other improvements to increase the marketability of the property.
- (3) Development, redevelopment and other activities generally include capital expenditures that reposition a property or result in new sources of revenue.

During the three and nine months ended September 30, 2021, we invested \$0.3 million and \$1.1 million, respectively, in revenue producing capital improvements at certain of our triple net leased senior living communities leased to private operators, and, as a result, annual rent payable to us increased pursuant to the terms of the applicable leases. We used cash on hand to fund these purchases. These capital improvement amounts are not included in the table above.

We plan to continue investing capital in our senior living communities, including redevelopment projects, to better position these communities in their respective markets in order to increase our returns in future years. Our ability to make capital investments is currently limited to \$350.0 million per year pursuant to our credit agreement through the Amendment Period.

As of September 30, 2021, we have estimated unspent leasing related obligations at our triple net leased senior living communities and our medical office and life science properties of approximately \$64.6 million, of which we expect to spend approximately \$45.7 million during the next 12 months. We expect to fund these obligations using operating cash flows we generate as rental income from our leased properties, residents fees and services revenues from our managed communities, cash on hand and proceeds from the disposition of certain properties.

Our redevelopment in San Diego, CA has been substantially completed and we expect to incur additional leasing costs in 2021 to lease the remaining available space. During the nine months ended September 30, 2021, we entered into five leases

with a weighted (by annualized rental income) average lease term of approximately 11 years at a weighted average rental rate that is approximately 22% higher than the prior rental rate for the same space at this San Diego, CA property. As of November 1, 2021, we have executed new leases for 100% of the leasable square footage at this property. We are currently in the process of redeveloping two properties in our Office Portfolio located in Lexington, MA and Tempe, AZ. Our redevelopments in Lexington, MA and Tempe, AZ are currently expected to be completed in the second quarter of 2022. We have entered into a new ten year lease for the entire building at the Lexington, MA property at a rental rate that is 46% higher than the prior rental rate for the same space. Additionally, as of November 1, 2021, we have signed a letter of intent for the entire building at our redevelopment undergoing in Tempe, AZ. We are also currently reviewing strategic alternatives at properties in our Office Portfolio located in Silver Springs, MD and in Decatur, GA, including opportunities to redevelop these properties. These redevelopment projects may require significant capital expenditures and time to complete. We have continued to progress on our redevelopments during 2021 and continue to assess opportunities to redevelop other properties in our portfolio.

As noted above, our ability to make capital investments is currently limited pursuant to our credit agreement through the Amendment Period. Additionally, due to supply chain disruptions, the capital investments we plan to make may be delayed or require more capital than we expect. For further information regarding our acquisitions and dispositions, see Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Our Financing Liquidity and Resources

The change in cash provided by (used in) financing activities for the nine months ended September 30, 2021 compared to the prior period was primarily due to increased net borrowings under our revolving credit facility, net proceeds from our issuance in February 2021 of \$500.0 million aggregate principal amount of our 4.375% senior notes, decreased term loan repayment amounts in the 2021 period compared to the 2020 period, and a reduction in distributions paid to our shareholders in the 2021 period, partially offset by increased senior unsecured notes repayment amounts in the 2021 period compared to the 2020 period and net proceeds from our issuance in June 2020 of \$1.0 billion aggregate principal amount of our 9.75% senior notes.

As of September 30, 2021, we had \$794.7 million of cash and cash equivalents and were fully drawn under our revolving credit facility. We typically use cash balances, borrowings under our revolving credit facility, net proceeds from offerings of debt or equity securities, net proceeds from the disposition of assets and the cash flows from our operations to fund our operations, debt repayments, distributions, property acquisitions, investments, capital expenditures and other general business purposes.

In order to fund investments and to meet cash needs that may result from timing differences between our receipt of rents and our desire or need to make distributions or pay operating or capital expenses, we maintain a revolving credit facility. As of September 30, 2021, the maturity date of our revolving credit facility was January 2022. In October 2021, we exercised our option to extend the maturity date of our revolving credit facility by one year to January 2023. Subject to the payment of an extension fee and meeting other conditions, we have an additional option to extend the maturity date of the facility by one year to January 2024. Our revolving credit facility generally provides that we can borrow, repay and re-borrow funds available under our revolving credit facility until maturity, and no principal repayment is due until maturity. At September 30, 2021, our revolving credit facility required interest to be paid on borrowings at the annual rate of 2.9%, plus a facility fee of 30 basis points per annum on the total amount of lending commitments under the facility. The interest rate premium and facility fee are each subject to adjustment based upon changes to our credit ratings. On March 31, 2021, we borrowed \$800.0 million under our revolving credit facility as a precautionary measure to increase our cash position and preserve financial flexibility in light of continued uncertainties related to the COVID-19 pandemic. As of September 30, 2021 and November 1, 2021, we were fully drawn under our revolving credit facility.

In January 2021, we and our lenders amended our credit and term loan agreements in order to provide us with certain flexibility in light of continued uncertainties related to the COVID-19 pandemic. Pursuant to the amendments:

- certain of the financial covenants under our credit and term loan agreements, including covenants that require us to maintain certain financial ratios, have been waived through the Amendment Period;
- the revolving credit facility commitments have been reduced from \$1.0 billion to \$800.0 million;
- we pledged certain equity interests of subsidiaries owning properties to secure our obligations under our credit and term loan agreements and agreed to provide, and as of September 2021 had provided, first mortgage liens on 61 medical office and life science properties with an aggregate gross book value of real estate assets of \$1.0 billion as of

September 30, 2021 to secure our obligations, which pledges and/or mortgage liens may be removed or new ones may be added during the Amendment Period based on outstanding debt amounts, among other things;

- we have the ability to fund \$350.0 million of capital expenditures per year and we are restricted in our ability to acquire real property as defined in our credit agreement;
- the interest rate premium over LIBOR under our revolving credit facility and term loan increased by 30 basis points;
- certain covenants and restrictions on distributions to common shareholders, share repurchases, capital expenditures, acquiring additional properties and incurring additional indebtedness (in each case subject to various exceptions), and the minimum liquidity requirement of \$200.0 million will remain in place during the Amendment Period; and
- we are generally required to apply the net cash proceeds from the disposition of assets, capital markets transactions, and debt financings to the repayment of any amounts outstanding under our revolving credit facility.

In September 2021, we and our lenders further amended our credit agreement. Among other things, the amendment sets forth the mechanics for establishing a replacement benchmark rate under our revolving credit facility at such time as LIBOR is no longer available to calculate interest payable on amounts outstanding thereunder.

Generally, when significant amounts are outstanding under our revolving credit facility, or as the maturities of our indebtedness approach, we intend to explore refinancing alternatives. Such alternatives may include incurring additional debt, selling certain properties and issuing new equity securities. In addition, we may also seek to expand our existing joint venture arrangements or to participate in additional joint ventures or other arrangements that may provide us additional sources of financing. We currently have an effective shelf registration statement that allows us to issue public securities on an expedited basis, but it does not assure that there will be buyers for such securities. We may also assume debt in connection with our acquisitions of properties or place new debt on properties we own.

During the nine months ended September 30, 2021, we paid quarterly cash distributions to our shareholders totaling approximately \$7.2 million using existing cash balances. On October 14, 2021, we declared a quarterly distribution payable to common shareholders of record on October 25, 2021 in the amount of \$0.01 per share, or approximately \$2.4 million. We expect to pay this distribution on or about November 18, 2021 using cash on hand. For further information regarding the distribution we paid during 2021, see Note 7 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

We believe we will have access to various types of financings, including debt or equity offerings, to fund our future acquisitions and to pay our debts and other obligations as they become due, subject to limitations on debt offerings in agreements governing our debt. Our ability to complete, and the costs associated with, future debt transactions depends primarily upon credit market conditions and our then creditworthiness. We have no control over market conditions. Our credit and debt ratings, which were recently downgraded, depend upon evaluations by credit rating agencies of our business practices and plans, including our ability to maintain our earnings, to stagger our debt maturities and to balance our use of debt and equity capital so that our financial performance and leverage ratios afford us flexibility to withstand any reasonably anticipated adverse changes. Similarly, our ability to raise equity capital in the future will depend primarily upon equity capital market conditions and our ability to conduct our business to maintain and grow our operating cash flows. We intend to conduct our business activities in a manner which will afford us reasonable access to capital for investment and financing activities, but we cannot be sure that we will be able to successfully carry out that intention. It is uncertain what the duration and severity of the COVID-19 pandemic and its economic impact will be. A protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from the COVID-19 pandemic may have various negative consequences including a decline in financing availability and increased costs for financing. Further, those conditions could also disrupt capital markets and limit our access to financing from public sources, particularly if the global financial markets experience significant disruptions.

In February 2021, we issued \$500.0 million aggregate principal amount of our 4.375% senior notes due 2031 in an underwritten public offering. These notes are guaranteed by all of our subsidiaries, except for certain excluded subsidiaries, including pledged subsidiaries under our credit agreement. We used the net proceeds from this offering to prepay in full our \$200.0 million term loan which was scheduled to mature in September 2022. In June 2021, we used the remaining net proceeds from this offering and cash on hand to redeem all of our outstanding 6.75% senior notes due 2021 for a redemption price equal to the principal amount of \$300.0 million plus accrued and unpaid interest of \$10.1 million, when these notes became redeemable with no prepayment premium. Our next significant debt maturity does not occur until \$250.0 million of our senior notes mature in May 2024.

In February 2021, Moody's Investors Service downgraded our senior unsecured debt rating from Ba2 to B1 and our 9.75% senior notes due 2025 rating from Ba1 to Ba3 and assigned a Ba3 rating to our 4.375% senior notes due 2031, and Standard & Poor's Ratings Services downgraded our senior unsecured debt rating from BB to BB- and our 9.75% senior notes due 2025 rating from BB+ to BB and assigned a BB rating to our 4.375% senior notes due 2031.

For further information regarding our outstanding debt, see Note 4 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Except for the limitations in the amendments to our credit agreement described above, our strategy related to property acquisitions and dispositions is materially unchanged from that disclosed in our Annual Report. Our plans for particular properties and other strategic considerations may cause us to change our acquisition and disposition strategies, and we may do so at any time and without shareholder approval. Further, those plans may be further impacted by the COVID-19 pandemic.

Debt Covenants

Our principal debt obligations at September 30, 2021 were: (1) outstanding borrowings under our \$800.0 million revolving credit facility; (2) \$2.9 billion outstanding principal amount of senior unsecured notes; and (3) \$683.0 million aggregate principal amount of mortgage notes (excluding premiums, discounts and net debt issuance costs) secured by seven properties. For further information regarding our indebtedness, see Note 4 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Our senior unsecured notes are governed by our senior unsecured notes indentures and their supplements. Our credit agreement and our senior unsecured notes indentures and their supplements provide for acceleration of payment of all amounts outstanding upon the occurrence and continuation of certain events of default, such as, in the case of our credit agreement, a change of control of us, as defined, which includes RMR LLC ceasing to act as our business and property manager. Our senior unsecured notes indentures and their supplements and our credit agreement also contain covenants that restrict our ability to incur debts, including debts secured by mortgages on our properties, in excess of calculated amounts and require us to maintain various financial ratios, and our credit agreement contains covenants that restrict our ability to make distributions to our shareholders in certain circumstances. As of September 30, 2021, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our revolving credit facility and our public debt covenants as the effects of the COVID-19 pandemic continued to adversely impact our operations. We are not allowed to incur additional debt while this ratio is below 1.5x on a pro forma basis, and as such, prior to falling below the 1.5x incurrence requirement, we borrowed \$800.0 million under our revolving credit facility as a precautionary measure to increase our cash position and preserve financial flexibility in light of continued uncertainties related to the COVID-19 pandemic. The proceeds from this borrowing may be used for general business purposes. As of September 30, 2021, we believe we were in compliance with all of the other covenants under our senior unsecured notes indentures and their supplements, our credit agreement and our other debt obligations. Although we have taken steps to enhance our ability to maintain sufficient liquidity, as noted elsewhere in this Quarterly Report on Form 10-Q, a protracted negative impact on the economy or the industries in which our properties and businesses operate resulting from the COVID-19 pandemic may cause increased pressure on our ability to satisfy financial and other covenants. Continued availability of borrowings under our revolving credit facility is subject to our satisfying certain financial covenants and other credit facility conditions. If our operating results and financial condition are significantly negatively impacted by the economic conditions or otherwise, we may fail to satisfy covenants and conditions under our credit agreement or fail to satisfy our public debt covenants. Further, if we believe we would not be able to satisfy our financial or other covenants, we would seek waivers, amendments, or in the case of our public debt covenants, draw upon any undrawn amounts if again available from our revolving credit facility prior to any covenant violation, consistent with our previous approach in March 2021, which may lead to increased costs and interest rates, additional restrictive covenants or other lender protections. We can provide no assurance that we would be able to obtain these waivers or amendments or repay the related debt facilities when due, which would lead to an event of default or potential acceleration of amounts due on our outstanding debt.

Neither our senior unsecured notes indentures and their supplements, nor our credit agreement, contain provisions for acceleration which could be triggered by our debt ratings. However, under our credit agreement, our senior unsecured debt ratings are used to determine the fees and interest rates we pay. Accordingly, following our debt ratings downgrades, our interest expense and related costs under our credit agreement has increased. See "—Our Financing Liquidity and Resources" above for information regarding recent downgrades of our issuer credit rating and senior unsecured debt rating that resulted in a change in the interest rate premiums under our revolving credit facility and term loan.

Our senior unsecured notes indentures and their supplements contain cross default provisions to any other debts of more than \$20.0 million (\$50.0 million or more in the case of our senior unsecured notes indentures and supplements entered in

February 2016, February 2018, June 2020 and February 2021). Similarly, our credit agreement has cross default provisions to other indebtedness that is recourse of \$25.0 million or more and indebtedness that is non-recourse of \$75.0 million or more.

The loan agreements governing the aggregate \$620.0 million secured debt financing on the property owned by our joint venture contain customary covenants and provide for acceleration of payment of all amounts due thereunder upon the occurrence and continuation of certain events of default.

Supplemental Guarantor Information

In March 2020, the SEC released Release No. 33-10762, Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities, or Release 33-10762. Release 33-10762 amended the disclosure requirements related to certain registered securities under SEC Regulation S-X, Rules 3-10 and 3-16, permitting registrants to provide certain alternative financial disclosures and non-financial disclosures in lieu of separate consolidating financial statements for subsidiary issuers and guarantors of registered debt securities if certain conditions are met.

On May 28, 2020, we issued \$1.0 billion of our 9.75% senior notes due 2025. On February 3, 2021, we issued \$500.0 million of our 4.375% senior notes due 2031. As of September 30, 2021, all \$1.0 billion of our 9.75% senior notes due 2025 and all \$500.0 million of our 4.375% senior notes due 2031 were fully and unconditionally guaranteed, on a joint and several basis and on a senior unsecured basis, by all of our subsidiaries, except for certain excluded subsidiaries, including pledged subsidiaries under our credit agreement. The notes and the guarantees are effectively subordinated to all of our and the subsidiary guarantors' secured indebtedness, respectively, to the extent of the value of the collateral securing such secured indebtedness, and are structurally subordinated to all indebtedness and other liabilities and any preferred equity of any of our subsidiaries that do not guarantee the notes. Our remaining \$1.35 billion of senior unsecured notes do not have the benefit of any guarantees as of September 30, 2021.

A subsidiary guarantor's guarantee of our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031, as applicable, and all other obligations of such subsidiary guarantor under the indenture governing the notes will automatically terminate and such subsidiary guarantor will automatically be released from all of its obligations under such subsidiary guarantee and the indenture under certain circumstances, including on or after the date (a) the notes have an investment grade rating from two rating agencies and one of such investment grade ratings is a mid-BBB investment grade rating and (b) no default or event of default has occurred and is continuing under the indenture. Our non-guarantor subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due on our 9.75% senior notes due 2025 or our 4.375% senior notes due 2031 or the respective guarantees, or to make any funds available therefor, whether by dividend, distribution, loan or other payments. The rights of holders of our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031, as applicable, to benefit from any of the assets of our non-guarantor subsidiaries are subject to the prior satisfaction of claims of those subsidiaries' creditors and any preferred equity holders. As a result, our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031 and the respective guarantees are structurally subordinated to all indebtedness, guarantees and other liabilities of our subsidiaries that do not guarantee our 9.75% senior notes due 2025 and our 4.375% senior notes due 2031, including guarantees of other indebtedness of ours, payment obligations under lease agreements, trade payables and preferred equity.

The following tables present summarized financial information for guarantor entities and issuer, on a combined basis after eliminating (i) intercompany transactions and balances among the guarantor entities and (ii) equity in earnings from, and any investments in, any subsidiary that is a non-guarantor (dollars in thousands):

	As of September 30, 2021	As of December 31, 2020
Real estate properties, net	\$ 4,122,769	\$ 4,138,919
Other assets, net	1,018,134	288,034
Total assets	<u>\$ 5,140,903</u>	<u>\$ 4,426,953</u>
Indebtedness, net	\$ 3,612,092	\$ 2,815,049
Other liabilities	269,048	253,263
Total liabilities	<u>\$ 3,881,140</u>	<u>\$ 3,068,312</u>

	Nine Months Ended September 30, 2021	
Revenues	\$	850,937
Expenses		928,412
Loss from continuing operations		(260,351)
Net loss		(261,375)
Net loss attributable to DHC		(261,375)

Related Person Transactions

We have relationships and historical and continuing transactions with RMR LLC, RMR Inc., Five Star and others related to them. For further information about these and other such relationships and related person transactions, see Notes 9, 10 and 11 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, our Annual Report, our definitive Proxy Statement for our 2021 Annual Meeting of Shareholders and our other filings with the SEC. In addition, see the section captioned “Risk Factors” of our Annual Report for a description of risks that may arise as a result of these and other related person transactions and relationships. We may engage in additional transactions with related persons, including businesses to which RMR LLC or its subsidiaries provide management services.

Impact of Government Reimbursement

For the nine months ended September 30, 2021, substantially all of our NOI was generated from properties where a majority of the revenues are derived from our tenants' and residents' private resources, and a small amount of our NOI was generated from properties where a majority of the revenues are derived from Medicare and Medicaid payments. Nonetheless, we own, and our tenants, managers and operators operate, facilities in many states that participate in federal and state healthcare payment programs, including the federal Medicare and state Medicaid programs and other federal and state healthcare payment programs. Also, some of our medical office and life science property tenants participate in federal Medicare and state Medicaid programs and other government healthcare payment programs.

Under the CARES Act, HHS established a Provider Relief Fund as noted elsewhere in this Quarterly Report on Form 10-Q. We have recognized \$18,967 as other income with respect to our SHOP segment for the nine months ended September 30, 2021.

For more information regarding the government healthcare funding and regulation of our business, please see the section captioned “Business—Government Regulation and Reimbursement” in our Annual Report and the section captioned “Management's Discussion and Analysis of Financial Condition and Results of Operations—Impact of Government Reimbursement” in our Annual Report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are exposed to risks associated with market changes in interest rates. We manage our exposure to this market risk by monitoring available financing alternatives. Our strategy to manage exposure to changes in interest rates has not materially changed since December 31, 2020. Other than as described below, we do not currently foresee any significant changes in our exposure to fluctuations in interest rates or in how we manage this exposure in the near future.

Although we have no present plans to do so, we may in the future enter into hedge arrangements or derivative contracts from time to time to mitigate our exposure to changes in interest rates.

Fixed Rate Debt

At September 30, 2021, our outstanding fixed rate debt included the following (dollars in thousands):

Debt	Principal Balance ⁽¹⁾	Annual Interest Rate ⁽¹⁾		Annual Interest Expense	Maturity	Interest Payments Due
Senior unsecured notes	\$ 250,000	4.750	%	\$ 11,875	2024	Semi-Annually
Senior unsecured notes	1,000,000	9.750	%	97,500	2025	Semi-Annually
Senior unsecured notes	500,000	4.750	%	23,750	2028	Semi-Annually
Senior unsecured notes	500,000	4.375	%	21,875	2031	Semi-Annually
Senior unsecured notes	350,000	5.625	%	19,688	2042	Quarterly
Senior unsecured notes	250,000	6.250	%	15,625	2046	Quarterly
Mortgage note	11,304	6.280	%	710	2022	Monthly
Mortgage note	10,542	4.850	%	511	2022	Monthly
Mortgage note	15,546	5.750	%	894	2022	Monthly
Mortgage note	15,318	6.640	%	1,017	2023	Monthly
Mortgage notes ⁽²⁾	620,000	3.530	%	21,886	2026	Monthly
Mortgage note	10,298	4.444	%	458	2043	Monthly
	<u>\$ 3,533,008</u>			<u>\$ 215,789</u>		

(1) The principal balances and interest rates are the amounts stated in the applicable contracts. In accordance with GAAP, our carrying values and recorded interest expense may differ from these amounts because of market conditions at the time we assumed certain of these debts. This table does not include obligations under finance leases.

(2) The life science property encumbered by these mortgages is owned in a joint venture arrangement in which we own a 55% equity interest. The principal amounts listed in the table for these debts have not been adjusted to reflect the equity interest in the joint venture that we do not own.

No principal repayments are due under our unsecured notes until maturity. Our mortgage notes generally require principal and interest payments through maturity pursuant to amortization schedules. Because these debts require interest to be paid at a fixed rate, changes in market interest rates during the term of these debts will not affect our interest obligations. If these debts were refinanced at interest rates which are one percentage point higher or lower than shown above, our annual interest cost would increase or decrease by approximately \$35.3 million.

Changes in market interest rates also would affect the fair value of our fixed rate debt obligations; increases in market interest rates decrease the fair value of our fixed rate debt, while decreases in market interest rates increase the fair value of our fixed rate debt. Based on the balances outstanding at September 30, 2021, and discounted cash flows analyses through the respective maturity dates, and assuming no other changes in factors that may affect the fair value of our fixed rate debt obligations, a hypothetical immediate one percentage point increase in interest rates would change the fair value of those obligations by approximately \$29.9 million.

Our senior unsecured notes and certain of our mortgages 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 and we are generally allowed to make prepayments only at a premium equal to a make whole amount, as defined, which is generally designed to preserve a stated yield to the noteholder. In the past, we have repurchased and retired some of our outstanding debt and we may do so again in the future. These prepayment rights and our ability to repurchase and retire outstanding debt may afford us opportunities to mitigate the risk of refinancing our debts at higher rates by refinancing prior to maturity.

Floating Rate Debt

At September 30, 2021, our floating rate debt obligations consisted of \$800.0 million outstanding under our revolving credit facility. As of September 30, 2021, the maturity date of our revolving credit facility was January 2022. In October 2021, we exercised our option to extend the maturity date of our revolving credit facility by one year to January 2023. Subject to the payment of an extension fee and meeting other conditions, we have an additional option to extend the maturity date of the

facility by one year to January 2024. Generally, no principal repayments are required under our revolving credit facility prior to maturity, and we can borrow, repay and re-borrow funds available, subject to conditions, at any time without penalty.

Borrowings under our revolving credit facility are in U.S. dollars and interest is required to be paid at the rate of LIBOR plus a premium that is subject to adjustment based upon changes to our credit ratings. Accordingly, we are exposed to interest rate risk for changes in U.S. dollar based short term rates, specifically LIBOR, and to changes in our credit ratings. In addition, upon renewal or refinancing of our revolving credit facility, we are vulnerable to increases in interest rate premiums due to market conditions or our perceived credit characteristics. Generally, a change in interest rates would not affect the value of our floating rate debt but would affect our operating results.

The following table presents the impact a one percentage point increase in interest rates would have on our annual floating rate interest expense as of September 30, 2021 (dollars in thousands except per share amounts):

	Impact of Changes in Interest Rates						
	Interest Rate ⁽¹⁾			Outstanding Floating Rate Debt		Total Interest Expense Per Year	Annual Earnings Per Share Impact ⁽²⁾
At September 30, 2021	2.85	%	\$	800,000	\$	22,800	\$ 0.10
One percentage point increase	3.85	%	\$	800,000	\$	30,800	\$ 0.13

(1) Interest rate under our revolving credit facility as of September 30, 2021.

(2) Based on weighted average number of shares outstanding (basic and diluted) for the nine months ended September 30, 2021.

The foregoing table shows the impact of an immediate increase in floating interest rates. If interest rates were to increase gradually over time, the impact would be spread over time. Our exposure to fluctuations in floating interest rates will increase or decrease in the future with increases or decreases in the amount of our borrowings outstanding under our revolving credit facility or other floating rate debt.

LIBOR Phase Out

LIBOR is currently expected to be phased out for new contracts by December 31, 2021 and for pre-existing contracts by June 30, 2023. We are required to pay interest on borrowings under our revolving credit facility at floating rates based on LIBOR. Interest we may pay on any future debt that we may incur may also require that we pay interest based upon LIBOR. In September 2021, we amended our credit agreement to set forth the mechanics for establishing a replacement benchmark rate under our revolving credit facility at such time as LIBOR is no longer available to calculate interest payable on amounts outstanding thereunder. Despite this amendment, we cannot be sure that, if LIBOR is phased out or transitioned, the changes to the determination of interest under our agreement will approximate the current calculation in accordance with LIBOR. We cannot be sure what standard, if any, will replace LIBOR if it is phased out or transitioned.

Item 4. Controls and Procedures.

As of the end of the period covered by this Quarterly Report on Form 10-Q, our management carried out an evaluation, under the supervision and with the participation of our President and Chief Executive Officer and our Chief Financial Officer and Treasurer, of the effectiveness of our disclosure controls and procedures pursuant to Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our President and Chief Executive Officer and our Chief Financial Officer and Treasurer concluded that our disclosure controls and procedures are effective.

There have been no changes in our internal control over financial reporting during the quarter ended September 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Warning Concerning Forward-Looking Statements

This Quarterly Report on Form 10-Q contains statements that constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and other securities laws. Also, whenever we use words such as “believe”, “expect”, “anticipate”, “intend”, “plan”, “estimate”, “will”, “may” and negatives or derivatives of these or similar expressions, we are making forward-looking statements. These forward-looking statements are based upon our present intent, beliefs or expectations, but forward-looking statements are not guaranteed to occur and may not occur. Forward-looking statements in this Quarterly Report on Form 10-Q relate to various aspects of our business, including:

- The duration and severity of the COVID-19 pandemic and its impact on us and our tenants', managers' and operators' businesses, including the ability of our tenants and senior living community residents to pay rent to us,
- Our ability to pay distributions to our shareholders and to sustain the amount of such distributions,
- The ability of our senior living community managers to minimize the negative impact from the COVID-19 pandemic on our senior living communities and to manage them profitably and increase our returns,
- Our belief that we are well positioned to weather the present disruptions facing the real estate industry and, in particular, the real estate healthcare industry, including the senior living industry,
- Our belief that the healthcare sector and many of our tenants, managers and operators provide essential services across the United States and the implication that our and our tenants', managers' and operators' businesses will remain open to provide such essential services,
- Our expectations regarding the quality and future performance of the new third party managers of the senior living communities we have recently transitioned from Five Star and the senior living communities we expect to transition from Five Star, and our expectation that we will complete the transition of all 107 communities from Five Star to new third party managers by December 31, 2021,
- Whether the aging U.S. population and increasing life spans of seniors will increase the demand for senior living communities and other medical and healthcare related properties and healthcare services,
- Our ability to retain our existing tenants, attract new tenants and maintain or increase current rental rates on terms as favorable to us as our prior leases,
- The credit qualities of our tenants,
- Our ability to compete for tenancies and acquisitions effectively,
- Our potential receipt of any additional funding under the CARES Act,
- Our expectation that our redevelopment projects will be completed on budget and by the estimated completion dates,
- Our acquisitions and sales of properties,
- Our closures of senior living communities,
- Our ability to raise debt or equity capital,
- Our ability to complete dispositions,
- The future availability of borrowings under our revolving credit facility,
- Our policies and plans regarding investments, financings and dispositions,
- Whether we may contribute additional properties to our joint venture and receive proceeds from the other investors in the joint venture in connection with those contributions,
- Our ability to pay interest on and principal of our debt,

- Our ability to appropriately balance our use of debt and equity capital,
- Our credit ratings,
- Our expectation that we benefit from our relationships with RMR LLC,
- Our qualification for taxation as a REIT, and
- Other matters.

Our actual results may differ materially from those contained in or implied by our forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. Risks, uncertainties and other factors that could have a material adverse effect on our forward-looking statements and upon our business, results of operations, financial condition, FFO attributable to common shareholders, Normalized FFO attributable to common shareholders, NOI, cash flows, liquidity and prospects include, but are not limited to:

- The impacts of the COVID-19 pandemic and its aftermath on us and our tenants', managers' and operators' businesses,
- The impact of conditions in the economy and the capital markets on us and our tenants, managers and operators,
- Compliance with, and changes to, federal, state and local laws and regulations, accounting rules, tax laws and similar matters,
- Limitations imposed on our business and our ability to satisfy complex rules in order for us to maintain our qualification for taxation as a REIT for U.S. federal income tax purposes,
- Competition within the healthcare and real estate industries, particularly in those markets in which our properties are located,
- Actual and potential conflicts of interest with our related parties, including our Managing Trustees, Five Star, RMR LLC and others affiliated with them, and
- Acts of terrorism, outbreaks of pandemics, including the COVID-19 pandemic, or other manmade or natural disasters beyond our control.

For example:

- Under the current economic conditions for the industries in which our properties and businesses operate, our tenants, managers and operators may not be able to profitably operate their businesses at our properties, our tenants may become unable or unwilling to pay rent owed to us, or the managers or operators of our senior living communities may be unable to generate our minimum returns for sustained periods as a result of the COVID-19 pandemic or otherwise. Additionally, our ability to borrow under our credit facility is subject to us satisfying financial and other covenants, and if we default under our credit facility or other debt obligations due to the impacts of the COVID-19 pandemic or otherwise, we may be required to repay our outstanding borrowings and other debt. Further, although we have taken steps to enhance our ability to maintain sufficient liquidity, unanticipated events, such as emergencies in addition to, or as an expansion of, the current impacts of the COVID-19 pandemic, may require us to expend amounts not currently planned,
- This Quarterly Report on Form 10-Q states that vaccination clinics at senior living communities in our SHOP segment have been completed; however, even though vaccinations have been administered, the senior living industry may not recover to pre-pandemic levels for an extended period of time or at all if market preferences and practices result in older adults utilizing less services of the type offered at our communities,
- Some of our senior living community managers have experienced, and others may experience, operating and financial challenges resulting from a number of factors, some of which are beyond their control, and which challenges impact our operating results from our managed senior living communities, including, but not limited to:
 - The impact of conditions in the economy and the capital markets on our senior living community managers and their residents, clients and other customers,

- Competition within the senior living and other health and wellness related services businesses,
 - Older adults delaying or forgoing moving into senior living communities or purchasing health and wellness services from our senior living community managers,
 - Increases in our senior living community managers' labor costs or in costs they pay for goods and services, due in part to supply chain constraints and commodity price inflation,
 - Increases in tort and insurance liability costs,
 - Our senior living community managers' operating and debt leverage,
 - Changes in Medicare or Medicaid policies and regulations or the possible future repeal, replacement or modification of these or other existing or proposed legislation or regulations,
 - Delays or nonpayment of government payments to our senior living community managers,
 - Compliance with, and changes to, federal, state and local laws and regulations that could affect our senior living community managers' services or impose requirements, costs and administrative burdens that may reduce our managers' ability to profitably operate their businesses,
 - Our senior living community managers' exposure to litigation and regulatory and government proceedings due to the nature of their businesses, including adverse determinations resulting from government reviews, audits and investigations and unanticipated costs to comply with legislative or regulatory developments, and
 - Ongoing healthcare reform efforts, including continued efforts by third-party payers to reduce costs,
- We may not be successful in transitioning the 107 senior living communities from Five Star to other third party managers by December 31, 2021 or at all, or in finding a redevelopment opportunity for the remaining senior living community, and the managers for those that we have transitioned or will transition may not be able to manage our senior living communities profitably or increase our returns,
 - We own a significant number of Five Star common shares and we expect to own these shares for the foreseeable future. However, we may sell some or all of our Five Star common shares, or our ownership interest in Five Star may otherwise be diluted in the future,
 - Our current cash distribution rate to common shareholders is \$0.01 per share per quarter, or \$0.04 per share per year, due to the operating challenges and uncertain economic challenges as a result of the COVID-19 pandemic. Our distribution rate may be set and reset from time to time by our Board of Trustees. Our Board of Trustees will consider many factors when setting or resetting our distribution rate, including our historical and projected net income, Normalized FFO, requirements to maintain our qualification for taxation as a REIT, limitations in the agreements governing our debt, the availability to us of debt and equity capital, our expectation of our future capital requirements and operating performance, our expected needs for and availability of cash to pay our obligations and other factors deemed relevant by our Board of Trustees in its discretion. Further, our projected cash available for distribution may change and may vary from our expectations. Accordingly, future distributions to our shareholders may be increased or decreased and we cannot be sure as to the rate at which future distributions will be paid,
 - Our ability to make future distributions to our shareholders and to make payments of principal and interest on our indebtedness depends upon a number of factors, including our future earnings, the capital costs we incur to lease and operate our properties and our working capital requirements. We may be unable to pay our debt obligations or to maintain our current rate of distributions on our common shares and future distributions may be reduced or eliminated,
 - We may be unable to repay our debt obligations when they become due,
 - We intend to conduct our business activities in a manner that will afford us reasonable access to capital for investment and financing activities. However, we may not succeed in this regard and we may not have reasonable access to capital,

- Subject to limitations on acquisitions in agreements governing our debt, we plan to selectively sell certain properties from time to time to fund future acquisitions, and to strategically update, rebalance and reposition our investment portfolio, which we refer to as our capital recycling program. In addition, to reduce our leverage, we have sold properties and other assets. We cannot be sure we will sell any of these properties or what the terms or timing of any such sales may be. In addition, in the case of our capital recycling program, we cannot be sure that we will acquire replacement properties that improve the quality of our portfolio or our ability to increase our distributions to shareholders, and, we may sell properties at prices that are less than expected and less than their carrying values and therefore incur losses,
- Contingencies in our acquisition and sale agreements that we may enter may not be satisfied and any acquisitions and sales pursuant to such agreements and any related management arrangements we may expect to enter may not occur, may be delayed or the terms of such transactions or arrangements may change,
- The capital investments we are making at our senior living communities and our plan to invest additional capital into our senior living communities to better position them in their respective markets in order to increase our future returns may not be successful and may not achieve our expected results. Our senior living communities may not be competitive, despite these capital investments, or these capital investments may be delayed due to the COVID-19 pandemic,
- Our redevelopment projects may not be successful and may cost more or take longer to complete than we currently expect. In addition, we may not realize the returns we expect from these projects and we may incur losses from these projects, and any letters of intent we entered and may enter into to lease our redevelopment projects may not materialize,
- We may spend more for capital expenditures than we currently expect,
- Our existing joint venture and any other joint ventures that we may enter may not be successful,
- Our tenants may experience losses and default on their rent obligations to us,
- Some of our tenants may not renew expiring leases, and we may be unable to obtain new tenants to maintain or increase the historical occupancy rates of, or rents from, our properties,
- Our ability to grow our business and maintain or increase our distributions to shareholders depends in large part upon our ability to buy properties and arrange for their profitable operation or lease them for rents, less their property operating expenses, that exceed our capital costs. We are currently generally prohibited from making acquisitions pursuant to our credit agreement during the Amendment Period. In addition, even after these restrictions expire, we may be unable to identify properties that we want to acquire, and we may fail to reach agreement with the sellers and complete the purchase of any properties we do want to acquire. In addition, we may not realize the returns we expect on any properties we acquire,
- Rents that we can charge at our properties may decline upon renewals or expirations because of changing market conditions or otherwise,
- Although we have obtained a waiver from compliance with certain financial covenants under our credit agreement through June 2022, if our operating results and financial condition are further adversely impacted by current economic conditions or otherwise, we may fail to comply with the terms of the waiver and other requirements under our credit agreement, and we may also fail to satisfy certain financial requirements under the agreements governing our public debt. For example, our ratio of consolidated income available for debt service to debt service was below the 1.5x incurrence requirement under our credit agreement and our public debt covenants as of September 30, 2021, and we cannot be certain how long this ratio will remain below 1.5x. We are prohibited from incurring additional debt while this ratio is below 1.5x on a pro forma basis, but are not required to repay outstanding debt as a result of failure to comply with this financial requirement. We are currently fully drawn under our revolving credit facility and could also be required to repay our outstanding debt in the event of non-compliance with certain other requirements of our credit agreement or the agreements governing our public debt. We may therefore experience future liquidity constraints, as we are prohibited from incurring additional debt under our credit agreement or otherwise for failure to comply with the requirements of our credit agreement and the agreements governing our public debt, and we will be limited to our cash on hand or be forced to raise additional sources of capital or take other measures to maintain adequate liquidity,

- Actual costs under our revolving credit facility or other floating rate debt will be higher than the stated rates because of fees and expenses associated with such debt,
- We have an option to extend the maturity date of our revolving credit facility upon payment of a fee and meeting other conditions; however, the applicable conditions may not be met,
- The premiums used to determine the interest rate payable on our revolving credit facility and the facility fee payable on our revolving credit facility are based on our credit ratings, which are subject to change,
- For the three months ended September 30, 2021, substantially all of our NOI was generated from properties where a majority of the revenues are derived from our tenants' and residents' private resources. This may imply that we will maintain or increase the percentage of our NOI generated from private resources at our senior living communities. However, our residents and patients may become unable to fund our charges with private resources and we may be required or may elect for business reasons to accept or pursue revenues from government sources, which could result in an increased part of our NOI and revenue being generated from government payments and our becoming more dependent on government payments. If the government fails to pay us or our tenants or managers amounts due to us or them because of government defaults, shutdowns, budgetary constraints or otherwise, we and they may be significantly negatively impacted,
- Circumstances that adversely affect the ability of seniors or their families to pay for our managers' or operators' services, such as economic downturns, weak housing market conditions, higher levels of unemployment among our residents' family members, lower levels of consumer confidence, stock market volatility and/or changes in demographics generally could affect the profitability of our senior living communities,
- It is difficult to accurately estimate tenant space preparation costs. Our unspent leasing related obligations may cost more or less and may take longer to complete than we currently expect, and we may incur increasing amounts for these and similar purposes in the future,
- Our senior living communities are subject to extensive government regulation, licensure and oversight. Our operators sometimes experience deficiencies in the operation of our senior living communities and some of our communities may be prohibited from admitting new residents or our license to continue operations at a community may be revoked. Also, operating deficiencies or a license revocation at one or more of our senior living communities may have an adverse impact on our ability to obtain licenses for or attract residents to our other communities,
- We believe that our relationships with our related parties, including Five Star and RMR LLC and others affiliated with them may benefit us and provide us with competitive advantages in operating and growing our business. However, the advantages we believe we may realize from these relationships may not materialize, and
- The business and property management agreements between us and RMR LLC have continuing 20 year terms. However, those agreements permit early termination in certain circumstances. Accordingly, we cannot be sure that these agreements will remain in effect for continuing 20 year terms.

Currently unexpected results could occur due to many different circumstances, some of which are beyond our control, such as the COVID-19 pandemic and its aftermath, new legislation or regulations affecting our business or the businesses of our tenants, managers or operators, changes in our tenants', managers' or operators' revenues or costs, worsening or lack of improvement of the financial condition or changes in our tenants', managers' or operators' financial conditions, deficiencies in operations by a tenant, manager or operator of one or more of our senior living communities, changed Medicare or Medicaid rates, acts of terrorism, pandemics, natural disasters, climate change or changes in capital markets or the economy generally.

The information contained elsewhere in this Quarterly Report on Form 10-Q or in our other filings with the SEC, including under the caption "Risk Factors", or incorporated herein or therein, identifies other important factors that could cause differences from our forward-looking statements. Our other filings with the SEC are available on the SEC's website at www.sec.gov.

You should not place undue reliance upon our forward-looking statements.

Except as required by law, we do not intend to update or change any forward-looking statements as a result of new information, future events or otherwise.

Statement Concerning Limited Liability

The Amended and Restated Declaration of Trust establishing Diversified Healthcare Trust, dated September 20, 1999, as amended and supplemented, as filed with the State Department of Assessments and Taxation of Maryland, provides that no trustee, officer, shareholder, employee or agent of Diversified Healthcare Trust shall be held to any personal liability, jointly or severally, for any obligation of, or claim against, Diversified Healthcare Trust. All persons dealing with Diversified Healthcare Trust in any way shall look only to the assets of Diversified Healthcare Trust for the payment of any sum or the performance of any obligation.

PART II. Other Information

Item 1A. Risk Factors.

There have been no material changes to risk factors from those we previously disclosed in our Annual Report.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Issuer purchases of equity securities. The following table provides information about our purchases of our equity securities during the quarter ended September 30, 2021:

Calendar Month	Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
September 2021	94,937	\$ 3.39	—	\$ —
Total	94,937	\$ 3.39	—	\$ —

(1) These common share withholdings and purchases were made to satisfy tax withholding and payment obligations of our officers and certain current and former employees of RMR LLC in connection with the vesting of awards of our common shares. We withheld and purchased these shares at their fair market value based upon the trading price of our common shares at the close of trading on Nasdaq on the purchase date.

Item 6. Exhibits.

Exhibit Number

Description

3.1	Composite Copy of Articles of Amendment and Restatement, dated September 20, 1999, as amended to date. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.)
3.2	Articles Supplementary, dated May 11, 2000. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2000.)
3.3	Articles Supplementary, dated June 30, 2017. (Incorporated by reference to the Company's Current Report on Form 8-K filed June 30, 2017.)
3.4	Articles Supplementary, dated May 19, 2020. (Incorporated by reference to the Company's Current Report on Form 8-K filed May 20, 2020.)
3.5	Amended and Restated Bylaws of the Company, adopted January 1, 2020. (Incorporated by reference to the Company's Current Report on Form 8-K filed January 2, 2020.)
4.1	Form of Common Share Certificate. (Incorporated by reference to the Company's Current Report on Form 8-K filed January 2, 2020.)
4.2	Indenture, dated as of December 20, 2001, between the Company and State Street Bank and Trust Company. (Incorporated by reference to the Company's Registration Statement on Form S-3, File No. 333-76588.)
4.3	Supplemental Indenture No. 6, dated as of December 8, 2011, between the Company and U.S. Bank National Association, related to 6.75% Senior Notes due 2021, including form thereof. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2011.)
4.4	Supplemental Indenture No. 7, dated as of July 20, 2012, between the Company and U.S. Bank National Association, related to 5.625% Senior Notes due 2042, including form thereof. (Incorporated by reference to the Company's Registration Statement on Form 8-A filed July 20, 2012.)
4.5	Supplemental Indenture No. 9, dated as of April 28, 2014, between the Company and U.S. Bank National Association, related to 4.75% Senior Notes due 2024, including form thereof. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014.)
4.6	Indenture, dated as of February 18, 2016, between the Company and U.S. Bank National Association. (Incorporated by reference to the Company's Current Report on Form 8-K filed February 18, 2016.)
4.7	First Supplemental Indenture, dated as of February 18, 2016, between the Company and U.S. Bank National Association, related to 6.25% Senior Notes due 2046, including form thereof. (Incorporated by reference to the Company's Current Report on Form 8-K filed February 18, 2016.)

4.8	Second Supplemental Indenture, dated as of February 12, 2018, between the Company and U.S. Bank National Association, related to 4.75% Senior Notes due 2028, including form thereof. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2017.)
4.9	Third Supplemental Indenture, dated as of June 2, 2020, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank, National Association, related to 9.750% Senior Notes due 2025, including form thereof. (Incorporated by reference to the Company's Current Report on Form 8-K filed June 5, 2020.)
4.10	Supplemental Indenture, dated as of March 5, 2021, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank, National Association, related to 9.750% Senior Notes due 2025. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021.)
4.11	Fourth Supplemental Indenture, dated as of February 8, 2021, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank, National Association, related to 4.375% Senior Notes due 2031, including form thereof. (Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 2020.)
4.12	Supplemental Indenture, dated as of March 5, 2021, among the Company, certain subsidiaries of the Company named therein as guarantors and U.S. Bank, National Association, related to 4.375% Senior Notes due 2025. (Incorporated by reference to the Company's Quarterly Report for the quarter ended March 31, 2021.)
4.13	Registration Rights and Lock-Up Agreement, dated as of June 5, 2015, among the Company, ABP Trust (f/k/a Reit Management & Research Trust) and Adam D. Portnoy. (Incorporated by reference to the Company's Current Report on Form 8-K filed June 8, 2015.)
10.1	First Amendment to Second Amended and Restated Business Management Agreement, effective as of August 1, 2021, between the Company and RMR LLC. (Filed herewith.)
10.2	Third Amendment to Amended and Restated Credit Agreement, dated as of September 3, 2021, among the Company, Wells Fargo Bank, National Association, as Administrative Agent and each of the other institutions party thereto. (Filed herewith.)
22.1	List of Subsidiary Guarantors. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021.)
31.1	Rule 13a-14(a) Certification. (Filed herewith.)
31.2	Rule 13a-14(a) Certification. (Filed herewith.)
32.1	Section 1350 Certification. (Furnished herewith.)
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema Document. (Filed herewith.)
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document. (Filed herewith.)
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document. (Filed herewith.)
101.LAB	XBRL Taxonomy Extension Label Linkbase Document. (Filed herewith.)
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document. (Filed herewith.)
104	Cover Page Interactive Data File. (Formatted as Inline XBRL and contained in Exhibit 101.)

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.

DIVERSIFIED HEALTHCARE TRUST

By: /s/ Jennifer F. (Francis) Mintzer
Jennifer F. (Francis) Mintzer
President and Chief Executive Officer

Dated: November 3, 2021

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer
(principal financial and accounting officer)

Dated: November 3, 2021

FIRST AMENDMENT TO SECOND AMENDED AND RESTATED BUSINESS MANAGEMENT AGREEMENT

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED BUSINESS MANAGEMENT AGREEMENT (this “Amendment”), effective as of August 1, 2021, is made and entered into by and between Diversified Healthcare Trust, a Maryland real estate investment trust (the “Company”), and The RMR Group LLC, a Maryland limited liability company (the “Manager”).

WHEREAS, the Company and the Manager are parties to that certain Second Amended and Restated Business Management Agreement, dated as of June 5, 2015 (the “Business Management Agreement”); and

WHEREAS, the Company and the Manager wish to amend certain provisions of the Business Management Agreement as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. The definition of “SNL Index” included in Section 11 of the Business Management Agreement shall be replaced in its entirety by the following:
“Index” shall mean (i) the SNL U.S. REIT Healthcare Index, as published from time to time, for all periods ending prior to August 1, 2021 and (ii) the MSCI U.S. REIT/Health Care REIT Index, as published from time to time, for all periods beginning on or after August 1, 2021.
2. The Business Management Agreement shall be amended by deleting all references therein to “SNL Index” and replacing them with references to the “Index”.
3. As amended hereby, the Business Management Agreement shall remain in full force and effect.
4. The provisions of this Amendment shall be governed by and construed in accordance with the laws of the State of Maryland.
5. This Amendment may be executed in separate counterparts, each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered by their respective duly authorized officers, as of the date first written above.

**DIVERSIFIED HEALTHCARE
TRUST**

By: /s/ Jennifer F. Francis
Name: Jennifer F. Francis
Title: President and Chief Operating
Officer

THE RMR GROUP LLC

By: /s/ Matthew P. Jordan
Name: Matthew P. Jordan
Title: Executive Vice President, Chief
Financial Officer and Treasurer

Exhibit 10.2

EXECUTION VERSION

THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

THIS THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this “Amendment”) dated as of September 3, 2021, by and among DIVERSIFIED HEALTHCARE TRUST (f/k/a SENIOR HOUSING PROPERTIES TRUST), a real estate investment trust formed under the laws of the State of Maryland (the “Borrower”), the other Loan Parties solely for the purpose of Section 5 hereof, each of the financial institutions party hereto and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the “Administrative Agent”).

WHEREAS, the Borrower, the Lenders, the Administrative Agent and certain other parties have entered into that certain Amended and Restated Credit Agreement dated as of August 1, 2017 (as amended and as in effect immediately prior to the date hereof, the “Credit Agreement”); and

WHEREAS, as permitted by Section 12.7. of the Credit Agreement, the parties hereto desire to amend the Credit Agreement subject to the terms and conditions of this Amendment (the Credit Agreement as so amended, the “Amended Credit Agreement”);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

Section 1. Amendments to Loan Documents. Subject to the conditions precedent set forth in Section 2 below, as of the Third Amendment Effective Date:

(a) the Credit Agreement is hereby amended to delete the red font stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the blue font underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in Exhibit A attached hereto such that, immediately after giving effect to this Amendment, the Amended Credit Agreement will read as set forth in Exhibit A; and

(b) Schedule A to the Second Amendment is hereby amended and restated in its entirety to read as set forth on Schedule A attached hereto.

Section 2. Conditions Precedent. The effectiveness of this Amendment is subject to (i) the truth and accuracy of the representations set forth in Section 3 below and (ii) the Administrative Agent’s receipt of each of the following, each of which shall be in form and substance satisfactory to the Administrative Agent (the first date on which each of the conditions pursuant to the foregoing clauses (i) and (ii) shall have been satisfied, the “Third Amendment Effective Date”):

(a) a counterpart of this Amendment duly executed by the Borrower, the other Loan Parties, the Administrative Agent and each Lender;

(b) an opinion of Sullivan & Worcester LLP, as counsel to the Borrower, and an opinion of Saul Ewing Arnstein & Lehr LLP, as special Maryland counsel to the Borrower, in each case addressed to the Administrative Agent, the Collateral Agent and the Lenders and covering such matters as the Administrative Agent may reasonably request;

(c) the side letter agreement, dated as of the Third Amendment Effective Date, in form and substance satisfactory to the Administrative Agent and the Requisite Lenders (the “Side Letter”), duly executed by the Administrative Agent, the Collateral Agent, and the Borrower;

(d) evidence that all fees, expenses and reimbursement amounts due and payable to the Administrative Agent, the Collateral Agent, and any of the Lenders in connection with this Amendment have been paid;

(e) all information requested by the Administrative Agent and each Lender in order to comply with applicable “know your customer” and Anti-Money Laundering Laws and regulations, including without limitation, the Patriot Act, in each case, at least five (5) Business Days prior to the Third Amendment Effective Date; and

(f) such other documents, agreements, instruments, certificates or other confirmations as the Administrative Agent may reasonably request.

Section 3. Representations and Warranties. The Borrower represents and warrants to the Administrative Agent and the Lenders that:

(a) Authorization. The Borrower has the right and power, and has taken all necessary action to authorize it, to execute and deliver this Amendment and to perform its obligations hereunder and under the Amended Credit Agreement in accordance with their respective terms. This Amendment has been duly executed and delivered by a duly authorized officer of the Borrower and each of this Amendment and the Amended Credit Agreement is a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors’ rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(b) Compliance with Laws, etc. The execution and delivery by the Borrower of this Amendment and the performance by the Borrower of this Amendment and the Amended Credit Agreement in accordance with their respective terms, do not and will not, by the passage of time, the giving of notice or otherwise: (i) require any Governmental Approval or violate any Applicable Law (including Environmental Laws) relating to the Borrower or any other Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of Borrower or any other Loan Party, or any indenture, agreement or other instrument to which the Borrower or any other Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by the Borrower or any other Loan Party other than in favor of the Collateral Agent for its benefit and the benefit of the Lenders and the Issuing Banks.

(c) No Default. No Default or Event of Default has occurred and is continuing as of the date hereof or will exist immediately after giving effect to this Amendment.

Section 4. Post-Closing Covenant. As soon as reasonably practicable following the date hereof, but in no event later than 30 days after the Third Amendment Effective Date (or such later date as the Administrative Agent may reasonably agree in its sole discretion), the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent, with respect to each Property listed on Schedule B attached hereto, (i) insurance certificates stating the names of the insurance companies, the amounts of the insurance, the dates of the expiration thereof and the properties and risks covered thereby, and (ii) upon request, copies of all policies of the insurance then in effect for each such Property, in each case in

compliance with the terms of Section 7.5 of the Credit Agreement and in form, scope and substance reasonably satisfactory to the Administrative Agent.

Section 5. Reaffirmation. Each Loan Party, as debtor, grantor, pledgor, guarantor, assignor, or in any other similar capacity in which such Person grants liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, in each case, pursuant to any Loan Document, hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Amended Credit Agreement and each other Loan Document to which it is a party (after giving effect hereto) and (ii) to the extent such Person granted liens on or security interests in any of its property pursuant to any Security Documents as security for or otherwise guaranteed the Obligations or Guaranteed Obligations, as applicable, under or with respect to the Loan Documents, ratifies and reaffirms such guarantee and grant of security interests and liens, as applicable, and confirms and agrees that such guarantee or security interests and liens, as applicable, hereafter guarantee or secure all of the Guaranteed Obligations or Obligations, as applicable, as amended hereby. Each Loan Party hereby consents to this Amendment and acknowledges that the Amended Credit Agreement and each other Loan Document remains in full force and effect and is hereby ratified and reaffirmed.

Section 6. Certain References. Each reference to the Credit Agreement in any of the Loan Documents shall be deemed to be a reference to the Amended Credit Agreement. This Amendment is a Loan Document.

Section 7. Costs and Expenses. Without limiting the obligations of the Borrower under Section 12.2 of the Amended Credit Agreement, the Borrower shall reimburse the Administrative Agent for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the Administrative Agent and the Collateral Agent in connection with the preparation, negotiation and execution of this Amendment and the other agreements and documents executed and delivered in connection herewith.

Section 8. Benefits. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 9. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 10. Effect. Except as expressly herein amended, the terms and conditions of the Credit Agreement and the other Loan Documents remain in full force and effect. The amendment contained herein shall be deemed to have prospective application only. The Amended Credit Agreement is hereby ratified and confirmed in all respects. Nothing in this Amendment shall limit, impair or constitute a waiver of the rights, powers or remedies available to the Administrative Agent, the Collateral Agent or the Lenders under the Amended Credit Agreement or any other Loan Document. This Amendment is not intended to and shall not constitute a novation of any of the Loan Documents or Obligations.

Section 11. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

Section 12. Electronic Signatures. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed by any Lender, Titled Agent, Issuing Bank or Swingline Lender (collectively, the "Lender Parties") in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic

matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature of such Lender Party or the use of a paper-based recordkeeping system with respect to such Lender Party, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures from any Lender Party in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it. Each of the undersigned hereby (i) agrees that, for all purposes, electronic images of this Amendment (including with respect to any of the Lender Parties' signature pages thereto) shall have the same legal effect, validity, admissibility into evidence and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity, admissibility into evidence or enforceability of this Amendment based solely on the lack of paper original copies hereof, including with respect to any of the Lender Parties' signatures hereto.

Section 13. Side Letter. The undersigned Lenders hereby authorize the Administrative Agent and the Collateral Agent to enter into the Side Letter. The Lenders shall be bound by, and will not take any action contrary to, the provisions of the Side Letter to the same extent as if each Lender were a party thereto.

Section 14. Definitions. All capitalized terms not otherwise defined herein are used herein with the respective definitions given them in the Amended Credit Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Amended and Restated Credit Agreement to be duly executed as of the date first above written.

DIVERSIFIED HEALTHCARE TRUST

By: /s/ Richard W. Siedel, Jr.

Name: Richard W. Siedel, Jr.

Title: Chief Financial Officer and Treasurer

Signature Page to Third Amendment to Amended and Restated Credit Agreement

CCC ALPHA INVESTMENTS TRUST
CCC DELAWARE TRUST
CCC FINANCING I TRUST
CCC INVESTMENTS I, L.L.C.
CCC LEISURE PARK CORPORATION
CCC PUEBLO NORTE TRUST
CCC RETIREMENT PARTNERS TRUST
CCC RETIREMENT TRUST
CCDE SENIOR LIVING LLC
CCOP SENIOR LIVING LLC
CRESTLINE VENTURES LLC
CSL GROUP, INC.
DHC HOLDINGS LLC
ELLCOTT CITY LAND I, LLC
HRES1 PROPERTIES TRUST
HRES2 PROPERTIES TRUST
MSD POOL 1 LLC
MSD POOL 2 LLC
O.F.C. CORPORATION
SNH 30 NEWCROSSING INC.
SNH AL AIMO II, INC.
SNH AL AIMO TENANT II, INC.
SNH AL AIMO TENANT, INC.
SNH AL AIMO, INC.
SNH AL CRIMSON TENANT INC.
SNH AL CUMMING LLC
SNH AL CUMMING TENANT LLC
SNH AL GEORGIA HOLDINGS LLC
SNH AL GEORGIA LLC
SNH AL GEORGIA TENANT LLC
SNH AL PROPERTIES LLC
SNH AL PROPERTIES TRUST
SNH AL TRS, INC.
SNH AL WILMINGTON TENANT INC.
SNH ALPHARETTA LLC
SNH ALT LEASED PROPERTIES TRUST
SNH AZ TENANT LLC
SNH BAKERSFIELD LLC
SNH BAMA TENANT LLC
SNH BATON ROUGE (NORTH) LLC
SNH BATON ROUGE (REALTORS) LLC
SNH BLAINE INC.
SNH BRFL PROPERTIES LLC
SNH BRFL TENANT LLC
SNH BRIDGEWATER LLC
SNH CAL TENANT LLC
SNH CALI TENANT LLC
SNH CCMD PROPERTIES BORROWER LLC
SNH CCMD PROPERTIES LLC
SNH CCMD TENANT LLC

SNH GEORGIA TENANT LLC
SNH GLENVIEW (PATRIOT) LLC
SNH GP VALENCIA LLC
SNH GRANITE GATE LANDS TENANT LLC
SNH GRANITE GATE LANDS TRUST
SNH GROVE PARK TENANT LLC
SNH GROVE PARK TRUST
SNH HARRISBURG LLC
SNH IL JOPLIN INC.
SNH IL PROPERTIES TRUST
SNH INDEPENDENCE PARK LLC
SNH INDY TENANT LLC
SNH JACKSON LLC
SNH KENT PROPERTIES LLC
SNH LINCOLN TENANT LLC
SNH LONGHORN TENANT LLC
SNH LTF PROPERTIES LLC
SNH MARYLAND HEIGHTS LLC
SNH MASS TENANT LLC
SNH MD TENANT LLC
SNH MEDICAL OFFICE PROPERTIES LLC
SNH MEDICAL OFFICE PROPERTIES TRUST
SNH MEZZCO SAN ANTONIO LLC
SNH MO TENANT LLC
SNH MODESTO LLC
SNH NC TENANT LLC
SNH NEB TENANT LLC
SNH NJ TENANT GP LLC
SNH NJ TENANT LLC
SNH NM TENANT LLC
SNH NORTHWOODS LLC
SNH NORTHWOODS TENANT LLC
SNH NS PROPERTIES TRUST
SNH OHIO TENANT LLC
SNH OMISS TENANT LLC
SNH PARKVIEW PROPERTIES TRUST
SNH PENN TENANT LLC
SNH PHOENIX (COTTON) LLC
SNH PLAQUEMINE LLC
SNH PLFL PROPERTIES LLC
SNH PLFL TENANT LLC
SNH PRAIRIEVILLE LLC
SNH PROJ LINCOLN TRS LLC
SNH REDMOND PROPERTIES LLC
SNH REIT IRVING LLC
SNH REIT ROCKWALL LLC
SNH REIT SAN ANTONIO LLC
SNH REIT VICTORIA LLC
SNH RMI FOX RIDGE MANOR PROPERTIES LLC
SNH RMI JEFFERSON MANOR PROPERTIES LLC

SNH CHS PROPERTIES TRUST
SNH CLEAR BROOK LLC
SNH CLEAR CREEK PROPERTIES TRUST
SNH CO TENANT LLC
SNH CONCORD LLC
SNH DEL TENANT LLC
SNH DENHAM SPRINGS LLC
SNH DERBY TENANT LLC
SNH DURHAM LLC
SNH FLA TENANT LLC
SNH FM FINANCING LLC
SNH FM FINANCING TRUST
SNH SE BURLINGTON LLC
SNH SE BURLINGTON TENANT LLC
SNH SE DANIEL ISLAND LLC
SNH SE DANIEL ISLAND TENANT LLC
SNH SE HABERSHAM SAVANNAH LLC
SNH SE HABERSHAM SAVANNAH TENANT LLC
SNH SE HOLLY HILL LLC
SNH SE HOLLY HILL TENANT LLC
SNH SE KINGS MTN LLC
SNH SE KINGS MTN TENANT LLC
SNH SE MOORESVILLE LLC
SNH SE MOORESVILLE TENANT LLC
SNH SE N. MYRTLE BEACH LLC
SNH SE N. MYRTLE BEACH TENANT LLC
SNH SE PROPERTIES LLC
SNH SE PROPERTIES TRUST
SNH SE SG LLC
SNH SE SG TENANT LLC
SNH SE TENANT 2 TRS, INC.
SNH SE TENANT TRS, INC.
SNH SOMERFORD PROPERTIES TRUST
SNH ST. LOUIS LLC
SNH TEANECK PROPERTIES LLC
SNH TEANECK TENANT LLC
SNH TELLICO TENANT LLC
SNH TELLICO TRUST
SNH TEMPE LLC

SNH RMI MCKAY MANOR PROPERTIES LLC
SNH RMI NORTHWOOD MANOR PROPERTIES LLC
SNH RMI OAK WOODS MANOR PROPERTIES LLC
SNH RMI PARK SQUARE MANOR PROPERTIES LLC
SNH RMI PROPERTIES HOLDING COMPANY LLC
SNH RMI SMITH FARMS MANOR PROPERTIES LLC
SNH RMI SYCAMORE MANOR PROPERTIES LLC
SNH SC TENANT LLC
SNH SE ASHLEY RIVER LLC
SNH SE ASHLEY RIVER TENANT LLC
SNH SE BARRINGTON BOYNTON LLC
SNH SE BARRINGTON BOYNTON TENANT LLC
SNH TENN TENANT LLC
SNH TOTO TENANT LLC
SNH TRS INC.
SNH TRS LICENSEE HOLDCO LLC
SNH VA TENANT LLC
SNH VIKING TENANT LLC
SNH WARD AVE. PROPERTIES I INC.
SNH WELL PROPERTIES GA-MD LLC
SNH WELL PROPERTIES TRUST
SNH WILMINGTON LLC
SNH WIS TENANT LLC
SNH WY TENANT LLC
SNH YONKERS PROPERTIES TRUST
SNH YONKERS TENANT INC.
SNH/CSL PROPERTIES TRUST
SNH/LTA PROPERTIES GA LLC
SNH/LTA PROPERTIES TRUST
SNH/LTA SE HOME PLACE NEW BERN LLC
SNH/LTA SE MCCARTHY NEW BERN LLC
SNH/LTA SE WILSON LLC
SPTGEN PROPERTIES TRUST
SPTIHS PROPERTIES TRUST
SPTMISC PROPERTIES TRUST
SPTMNR PROPERTIES TRUST
SPTMRT PROPERTIES TRUST
SPTSUN II PROPERTIES TRUST

each as a Loan Party

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer

LEXINGTON OFFICE REALTY TRUST
SNH MEDICAL OFFICE REALTY TRUST
each as a Loan Party

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
as Trustee and not individually

CCC FINANCING LIMITED, L.P., as a Loan Party

By: CCC RETIREMENT TRUST,
its general partner

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer

CCC RETIREMENT COMMUNITIES II, L.P., as a Loan Party

By: CRESTLINE VENTURES LLC,
its general partner

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer

LEISURE PARK VENTURE LIMITED PARTNERSHIP, as a Loan Party

By: CCC LEISURE PARK CORPORATION,
its general partner

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer

SNH NJ TENANT LP, as a Loan Party

By: SNH NJ TENANT GP LLC,
its general partner

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer

SNH VALENCIA LP, as a Loan Party

By: SNH GP VALENCIA LLC,
its general partner

By: /s/ Richard W. Siedel, Jr.
Richard W. Siedel, Jr.
Chief Financial Officer and Treasurer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, as an Issuing Bank and as a Lender

By: /s/ Matthew Ricketts
Name: Matthew Ricketts
Title: Managing Director

Signature Page to Third Amendment to Amended and Restated Credit Agreement

CITIBANK, N.A., as a Lender and as an Issuing Bank

By: /s/ David Bouton

Name: David Bouton

Title: Authorized Signatory

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: PNC Bank, National Association,
as a Lender

By: /s/ Shari L. Rearns-Henofier
Name: Shari L. Rearns-Henofier
Title: Senior Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: ROYAL BANK OF CANADA,
as a Lender

By: /s/ William Behuniak
Name: William Behuniak
Title: Authorized Signatory

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: Bank of America, N.A.
as a Lender

By: /s/ Joseph L. Corah
Name: Joseph L. Corah
Title: Director

[If second signature block is necessary

By:
Name:
Title:

BBVA USA, as a Lender

By: /s/ Brian Tuerff
Name: Brian Tuerff
Title: Senior Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

MIZUHO BANK, LTD., as a Lender

By: /s/ Donna DeMagistris
Name: Donna DeMagistris
Title: Authorized Signatory

Signature Page to Third Amendment to Amended and Restated Credit Agreement

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AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: Sumitomo Mitsui Banking Corporation,
as a Lender

By: /s/ Jane Pedreira
Name: Jane Pedreira
Title: Director

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: BMO Harris Bank, N.A.
as a Lender

By: /s/ Jonas L. Robinson
Name: Jonas L. Robinson
Title: Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: REGIONS BANK,
as a Lender

By: /s/ C. Vincent Hughes, Jr.
Name: C. Vincent Hughes, Jr.
Title: Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: ASSOCIATED BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Mitchell Vega
Name: Mitchell Vega
Title: Senior Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Kimberly L. Feldman
Name: Kimberly L. Feldman
Title: Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: The Bank of East Asia, Limited, Los Angeles Branch, as a Lender

By: /s/ Fang-Ning Lim
Name: Fang-Ning Lim
Title: VP & Head of RMU

By: /s/ Simon Keung
Name: Simon Keung
Title: General Manager

Signature Page to Third Amendment to Amended and Restated Credit Agreement

SIGNATURE PAGE TO THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT,
AMONG DIVERSIFIED HEALTHCARE TRUST, EACH LENDER PARTY HERETO AND WELLS FARGO
BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT

Name of Institution: First Hawaiian Bank,
as a Lender

By: /s/ Derek Chang
Name: Derek Chang
Title: Senior Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

FIRST HORIZON BANK, as a Lender

By: /s/ Jean M. Brennan

Name: Jean M. Brennan

Title: Senior Vice President

Signature Page to Third Amendment to Amended and Restated Credit Agreement

MORGAN STANLEY BANK, N.A., as a Lender

By: /s/ Jack Kuhns

Name: Jack Kuhns

Title: Authorized Signatory

Signature Page to Third Amendment to Amended and Restated Credit Agreement

UBS AG, STAMFORD BRANCH, as a Lender

By: /s/ Anthony N. Joseph

Name: Anthony N. Joseph

Title: Associate Director

By: /s/ Ken Chin

Name: Ken Chin

Title: Director

Signature Page to Third Amendment to Amended and Restated Credit Agreement

BANK OF TAIWAN, LOS ANGELES BRANCH
as a Lender

By: /s/ Dixon Wang
Name: Dixon Wang
Title: V.P. & General Manager

Signature Page to Third Amendment to Amended and Restated Credit Agreement

FIRST COMMERCIAL BANK, LTD., NEW YORK BRANCH, as a Lender

By: /s/ Terry Y. G. Ju

Name: Terry Y. G. Ju

Title: Senior Vice President & General Manager

Signature Page to Third Amendment to Amended and Restated Credit Agreement

Land Bank of Taiwan Los Angeles Branch, as a Lender

By: /s/ Eugene Lee
Name: Eugene Lee
Title: Deputy General Manager

Signature Page to Third Amendment to Amended and Restated Credit Agreement

TAIWAN COOPERATIVE BANK, SEATTLE BRANCH, as a Lender

By: /s/ Yueh-Ching Lin
Name: Yueh-Ching Lin
Title: VP & General Manager

Signature Page to Third Amendment to Amended and Restated Credit Agreement

MEGA INTERNATIONAL COMMERCIAL BANK CO., LOS ANGELES BRANCH as a Lender

By: /s/ Warton Wang
Name: Warton Wang
Title: VP & GM

Signature Page to Third Amendment to Amended and Restated Credit Agreement

CTBC BANK CO., LTD., NEW YORK BRANCH, as a Lender

By: /s/ Marianne Yen as authorized signer for BGM Mingdao Li

Name: Mingdao Li

Title: SVP & General Manager

Signature Page to Third Amendment to Amended and Restated Credit Agreement

EXHIBIT A

Amended Credit Agreement



CONFORMED COPY OF AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of August 1, 2017

conformed through

~~SECOND~~THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of ~~January 29~~September 3, 2021

by and among

DIVERSIFIED HEALTHCARE TRUST (f/k/a SENIOR HOUSING PROPERTIES TRUST),
as Borrower,

THE FINANCIAL INSTITUTIONS PARTY HERETO
AND THEIR ASSIGNEES UNDER SECTION 12.6.,
as Lenders,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent,

WELLS FARGO SECURITIES, LLC,
RBC CAPITAL MARKETS,
CITIGROUP GLOBAL MARKETS INC.
and

PNC CAPITAL MARKETS LLC
as Joint Lead Arrangers and
Joint Lead Bookrunners,

ROYAL BANK OF CANADA,
CITIBANK, N.A.

and
PNC BANK, NATIONAL ASSOCIATION,
as Syndication Agents

and

BANK OF AMERICA, N.A.,
BBVA USA f/k/a COMPASS BANK,
MIZUHO BANK, LTD.,
SUMITOMO MITSUI BANKING CORPORATION,
BMO HARRIS BANK, N.A.

and
REGIONS BANK,
as Documentation Agents

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THIS AMENDED AND RESTATED CREDIT AGREEMENT (this “Agreement”) dated as of August 1, 2017 by and among DIVERSIFIED HEALTHCARE TRUST (f/k/a SENIOR HOUSING PROPERTIES TRUST), a real estate investment trust formed under the laws of the State of Maryland (the “Borrower”), each of WELLS FARGO SECURITIES, LLC, RBC CAPITAL MARKETS, CITIGROUP GLOBAL MARKETS INC. and PNC CAPITAL MARKETS LLC, as Joint Lead Arrangers and Joint Bookrunners (each a “Lead Arranger”), each of the financial institutions initially a signatory hereto together with their successors and assignees under Section 12.6. (the “Lenders”), each of ROYAL BANK OF CANADA, CITIBANK, N.A. and PNC BANK, NATIONAL ASSOCIATION, as Syndication Agents (each a “Syndication Agent”), each of BANK OF AMERICA, N.A., BBVA USA f/k/a COMPASS BANK, MIZUHO BANK, LTD., SUMITOMO MITSUI BANKING CORPORATION, BMO HARRIS BANK, N.A. and REGIONS BANK, as Documentation Agents (each a “Documentation Agent”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the “Administrative Agent”).

WHEREAS, the Borrower, certain of the Lenders and other financial institutions, the Administrative Agent and the other parties thereto previously entered into that certain Credit Agreement dated as of June 24, 2011 (as amended and in effect immediately prior to the date hereof, the “Existing Credit Agreement”) pursuant to which the Administrative Agent, Wells Fargo, as Issuing Bank and certain of the Lenders made available to the Borrower a revolving credit facility in the initial amount of \$750,000,000, including a \$100,000,000 swingline subfacility and a \$50,000,000 letter of credit subfacility on the terms and conditions contained therein; and

WHEREAS, the Borrower, the Administrative Agent and the Lenders desire to amend and restate the terms of the Existing Credit Agreement on the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree that the Existing Credit Agreement is amended and restated in its entirety as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions.

In addition to terms defined elsewhere herein, the following terms shall have the following meanings for the purposes of this Agreement:

“**6.75% Senior Notes**” has the meaning given that term in Section 2.7(b)(v)(B). [As of the Third Amendment Effective Date, the 6.75% Senior Notes have been repaid in full.](#)

“**Accession Agreement**” means an Accession Agreement substantially in the form of Annex I to the Guaranty.

“**Acquired Encumbered Properties**” means the Properties subject, as of the Agreement Date, to the Liens created under Acquired Property Lien Documents.

“**Acquired Property Lien Documents**” means those documents relating to the Liens on the Acquired Encumbered Properties as described on Item 1.1. (b) of the Borrower Letter, each as amended, supplemented or otherwise modified from time to time (except that amendments, supplements and modifications which (x) result in the Lien created by such lease or mortgage being spread to Properties other than the Acquired Encumbered Properties or (y) change any non-recourse provisions of such lease

or mortgage applicable to lease or loan payments thereunder in a manner which is materially adverse to the lessee or mortgagor, must, in each case, be approved by the Requisite Lenders).

“**Additional Costs**” has the meaning given that term in Section 4.1.(b).

“**Adjusted EBITDA**” means, with respect to any period of time, EBITDA of the Borrower and its Subsidiaries determined on a consolidated basis for such period less Capital Expenditure Reserves for all Properties for such period.

“**Administrative Agent**” means Wells Fargo Bank, National Association as contractual representative of the Lenders under this Agreement, or any successor Administrative Agent appointed pursuant to Section 11.8.

“**Administrative Questionnaire**” means the Administrative Questionnaire completed by each Lender and delivered to the Administrative Agent in a form supplied by the Administrative Agent to the Lenders from time to time.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affected Lender**” has the meaning given that term in Section 4.6.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. In no event shall the Administrative Agent or any Lender be deemed to be an Affiliate of the Borrower. For purposes of this Agreement, Five Star shall not be deemed to be an Affiliate of the Borrower so long as each of the board of trustees of the Borrower and the board of directors of Five Star has at least one independent trustee or independent director who does not serve as both a trustee of the Borrower and a director of Five Star. The terms “independent director” and “independent trustee” have the meaning given the term “independent director” under the listing requirements of the New York Stock Exchange.

“**Agreement Date**” means August 1, 2017.

“**Amendment Period**” means the period beginning on the First Amendment Effective Date and ending on the Amendment Period Termination Date.

“**Amendment Period Incurrence Conditions**” means, as of any date of determination, collectively, (i) the aggregate principal amount of all outstanding Debt of the Borrower and its Subsidiaries on a consolidated basis determined in accordance with GAAP as of such date of determination is not greater than 60% of the Adjusted Total Assets of the Borrower and its Subsidiaries, (ii) the aggregate principal amount of all outstanding Secured Debt of the Borrower and its Subsidiaries on a consolidated basis determined in accordance with GAAP as of such date of determination is not greater than 40% of Adjusted Total Assets, (iii) the ratio of Consolidated Income Available for Debt Service to the Annual Debt Service for the four consecutive fiscal quarters most recently ended is not less than 1.5 to 1.0, and (iv) the Borrower is in compliance with each other indebtedness incurrence test applicable under any Material Indebtedness; *provided* that, the foregoing clause (iii) shall be calculated on the assumptions that: (A) such Debt and any other Debt incurred by the Borrower and its Subsidiaries on a consolidated basis since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Debt, had occurred at the beginning of such period, (B) the repayment, retirement or other discharge of any other Debt by the Borrower and its Subsidiaries on a

consolidated basis since the first day of such four-quarter period had occurred at the beginning of such period (except that, in making such computation, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period), (C) in the case of Acquired Debt or Debt incurred in connection with or in contemplation of any acquisition, including any Person becoming a Subsidiary, since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with appropriate adjustments with respect to such acquisition being included in such pro forma calculation, and (D) in the case of any acquisition or disposition by the Borrower and its Subsidiaries of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Debt had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation. If the Debt giving rise to the need to make the foregoing calculation or any other Debt incurred after the first day of the relevant four-quarter period bears interest at a floating interest rate, then, for purposes of calculating the Annual Debt Service, the interest rate on such Debt shall be computed on a pro forma basis as if the average interest rate which would have been in effect during the entirety of such four-quarter period had been the applicable rate for the entirety of such period. As used herein, the following terms shall have the following meanings:

“Acquired Debt” means Debt of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Debt incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Debt shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

“Adjusted Total Assets” means the sum of (without duplication) (A) the Total Assets of the Borrower and its Subsidiaries as of the end of the fiscal quarter covered in the Borrower’s annual report on Form 10-K, or quarterly report on Form 10-Q, as the case may be, most recently filed with the Securities and Exchange Commission (or, if such filing is not permitted or required under the Exchange Act, with the “Trustee” as defined in the Supplemental Indenture) prior to the incurrence of such additional Debt and (B) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Debt), by the Borrower or any Subsidiary since the end of such fiscal quarter, including those proceeds obtained in connection with the incurrence of such additional Debt.

“Annual Debt Service” as of any date means the maximum amount which is expensed in any 12-month period for interest on Debt of the Borrower and its Subsidiaries excluding amortization of debt discounts and deferred financing costs.

“Capital Stock” means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participation or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into or exchangeable for capital stock), warrants or options to purchase any thereof.

“Consolidated Income Available for Debt Service” for any period means Earnings from Operations of the Borrower and its Subsidiaries plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (i) interest or distributions on Debt of the Borrower and its Subsidiaries, (ii) provision for taxes of the Borrower and its Subsidiaries based on income, (iii) amortization of debt premiums/discounts and deferred debt issuance costs, (iv) provisions for gains and losses on properties and property depreciation

and amortization, (v) the effect of any noncash charge resulting from a change in accounting principles in determining Earnings from Operations for such period and (vi) amortization of deferred charges.

“*Debt*” of the Borrower or any Subsidiary means, without duplication, any indebtedness of the Borrower or any Subsidiary, whether or not contingent, in respect of (i) borrowed money or evidenced by bonds, notes, debentures or similar instruments, (ii) indebtedness for borrowed money secured by any Encumbrance existing on property owned by the Borrower or any Subsidiary, to the extent of the lesser of (x) the amount of indebtedness so secured or (y) the fair market value of the property subject to such Encumbrance, (iii) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued (other than letters of credit issued to provide credit enhancement or support with respect to other indebtedness of the Borrower or any Subsidiary otherwise reflected as Debt) or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense or trade payable, or all conditional sale obligations or obligations under any title retention agreement, (iv) the principal amount of all obligations of the Borrower or any Subsidiary with respect to redemption, repayment or other repurchase of any Disqualified Stock, or (v) any lease of property by the Borrower or any Subsidiary as lessee which is reflected on the Borrower’s consolidated balance sheet as a capitalized lease in accordance with GAAP, to the extent, in the case of items of indebtedness under (i) through (iii) above, that any such items (other than letters of credit) would appear as a liability on the Borrower’s consolidated balance sheet in accordance with GAAP. Debt also (A) excludes any indebtedness (1) with respect to which a defeasance or covenant defeasance or discharge has been effected (or an irrevocable deposit is made with a trustee in an amount at least equal to the outstanding principal amount of such indebtedness, the remaining scheduled payments of interest thereon to, but not including, the applicable maturity date or redemption date, and any premium or otherwise as provided in the terms of such indebtedness) in accordance with the terms thereof or which has been repurchased, retired, repaid, redeemed, irrevocably called for redemption (and an irrevocable deposit is made with a trustee in an amount at least equal to the outstanding principal amount of such indebtedness, the remaining scheduled payments of interest thereon to, but not including, such redemption date, and any premium) or otherwise satisfied or (2) that is secured by cash or Cash Equivalents irrevocably deposited with a trustee in an amount, in the case of this clause (2), at least equal to the outstanding principal amount of such indebtedness and the remaining scheduled payments of interest thereon and (B) includes, to the extent not otherwise included, any obligation by the Borrower or any Subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Debt of another Person (other than the Borrower or any Subsidiary); (it being understood that Debt shall be deemed to be incurred by the Borrower or any Subsidiary whenever the Borrower or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof).

“*Disqualified Stock*” means, with respect to any Person, any Capital Stock of such Person which by the terms of such Capital Stock (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise, (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or for Subordinated Debt), (ii) is convertible into or exchangeable or exercisable for Debt, other than Subordinated Debt or Disqualified Stock, or (iii) is redeemable at the option of the holder thereof, in whole or in part (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or for Subordinated Debt);

in each case on or prior to the stated maturity of the principal of any senior notes issued by the Borrower.

“Earnings from Operations” for any period means net earnings excluding gains and losses on sales of investments, gains or losses on early extinguishment of debt, extraordinary items and property valuation losses, in each case as reflected in the financial statements of the Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Encumbrance” means any mortgage, lien, charge, pledge, security interest or other encumbrance of any kind.

“Secured Debt” means Debt of the Borrower or its Subsidiaries secured by an Encumbrance on the property of the Borrower or its Subsidiaries.

“Subordinated Debt” means Debt which by the terms of such Debt is subordinated in right of payment to the principal of and interest and premium, if any, on the 6.75% Senior Notes or any other senior notes issued by the Borrower.

“Total Assets” as of any date means the sum of (i) the Undepreciated Real Estate Assets and (ii) all other assets of the Borrower and its Subsidiaries determined in accordance with GAAP (but excluding accounts receivable and intangibles).

“Undepreciated Real Estate Assets” as of any date means the cost (original cost plus capital improvements) of real estate and associated tangible personal property used in connection with the real estate assets of the Borrower and its Subsidiaries on such date, before depreciation and amortization determined on a consolidated basis in accordance with GAAP.

“Amendment Period Termination Date” means June 30, 2022.

“Announcements” has the meaning given that term in [Section 1.3](#).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

“Anti-Money Laundering Laws” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules related to terrorism financing, money laundering, any predicate crime to money laundering or any financial record keeping, including any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Facility Fee” means the percentage set forth in the table below corresponding to the Level at which the “Applicable Margin” is determined in accordance with the definition thereof:

Level	Facility Fee
1	0.10%
2	0.125%
3	0.15%
4	0.20%
5	0.25%
6	0.30%

Any change in the applicable Level at which the Applicable Margin is determined shall result in a corresponding and simultaneous change in the Applicable Facility Fee. The provisions of this definition shall be subject to Section 2.4.(c).

“**Applicable Law**” means all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Applicable Margin**” means the percentage rate set forth in the table below corresponding to the level (each a “Level”) into which the Borrower’s Credit Rating then falls. As of the Agreement Date, the Applicable Margin is determined based on Level 5 of Table I. Any change in the Borrower’s Credit Rating which would cause it to move to a different Level shall be effective as of the first day of the first calendar month immediately following receipt by the Administrative Agent of written notice delivered by the Borrower in accordance with Section 8.4.(m) that the Borrower’s Credit Rating has changed; provided, however, if the Borrower has not delivered the notice required by such Section but the Administrative Agent becomes aware that the Borrower’s Credit Rating has changed, then the Administrative Agent may, in its sole discretion, adjust the Level effective as of the first day of the first calendar month following the date the Administrative Agent becomes aware that the Borrower’s Credit Rating has changed. During any period that the Borrower has received two Credit Ratings that are not equivalent, then (x) the Applicable Margin shall be determined based on the Level corresponding to the higher of such two Credit Ratings if the higher of such two Credit Ratings is not more than one Level higher than the lower of such two Credit Ratings and (y) the Applicable Margin shall be determined based on the Level corresponding to the Level immediately below the higher of such two Credit Ratings if the higher of such two Credit Ratings is more than one Level higher than the lower of such two Credit Ratings. During any period for which the Borrower has received a Credit Rating from only one Rating Agency, then the Applicable Margin shall be determined based on such Credit Rating. During any period that the Borrower has not received a Credit Rating from any Rating Agency, the Applicable Margin shall be determined based on Level 6. The provisions of this definition shall be subject to Section 2.4.(c).

Level	Borrower's Credit Rating (S&P/Moody's)	Applicable Margin for LIBOR Loans	Applicable Margin for Base Rate Loans
1	A/A2 or better	1.575%	0.575%
2	A-/A3	1.625%	0.625%
3	BBB+/Baa1	1.675%	0.675%
4	BBB/Baa2	1.800%	0.800%
5	BBB-/Baa3	2.000%	1.000%
6	Lower than BBB-/Baa3 or not rated	2.350%	1.350%

“**Appraisal**” means, with respect to any Property, an M.A.I. appraisal commissioned by and addressed to the Administrative Agent (acceptable to the Administrative Agent as to form, substance and appraisal date), prepared by a professional appraiser acceptable to the Administrative Agent, having at least the minimum qualifications required under Applicable Law governing the Administrative Agent and the Lenders, including, without limitation, FIRREA, and determining the “as-is” market value of such Property as between a willing buyer and a willing seller.

“**Approved Budget**” means the forecast of the Borrower substantially in the form delivered in connection with the Second Amendment, as adjusted from time to time as approved by the Administrative Agent and the Term Loan Administrative Agent in accordance with the terms of the Intercreditor Agreement.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“**As-Is Appraised Value**” means, with respect to any Property, the “as-is” market value of such Property as reflected in the most recent Appraisal of such Property accepted by Administrative Agent, as the same may have been adjusted by the Administrative Agent based upon its internal review of such Appraisal which is based on criteria and factors then generally used and considered by the Administrative Agent, which review shall be conducted prior to acceptance of such Appraisal by the Administrative Agent.

“**Asset Under Development**” means, as of any date of determination, any Property owned by the Borrower or any of its Subsidiaries on which the construction of new income-producing improvements has been commenced and is continuing, with both the land and the improvements under construction thereon which comprise such Property to be valued as set forth in the definition of “Total Asset Value”. In the event of construction of an addition or expansion to an existing income producing Property, only the addition or expansion shall be considered an Asset Under Development.

“**Assignment and Assumption**” means an Assignment and Assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.6.), and accepted by the Administrative Agent, substantially in the form of Exhibit A or any other form approved by the Administrative Agent.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this

Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 4.2.(b).

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means (a) 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, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bankruptcy Code**” means the Bankruptcy Code of 1978, as amended.

“**Base Rate**” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the LIBOR Market Index Rate plus 1.0%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Market Index Rate (provided that clause (c) shall not be applicable during any ~~period in which LIBOR is unavailable or unascertainable~~ Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor).

“**Base Rate Loan**” means a Revolving Loan bearing interest at a rate based on the Base Rate.

“**Benchmark**” means, initially, LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election, or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.2.(b)(i).

“**Benchmark Replacement**” means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment; or

(c) with respect to any Other Benchmark Rate Election, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;

provided that, (i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3), clause (b) or clause (c) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (b) of the definition of “Benchmark Replacement,” an amount equal to (A) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, (B) 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration and (C) 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration;

(2) for purposes of clause (a)(2) of the definition of “Benchmark Replacement,” an amount equal to 0.11448% (11.448 basis points);

(3) for purposes of clause (a)(3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; and

(4) for purposes of clause (c) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of Section 4.4, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Borrower pursuant to Section 4.2.(b)(i)(B); or

(4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Requisite Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such

administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.2.(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.2.(b).

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 CFR § 1010.230.

“**Benefit Arrangement**” means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

“**Benefit Plan**” means 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 Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

“**Borrower**” has the meaning set forth in the introductory paragraph hereof and shall include the Borrower’s successors and permitted assigns.

“**Borrower Information**” has the meaning given that term in Section 2.4.(c).

“**Borrower Letter**” means that certain letter dated as of even date herewith from the Borrower to the Administrative Agent and the Lenders.

“**Business Day**” means (a) for all purposes other than as set forth in clause (b) below, any day (other than a Saturday, Sunday or legal holiday) on which banks in New York, New York, are open for the conduct of their commercial banking business, and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Loan, or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market. Unless specifically referenced in this Agreement as a Business Day, all references to “days” shall be to calendar days.

“**Business Management Agreement**” means that certain Second Amended and Restated Business Management Agreement dated as of June 5, 2015 by and between the Borrower and RMR.

“**Capital Expenditure Reserves**” means, with respect to a Property and for a given period, an amount equal to (a)(i) \$300 per annum per bed, for a skilled nursing facility, or per unit for any other Senior Housing Asset, on which the applicable lease does not require the Lessee to pay for all capital expenditures or (ii) an amount equal to \$0.40 per square foot per annum for any other Property on which the applicable lease does not require the Lessee to pay for all capital expenditures, times (b) the number of days in such period, divided by (c) 365.

“**Capitalization Rate**” means (a) 7.00% for Senior Housing Assets and (b) 6.50% for all other Properties.

“**Capitalized Lease Obligation**” means obligations under a lease (to pay rent or other amounts under any lease or other arrangement conveying the right to use) that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date.

“**Cash Collateralize**” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Banks or the Lenders, as collateral for Letter of Credit Liabilities or obligations of Lenders to fund participations in respect of Letter of Credit Liabilities, cash or deposit account balances or, if the Administrative Agent and the Issuing Banks shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Banks. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**” means: (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Cooperation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or the equivalent by Moody’s; (c) reverse repurchase agreements with terms of not more than seven days from the date acquired, for securities of the type described in clause (a) above and entered into

only with commercial banks having the qualifications described in clause (b) above; (d) commercial paper issued by any Person incorporated under the laws of the United States of America or any State thereof and rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's, in each case with maturities of not more than one year from the date acquired; and (e) investments in money market funds registered under the Investment Company Act of 1940, as amended, which have net assets of at least \$500,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (d) above.

"Casualty/Condemnation Event" means the occurrence of (i) any damage to a Collateral Property, in whole or in part, by fire or other casualty or (ii) any condemnation of any Collateral Property, in each case, equaling or exceeding twenty percent (20%) of the As-Is Appraised Value of such Property.

"Collateral" means any real or personal property directly or indirectly securing any of the Guaranteed Obligations or Pari Passu Guaranteed Obligations or any other obligation of a Person under or in respect of any Loan Document and includes, without limitation, all Pledged Interests, all "Property," "Improvements," and "Collateral" (or other similar term) under and as defined in each Security Instrument, all "Management Agreements" (or other similar term) as defined in any Property Management Contract Assignment, and all other property subject to a Lien created by a Security Document. For the avoidance of doubt, the Collateral shall not secure any Specified Derivatives Obligations.

"Collateral Agent" means Wells Fargo Bank, National Association, as collateral agent under the Intercreditor Agreement, or any successor thereto appointed in accordance with the terms of the Intercreditor Agreement.

"Collateral Properties" means, collectively, (i) each Initial Collateral Property for which (a) a Security Instrument and each other applicable Security Document has been delivered to and accepted by the Administrative Agent and (b) each other condition set forth on Annex I has been satisfied or waived in writing by the Administrative Agent in respect of such Property (provided that any such condition requiring delivery of Security Documents that the Administrative Agent determines to be applicable, a Title Policy, flood hazard determinations or, to the extent applicable, evidence of flood insurance coverage as required by the Administrative Agent shall not be waived without the written consent of the Requisite Lenders), and (ii) each other Property added as a Collateral Property from time to time pursuant to Section 7.15(a); *provided that*, notwithstanding anything to the contrary herein or in any other Loan Document, solely for purposes of Sections 7.13(b), 9.2, 9.4, and 12.2, each Initial Collateral Property shall, at all times prior to the satisfaction of the Initial Mortgage Collateral Requirement, and solely to the extent the Initial Mortgage Collateral Requirement is not yet satisfied, be deemed to be a "Collateral Property" for all purposes thereunder regardless of whether or not the conditions specified in the foregoing clauses (i)(a) and (i)(b) shall have been satisfied.

"Collateral Property Addition" has the meaning given that term in Section 7.15(a).

"Collateral Property Availability" means, as determined with respect to the then Collateral Properties, the lesser of (i) 60% of the As-Is Appraised Value of such Collateral Properties, in the aggregate, and (ii) the amount that would result in a 9% Collateral Property Debt Yield for such Collateral Properties, in the aggregate. If any Collateral Property shall cease to qualify as such pursuant to Section 7.15(c), such ineligible Property shall be excluded from the calculation of the Collateral Property Availability, and the Collateral Property Availability shall be recalculated immediately upon such exclusion.

“Collateral Property Debt Yield” means, on any date of determination, the ratio, expressed as a percentage, of Net Operating Income of the Collateral Properties for the fiscal quarter of the Borrower most recently ending and the three immediately preceding fiscal quarters, in the aggregate, to the outstanding principal balance of all Loans, Swingline Loans, Letter of Credit Liabilities, Term Loans, and other extensions of credit hereunder or under the Existing Term Loan Agreement as of such date.

“Commitment” means, as to each Lender (other than a Swingline Lender), such Lender’s obligation to make Revolving Loans pursuant to Section 2.1., to issue (in the case of an Issuing Bank) and to participate (in the case of the other Lenders) in Letters of Credit pursuant to Section 2.2.(i), and to participate in Swingline Loans pursuant to Section 2.3.(e), in an amount up to, but not exceeding the amount set forth for such Lender on Schedule I as such Lender’s “Commitment Amount” or as set forth in any applicable Assignment and Assumption or agreement executed by a Lender becoming a party hereto in accordance with Section 2.15., as the same may be reduced from time to time pursuant to Section 2.11. or increased or reduced as appropriate to reflect any assignments to or by such Lender effected in accordance with Section 12.6. or increased as appropriate to reflect any increase effected in accordance with Section 2.15.

“Commitment Percentage” means, as to each Lender, the ratio, expressed as a percentage, of (a) the amount of such Lender’s Commitment to (b) the aggregate amount of the Commitments of all Lenders; provided, however, that if at the time of determination the Commitments have been terminated or been reduced to zero, the “Commitment Percentage” of each Lender shall be the “Commitment Percentage” of such Lender in effect immediately prior to such termination or reduction.

“Compliance Certificate” has the meaning given that term in Section 8.3.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Construction Budget” means the fully-budgeted costs for the acquisition and construction of a given piece of real property (including without limitation, the cost of acquiring such piece of real property (except to the extent any portion thereof is Unimproved Land), reserves for construction interest and operating deficits, tenant improvements, leasing commissions, and infrastructure costs), as reasonably determined by the Borrower in good faith. Real property under construction to be (but not yet) acquired by the Borrower or a Subsidiary upon completion of construction pursuant to a contract in which the seller of such real property is required to complete construction prior to, and as a condition precedent to, such acquisition, shall be subject to this definition.

“Continue”, **“Continuation”** and **“Continued”** each refers to the continuation of a LIBOR Loan from one Interest Period to another Interest Period pursuant to Section 2.8.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convert”, **“Conversion”** and **“Converted”** each refers to the conversion of a Loan of one Type into a Loan of another Type pursuant to Section 2.9: [or Section 4.2.\(b\).](#)

“Corresponding Tenor” [with respect to any Available Tenor means, as applicable, either a tenor \(including overnight\) or an interest payment period having approximately the same length \(disregarding business day adjustment\) as such Available Tenor.](#)

“**Covered Party**” has the meaning given that term in Section 12.24.

“**Credit Event**” means any of the following: (a) the making (or deemed making) of any Loan, (b) the Conversion of a Base Rate Loan into a LIBOR Loan and (c) the issuance, extension or amendment that increases the amount of a Letter of Credit.

“**Credit Rating**” means the rating assigned by a Rating Agency to the senior unsecured long term Indebtedness of a Person.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**Debt Service**” means, for any period, the sum of: (a) Interest Expense of the Borrower and its Subsidiaries determined on a consolidated basis for such period and (b) all regularly scheduled principal payments made with respect to Indebtedness of the Borrower and its Subsidiaries during such period, other than any balloon, bullet or similar principal payment which repays such Indebtedness in full.

“**Debtor Relief Laws**” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Applicable Laws relating to the relief of debtors in the United States of America or other applicable jurisdictions from time to time in effect.

“**Default**” means any of the events specified in Section 10.1., whether or not there has been satisfied any requirement for the giving of notice, the lapse of time, or both.

“**Defaulting Lender**” means, subject to Section 3.9.(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within 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 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, the Issuing Banks, the Swingline Lenders 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 2 Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Banks or the Swingline Lenders 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 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 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, (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 regulatory

authority acting in such a capacity or (iii) become the subject of a Bail-In Action; 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 of America 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 3.9.(f)) upon delivery of written notice of such determination to the Borrower, each Issuing Bank, each Swingline Lender and each Lender.

“Derivatives Contract” means (a) any transaction (including any master agreement, confirmation or other agreement with respect to any such transaction) now existing or hereafter entered into by the Borrower or any of its Subsidiaries (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index 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, 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, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, and (b) any combination of these transactions.

“Derivatives Support Document” means (i) any credit support annex comprising part of (and as defined in) any Specified Derivatives Contract, and (ii) any document or agreement pursuant to which cash, deposit accounts, securities accounts or similar financial asset collateral are pledged to or made available for set-off by, a Specified Derivatives Provider, including any banker’s lien or similar right, securing or supporting Specified Derivatives Obligation.

“Derivatives Termination Value” means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement or provision relating thereto, (a) for any date on or after the date such Derivatives Contracts have been terminated or closed out, the termination amount or value determined in accordance therewith, and (b) for any date prior to the date such Derivatives Contracts have been terminated or closed out, the then-current mark-to-market value for such Derivatives Contracts, determined based upon one or more mid-market quotations or estimates provided by any recognized dealer in Derivatives Contracts (which may include the Administrative Agent, any Lender, any Specified Derivatives Provider or any Affiliate of any thereof).

“Disbursement Instruction Agreement” means an agreement substantially in the form of Exhibit I to be executed and delivered by the Borrower, as the same may be amended, restated or modified from time to time with the prior written approval of the Administrative Agent.

“Dollars” or **“\$”** means the lawful currency of the United States of America.

“Early Opt-in Election” means, if the then-current Benchmark is LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“EBITDA” means, with respect to a Person for a given period and without duplication, the sum of: (a) net income (or loss) of such Person for such period determined on a consolidated basis, in accordance with GAAP, exclusive of the following (but only to the extent included in the determination of such net income (loss) for such period): (i) depreciation and amortization; (ii) interest expense; (iii) income tax expense; (iv) extraordinary or nonrecurring items, including without limitation, extraordinary or non-recurring gains and losses; (v) in the case of the Borrower and its Subsidiaries, funds received by the Borrower or a Subsidiary as rent but which are reserved for capital expenses; and (vi) in the case of Borrower and its Subsidiaries, equity in the earnings (or loss) of Unconsolidated Affiliates, RMR Inc. and Five Star (but only, in the case of each of RMR Inc. and Five Star, if such entity would be an Unconsolidated Affiliate but for the last sentence of the definition of that term); plus (b) in the case of the Borrower and its Subsidiaries cash dividends (other than extraordinary cash dividends or distributions) received by the Borrower or its Subsidiaries from RMR Inc. or Five Star during such period; plus (c) such Person’s Ownership Share of EBITDA of its Unconsolidated Affiliates. Straight line rent leveling adjustments and deferred percentage rent adjustments required under GAAP, and amortization of intangibles pursuant to FASB ASC 805 and the like, shall be disregarded in determinations of EBITDA (to the extent such adjustments would otherwise have been included in the determination of EBITDA). For purposes of this definition, nonrecurring items shall be deemed to include (x) gains and losses on early extinguishment of Indebtedness, (y) non-cash severance and other non-cash restructuring charges and (z) transaction costs of acquisitions not permitted to be capitalized pursuant to GAAP.

“EEA Financial Institution” means (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 clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the later of (a) the Agreement Date and (b) the date on which all of the conditions precedent set forth in Section 5.1. shall have been fulfilled or waived by all of the Lenders.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (subject to such consents, if any, as may be required under Section 12.6.(b)(iii)).

“Eligible Property” means a Property which satisfies all of the following requirements: (a) such Property is wholly-owned (i) in fee simple (or leasehold, if applicable) directly by a Guarantor and (ii) indirectly by the Borrower; (b) the Guarantor that owns such Property has the right to take the following actions without the need to obtain the consent of any Person (other than the Administrative Agent, the Term Loan Administrative Agent, the Collateral Agent, the Lenders and the Term Lenders): (i) to create Liens on such Property as security for Indebtedness of the Borrower or such Guarantor, as applicable, and (ii) to sell, transfer or otherwise dispose of such Property; (c) neither such Property, nor any of the Borrower’s direct or indirect ownership interest in such Guarantor, is subject to (i) any Lien other than Permitted Liens described in clauses (a), (c), (g), (i) and (j) of the definition of that term or (ii) any Negative Pledge; (d) [intentionally omitted]; (e) such Property and related Collateral is encumbered by first priority mortgage Liens in favor of the Collateral Agent, for the benefit of the holders of Pari Passu Guaranteed Obligations, as required pursuant to Section 7.15(a) (subject to the Administrative Agent having entered into a subordination, non-disturbance and attornment agreement with any applicable manager or tenant if required to provide the Administrative Agent with a first priority mortgage Lien), and the Lien of the Security Instrument on such Property is insured by a Title Policy as required pursuant hereto; (f) such Property is free of all structural defects and major architectural deficiencies, title defects, environmental conditions and other adverse matters, except for defects, deficiencies, conditions or other matters which, individually or collectively, are not materially adverse to the use, operation or value of such Property; and (g) no Casualty/Condemnation Event has occurred with respect to such Property which has not been fully restored and paid for in full.

“Environmental Laws” means any Applicable Law relating to environmental protection or the manufacture, storage, remediation, disposal or clean-up of Hazardous Materials including, without limitation, the following: Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; regulations of the Environmental Protection Agency, any applicable rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials, and any analogous or comparable state or local laws, regulations or ordinances that concern Hazardous Materials or protection of the environment.

“Equity Interest” means, with respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person whether or not certificated, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

“ERISA Event” means, with respect to the ERISA Group, (a) any “reportable event” as defined in Section 4043 of ERISA with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the withdrawal of a member of the ERISA Group from a Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;

(c) the incurrence by a member of the ERISA Group of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (d) the incurrence by any member of the ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC; (f) the failure by any member of the ERISA Group to make when due required contributions to a Multiemployer Plan or Plan unless such failure is cured within 30 days or the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan or the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the receipt by any member of the ERISA Group of any notice or the receipt by any Multiemployer Plan from any member of the ERISA Group 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 Section 4245 of ERISA), in reorganization (within the meaning of Section 4241 of ERISA), or in “critical” status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA); (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any member of the ERISA Group or the imposition of any Lien in favor of the PBGC under Title IV of ERISA with respect to any Plan or Multiemployer Plan; or (j) a determination that a Plan is, or is reasonably expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA).

“**ERISA Group**” means the Borrower, any Subsidiary and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control, which, together with the Borrower or any Subsidiary, are treated as a single employer under, as applicable, Section 414(b), (c), (m) and (o) of the Internal Revenue Code or Section 4001(a)(14) or 4001(b)(1) of ERISA.

“**Erroneous Payment**” has the meaning given that term in Section 11.14.(a).

“**Erroneous Payment Deficiency Assignment**” has the meaning given that term in Section 11.14.(d).

“**Erroneous Payment Impacted Class**” has the meaning given that term in Section 11.14.(d).

“**Erroneous Payment Return Deficiency**” has the meaning given that term in Section 11.14.(d).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Event of Default**” means any of the events specified in Section 10.1., provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“**Excluded Subsidiary**” means any Subsidiary (a) holding title to or beneficially owning assets which are or are intended to become collateral for any Secured Indebtedness of such Subsidiary, or being a beneficial owner of a Subsidiary holding title to or beneficially owning such assets (but having no material assets other than such beneficial ownership interests or the equity interests of a Subsidiary having no material assets other than such beneficial ownership interests) and (b) which (i) is, or is expected to be, prohibited from Guarantying the Indebtedness of any other Person pursuant to any document, instrument or agreement evidencing such Secured Indebtedness or (ii) is prohibited from Guarantying the Indebtedness of any other Person pursuant to a provision of such Subsidiary’s organizational documents which provision was included in such Subsidiary’s organizational documents as

a condition or anticipated condition to the extension of such Secured Indebtedness. In addition, (A) CCC of Kentucky Trust shall be deemed to be an Excluded Subsidiary so long as any Indebtedness secured by the Acquired Property Lien Documents described in Part I or Part II of Item 1.1.(b) of the Borrower Letter remains outstanding, and (B) SNH NS Mtg Properties 2 Trust shall be deemed to be an Excluded Subsidiary so long as the Property owned by such Subsidiary remains subject to a Lien arising in connection with any Acquired Property Lien Document described in Part IV of Item 1.1(b) of the Borrower Letter.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to an Applicable Law in effect on the date on which (i) such Lender acquires such interest in such Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 4.6.) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.10., amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.10.(g) (relating to documentation to reduce or eliminate withholding Tax) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning set forth in the recitals hereof.

“Existing Term Loan Agreement” means that certain Amended and Restated Term Loan Agreement dated as of August 1, 2017 by and among the Borrower, the lenders party thereto and Wells Fargo, as administrative agent, providing for a term loan facility in an original aggregate principal amount of \$200,000,000, as the same may be amended, restated, supplemented, or otherwise modified from time to time. [As of the Third Amendment Effective Date, the Existing Term Loan Agreement has been terminated and is of no further force or effect.](#)

“Extended Commitments” means, as to each Extending Lender, the portion of the Commitment of such Extending Lender that shall be subject to the Second Extension Option. The Extended Commitment of each Extending Lender as of the Second Amendment Effective Date is set forth on Schedule 2.12 opposite such Extending Lender’s name, as such Extended Commitment may be assigned from time to time pursuant to an Assignment and Assumption in accordance with the terms of this Agreement.

“Extending Lender” means each Lender with an Extended Commitment.

“Fair Market Value” means, (a) with respect to a security listed on a national securities exchange or the NASDAQ Global Market, the price of such security as reported on such exchange or market by any widely recognized reporting method customarily relied upon by financial institutions and (b) with respect to any other property, the price which could be negotiated in an arm’s-length free market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue 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 agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

“**FCA**” has the meaning given that term in Section 1.3.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent. If the Federal Funds Rate determined as provided above would be less than fifty basis points (0.50%), the Federal Funds Rate shall be deemed to be fifty basis points (0.50%).

“**Fee Letter**” means that certain fee letter dated as of June 29, 2017, by and among the Borrower, Wells Fargo, Wells Fargo Securities, LLC, Royal Bank of Canada, Citigroup Global Markets, Inc., PNC Bank, National Association, PNC Capital Markets LLC and the other parties thereto.

“**Fees**” means the fees and commissions provided for or referred to in Section 3.5. and any other fees payable by the Borrower hereunder, under any other Loan Document or under the Fee Letter.

“**FIRREA**” means the Financial Institution Recovery, Reform and Enforcement Act of 1989.

“**First Amendment**” means that certain First Amendment to Amended and Restated Credit Agreement, dated as of June 30, 2020, among the Borrower, the Lenders party thereto and the Administrative Agent.

“**First Amendment Effective Date**” has the meaning given that term in the First Amendment.

“**First Extended Termination Date**” has the meaning given that term in Section 2.12(b).

“**First Extension Option**” has the meaning given that term in Section 2.12(a).

“**Fitch**” means Fitch, Inc. and its successors.

“**Five Star**” means Five Star Senior Living Inc., a Maryland corporation, and its successors.

“**Fixed Charges**” means, for any period, the sum (without duplication) of (a) Debt Service for such period and (b) Preferred Dividends for such period.

“**Flood Laws**” has the meaning given that term in Section 11.12.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBOR. As of the Third Amendment Effective Date, the Floor is one-half of one percent (0.50%).

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means a Subsidiary not formed under the laws of the United States of America, any state thereof or the District of Columbia.

“FRB” means the [Board of Governors of the Federal Reserve System](#).

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Banks, such Defaulting Lender’s Commitment Percentage of the outstanding Letter of Credit Liabilities other than Letter of Credit Liabilities as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lenders, such Defaulting Lender’s Commitment Percentage of outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“Fund” means 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.

“Funds From Operations” means, for any period, (a) net income of the Borrower for such period determined on a consolidated basis exclusive of the following (to the extent included in the determination of such net income): (i) depreciation and amortization; (ii) gains and losses from extraordinary or non-recurring items; (iii) gains and losses on sales of real estate; (iv) gains and losses on investments in marketable securities; and (v) provisions/benefits for income taxes for such period; plus (b) the Borrower’s share of Funds From Operations from Unconsolidated Affiliates. Straight line rent leveling adjustments and deferred percentage rent adjustments required under GAAP, and amortization of intangibles pursuant to FASB ASC 805 and the like, shall be disregarded in determinations of Funds From Operations (to the extent such adjustments otherwise would be included in the determination of Funds From Operations).

“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, “The FASB Accounting Standards Codification”) or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination.

“Governmental Approvals” means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

“Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

“Ground Lease” means a ground lease containing the following terms and conditions: (a) either (i) a remaining term (taking into account extensions which may be effected by the lessee without the consent of the lessor) of no less than 30 years from the Agreement Date, or (ii) the right of the lessee to purchase the property on terms reasonably acceptable to the Administrative Agent; (b) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor; (c) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; and (d) free transferability of the lessee’s interest under such lease, including ability to sublease, subject to only reasonable consent provisions.

“Guarantor” means, collectively, (i) each direct owner of any Collateral Property and (ii) any Subsidiary that becomes a Guarantor pursuant to the terms of Section 7.13.

“Guaranteed Obligations” means, at any given time, the “Guaranteed Obligations” (as defined in the Guaranty) of each Guarantor that directly owns a Collateral Property at such time.

“Guaranty”, **“Guaranteed”** or to **“Guarantee”** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit (including Letters of Credit), or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person’s obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. As the context requires, “Guaranty” shall also mean the guaranty executed and delivered pursuant to Section 5.1. or 7.13. and substantially in the form of Exhibit B.

“Hazardous Materials” means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic substances” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, “TCLP” toxicity, or “EP toxicity”; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; (d) asbestos in any form; (e) toxic mold; and (f) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

“IBA” has the meaning given that term in Section 1.3.

“Indebtedness” means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed or for the deferred purchase price of property or services (excluding trade debt incurred in the ordinary course of

business); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered; (c) Capitalized Lease Obligations of such Person; (d) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person or any other Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) all obligations of such Person in respect of any purchase obligation, repurchase obligation, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement (excluding any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock)); (h) all Indebtedness of other Persons which such Person has Guaranteed or is otherwise recourse to such Person (excluding guarantees required under Applicable Laws, or by any Governmental Authority, as a condition to ownership of Senior Housing Assets); (i) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien (other than Permitted Liens of the types described in clauses (a) through (c) or (e) through (j) of the definition thereof) on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation, valued, in the case of any such Indebtedness as to which recourse for the payment thereof is expressly limited to the property or assets on which such Lien is granted, at the lesser of (x) the stated or determinable amount of the Indebtedness that is so secured or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) and (y) the Fair Market Value of such property or assets; and (j) such Person's Ownership Share of the Indebtedness of any Unconsolidated Affiliate of such Person.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document and (b) to the extent not otherwise described in the immediately preceding clause (a), Other Taxes.

"Initial Collateral Property" has the meaning given that term in the Second Amendment.

"Initial Mortgage Collateral Requirement" has the meaning given that term in the Second Amendment.

"Intellectual Property" has the meaning given that term in Section 6.1.(t).

"Intercreditor Agreement" means the Collateral Agency and Pari Passu Intercreditor Agreement, dated as of the Second Amendment Effective Date, by and among the Collateral Agent, the Administrative Agent, the Term Loan Administrative Agent, and the Loan Parties from time to time party thereto, substantially in the form of Exhibit B to the Second Amendment, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

"Interest Expense" means, with respect to a Person for any period of time (a) the interest expense whether paid, accrued or capitalized (without deduction of consolidated interest income) of such Person for such period plus (b) in the case of the Borrower, the Borrower's Ownership Share of Interest Expense of its Unconsolidated Affiliates. Interest Expense shall exclude any amortization of (i) deferred

financing fees and (ii) debt discounts (but only to the extent such discounts do not exceed 3.0% of the initial face principal amount of such debt).

“**Interest Period**” means, with respect to each LIBOR Loan, each period commencing on the date such LIBOR Loan is made, or in the case of the Continuation of a LIBOR Loan the last day of the preceding Interest Period for such Loan, and ending 7 days thereafter or on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select in a Notice of Borrowing, Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period (other than an Interest Period having a duration of 7 days) that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. Notwithstanding the foregoing: (i) if any Interest Period would otherwise end after the Termination Date, such Interest Period shall end on the Termination Date; and (ii) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day).

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

“**Investment**” means, (x) with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person and (y) with respect to any Property or other asset, the acquisition thereof. Any commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in a Loan Document, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“**Issuing Banks**” means each of Wells Fargo, Royal Bank of Canada, Citibank, N.A. and PNC Bank, National Association, in its capacity as the issuer of Letters of Credit pursuant to Section 2.2.

“**L/C Commitment Amount**” has the meaning given to that term in Section 2.2.(a).

“**L/C Disbursement**” has the meaning given to that term in Section 3.9.(b).

“**Lead Arranger**” has the meaning set forth in the introductory paragraph hereof.

“**Lease**” means a (sub)lease of a Property, between the Borrower or a Subsidiary, as Lessor, and a Lessee.

“**Lender**” means each financial institution from time to time party hereto as a “Lender,” together with its respective successors and permitted assigns, and, as the context requires, includes the Swingline Lenders. Except as expressly provided herein, the term “Lender” shall exclude any Lender (and its Affiliates) in its capacity as a Specified Derivatives Provider

“**Lending Office**” means, for each Lender and for each Type of Loan, the office of such Lender specified in such Lender’s Administrative Questionnaire or in the applicable Assignment and

Assumption, or such other office of such Lender as such Lender may notify the Administrative Agent in writing from time to time.

“**Lessee**” means the (sub)lessee of a Property pursuant to a Lease, provided that (without the Administrative Agent’s approval) no such (sub)lessee shall be an Affiliate of the Borrower (including, without limitation, RMR, or any Managing Trustee, but, subject to compliance with Section 9.8., excluding (x) Five Star and any of its Subsidiaries at any time Five Star or any such Subsidiary is an Affiliate and (y) any TRS), except during an interim period for Properties which are foreclosed upon or repossessed upon lease terminations or otherwise by or on behalf of the Borrower or a Subsidiary.

“**Letter of Credit**” has the meaning given that term in Section 2.2.(a).

“**Letter of Credit Collateral Account**” means a special deposit account maintained by the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, and under its sole dominion and control.

“**Letter of Credit Documents**” means, with respect to any Letter of Credit, collectively, any application therefor, any certificate or other document presented in connection with a drawing under such Letter of Credit and any other agreement, instrument or other document governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations.

“**Letter of Credit Liabilities**” means, without duplication, at any time and in respect of any Letter of Credit, the sum of (a) the Stated Amount of such Letter of Credit plus (b) the aggregate unpaid principal amount of all Reimbursement Obligations of the Borrower at such time due and payable in respect of all drawings made under such Letter of Credit. For purposes of this Agreement, a Lender (other than the Lender then acting as Issuing Bank with respect to the related Letter of Credit) shall be deemed to hold a Letter of Credit Liability in an amount equal to its participation interest under Section 2.2. in the related Letter of Credit, and the Lender then acting as Issuing Bank with respect to such related Letter of Credit shall be deemed to hold a Letter of Credit Liability in an amount equal to its retained interest in the related Letter of Credit after giving effect to the acquisition by the Lenders (other than the Lender then acting as Issuing Bank with respect to such related Letter of Credit) of their participation interests under such Section.

“**Level**” has the meaning given that term in the definition of the term “Applicable Margin.”

“**LIBOR**” means, subject to implementation of a Benchmark Replacement in accordance with Section 4.2.(b), with respect to any LIBOR Loan for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period ~~which appears on Reuters Screen LIBOR01 Page (or any applicable successor page)~~ as published by the ICE Benchmark Administration Limited, a United Kingdom Company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the stated maximum rate (stated as a decimal) of all reserves, if any, required to be maintained with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”) as specified in Regulation D of the ~~Board of Governors of the Federal Reserve System FRB~~ (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Loans is determined or any applicable category of extensions of credit or other assets which includes loans by an office of any Lender outside of the United States of America). If, for any reason, the rate referred to in the preceding clause (i) ~~does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page)~~ is not so published, then the rate to be used for such clause (i)

shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class 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 the applicable Interest Period for a period equal to such Interest Period. Any change in the maximum rate or ~~reserves~~reserve described in the preceding clause (ii) shall result in a change in LIBOR on the date on which such change in such maximum rate becomes effective. ~~If LIBOR determined as provided above would~~Notwithstanding the foregoing, (x) in no event shall LIBOR (including, without limitation, any Benchmark Replacement with respect thereto) be less than fifty basis points (0.50%); per annum and (y) in the event of the implementation of a Benchmark Replacement in accordance with Section 4.2.(b), any references herein to LIBOR shall be deemed ~~to be fifty basis points (0.50%)~~references to such Benchmark Replacement.

“**LIBOR Loan**” means a Revolving Loan (other than a Base Rate Loan) bearing interest at a rate based on LIBOR.

“**LIBOR Market Index Rate**” means, for any day, LIBOR as of that day that would be applicable for a LIBOR Loan having a one-month Interest Period determined at approximately 11:00 a.m. Eastern time for such day (rather than 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period as otherwise provided in the definition of “LIBOR”), or if such day is not a Business Day, the immediately preceding Business Day. The LIBOR Market Index Rate shall be determined on a daily basis. If the LIBOR Market Index Rate determined as provided above would be less than fifty basis points (0.50%), then the LIBOR Market Index Rate shall be deemed to be fifty basis points (0.50%).

“**Lien**” as applied to the property of any Person means: (a) any security interest, encumbrance, mortgage, deed to secure debt, deed of trust, assignment of leases and rents, pledge, lien, hypothecation, assignment, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom; (b) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; (c) the filing of any financing statement under the UCC or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (i) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the UCC or its equivalent as in effect in an applicable jurisdiction or (ii) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien; and (d) any agreement by such Person to grant, give or otherwise convey any of the foregoing.

“**Liquidity**” means, at any time, the sum of (a) the aggregate Commitments of all Lenders as of such date minus the outstanding principal balance of all Revolving Loans, Swingline Loans and Letter of Credit Liabilities, plus (b) unrestricted and unencumbered cash, in Dollars, solely owned by the Borrower and held in the United States.

“**Loan**” means a Revolving Loan or a Swingline Loan.

“**Loan Document**” means this Agreement, each Note, the Borrower Letter, the Guaranty, the Intercreditor Agreement, the Pledge Agreement, each other Security Document, each Letter of Credit Document and each other document or instrument now or hereafter executed and delivered by a Loan

Party in connection with, pursuant to or relating to this Agreement (other than the Fee Letter and any Specified Derivatives Contract).

“**Loan Party**” means each of the Borrower, each Pledgor, and each other Person who guarantees all or a portion of the Obligations and/or who pledges any collateral to secure all or a portion of the Obligations. Schedule 1.1. sets forth the Loan Parties in addition to the Borrower as of the Agreement Date.

“**Managed Property**” means a Property acquired by the Borrower or a Subsidiary as a result of, or in connection with, a foreclosure or repossession (or consensual arrangement in lieu thereof).

“**Managing Trustee**” means either Adam D. Portnoy or Jennifer B. Clark, both having a business address c/o RMR, or any duly appointed successor thereto.

“**Mandatorily Redeemable Stock**” means, with respect to any Person, any Equity Interest of such Person which by the terms of such Equity Interest (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other equivalent common Equity Interests at the option of the issuer of such Equity Interest), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatorily Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or part (other than an Equity Interest which is redeemable solely in exchange for common stock or other equivalent common Equity Interests); in each case, on or prior to the date that is ninety-one (91) days following the Termination Date.

“**Marketable Securities**” means (a) bank deposits and certificates of deposit from a bank rated Baa1 or BBB+ or better by a Rating Agency; (b) government obligations; and (c) commercial paper rated A1 or P1 by a Rating Agency.

“**Material Acquisition**” means any acquisition (whether by direct purchase, merger or otherwise and whether in one or more related transactions) by the Borrower or any Subsidiary in which the purchase price of the assets acquired exceed 5% of the consolidated total assets of the Borrower and its Subsidiaries determined under GAAP as of the last day of the most recently ending fiscal quarter of the Borrower for which financial statements are publicly available.

“**Material Adverse Effect**” means a materially adverse effect on (a) the business, assets, liabilities, condition (financial or otherwise), or results of operations of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Borrower or any other Loan Party to perform its obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any of the Loan Documents, (d) the rights and remedies of the Lenders, the Issuing Banks and the Administrative Agent under any of the Loan Documents, (e) the timely payment of the principal of or interest on the Loans or other amounts payable in connection therewith or the timely payment of all Reimbursement Obligations, or (f) when used with respect to a Collateral Property, the use, value or operation of such Property.

“**Material Contract**” means any contract or other arrangement (other than Loan Documents and Specified Derivatives Contracts), whether written or oral, to which the Borrower, any Subsidiary or any other Loan Party is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect, and in any event shall include the Business Management Agreement and Property Management Agreement.

“**MIRE Event**” means (a) any increase, extension or renewal of any of the Commitments or Loans (including any increase of Commitments pursuant to Section 2.15 or otherwise, but excluding (i) any continuation or conversion of Loans, (ii) the making of any Loan or (iii) the issuance, renewal or extension of Letters of Credit) or (b) any Collateral Property Addition.

“**Moody’s**” means Moody’s Investors Service, Inc. and its successors.

“**Mortgage**” means a mortgage, deed of trust, deed to secure debt or similar security instrument made by a Person owning an interest in real estate granting a Lien on such interest in real estate as security for the payment of Indebtedness.

“**Mortgage Receivable**” means a promissory note secured by a Mortgage of which the Borrower or a Subsidiary is the holder and retains the rights of collection of all payments thereunder.

“**Multiemployer Plan**” means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding six plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such six-year period.

“**Negative Pledge**” means, with respect to a given asset, any provision of a document, instrument or agreement (other than any Loan Document, a Specified Derivatives Contract or a lease or related agreement between a TRS, as tenant, and the Borrower or another Subsidiary, as landlord) which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that (i) an agreement that conditions a Person’s ability to encumber its assets upon the maintenance of one or more specified ratios that limit a Person’s ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, and (ii) negative pledge provisions set forth in the Existing Term Loan Agreement on substantially the same terms as the provisions of Sections 7.14(d) and 9.2 hereof, in each case, shall not constitute a Negative Pledge.

“**Net Cash Proceeds**” means the aggregate cash or cash equivalent proceeds received by the Borrower or any of its Subsidiaries, or Borrower’s Ownership Share of any cash or cash equivalents proceeds received by the Borrower or any Subsidiary from any Unconsolidated Affiliate, in respect of any sale, assignment, transfer or other disposition of any kind of any asset, any capital markets transaction (including the issuance of any Equity Interest, whether common, preferred or otherwise), or any debt or debt refinancing (whether secured or unsecured), in each case, net of (a) customary direct costs incurred in connection therewith (including legal, accounting and investment banking fees, and underwriting discounts and commissions), (b) taxes paid or payable as a result thereof, and (c) in the case of any such sale, assignment, transfer or other disposition of an asset, amounts required to be applied to the repayment of any Indebtedness secured by a Lien that has priority over any Lien in favor of the Administrative Agent on the asset subject to such sale, assignment, transfer or disposition; *provided*, however, that “Net Cash Proceeds” shall not include any cash or cash equivalent proceeds of any Stimulus Transaction.

“**Net Collateral Property Availability**” means, as of any particular date, the difference of (a) the then Collateral Property Availability *minus* (b) the outstanding principal amount of Term Loans as of such date.

“**Net Operating Income**” means, for any Collateral Property at any date of its determination (without duplication and determined on a consistent basis with prior periods): (a) rents and other revenues received in the ordinary course from such Collateral Property (including proceeds from rent loss or

business interruption insurance (but not in excess of the actual rent otherwise payable), determined in accordance with GAAP, but excluding rents and other contractually due amounts not collected during the applicable period, minus (b) all expenses paid (excluding depreciation, amortization, other non-cash expenses, interest expense, income tax expense, capital expenses and real estate acquisition costs and expenses, but including appropriate adjustments to allocate property taxes and insurance premiums evenly over the applicable period) related to the ownership, operation or maintenance of such Collateral Property, including but not limited to, ground rents, property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses, in each case, which are the responsibility of the applicable Subsidiary Guarantor that are not paid directly by the applicable tenant (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred by such Guarantor in connection with such Collateral Property, but specifically excluding any property management fees), minus (c) the Capital Expenditure Reserves for such Collateral Property for the applicable period, minus (d) the greater of (i) the actual management fee paid during such period with respect to such Collateral Property and (ii) three percent (3.00%) of the gross revenues of such Collateral Property. In no event shall Net Operating Income for any Property be less than \$0.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Domestic Property” means a Property located outside a state, territory or commonwealth of the United States of America (including without limitation Puerto Rico and the U.S. Virgin Islands) or the District of Columbia.

“Nonrecourse Indebtedness” means, with respect to a Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar customary exceptions to nonrecourse liability) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

“Note” means a Revolving Note or a Swingline Note.

“Notice of Borrowing” means a notice substantially in the form of Exhibit C (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.1.(b) evidencing the Borrower’s request for a borrowing of Revolving Loans.

“Notice of Continuation” means a notice substantially in the form of Exhibit D (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.8. evidencing the Borrower’s request for the Continuation of a LIBOR Loan.

“Notice of Conversion” means a notice substantially in the form of Exhibit E (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.9. evidencing the Borrower’s request for the Conversion of a Loan from one Type to another Type.

“Notice of Swingline Borrowing” means a notice substantially in the form of Exhibit F (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Swingline Lenders pursuant to Section 2.3.(b) evidencing the Borrower’s request for a Swingline Loan.

“**Obligations**” means, individually and collectively: (a) the aggregate principal balance of, and all accrued and unpaid interest on, all Loans; (b) all Reimbursement Obligations and all other Letter of Credit Liabilities; and (c) all other indebtedness, liabilities, obligations, covenants and duties of the Borrower and the other Loan Parties owing to the Administrative Agent, any Issuing Bank or any Lender of every kind, nature and description, under or in respect of this Agreement or any of the other Loan Documents, including, without limitation, the Fees and indemnification obligations, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any promissory note. For the avoidance of doubt, “Obligations” shall not include Specified Derivatives Obligations.

“**Off-Balance Sheet Obligations**” means liabilities and obligations of the Borrower, any Subsidiary or any other Person in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Borrower would be required to disclose in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Borrower’s report on Form 10-Q or Form 10-K (or their equivalents) which the Borrower is required to file with the Securities and Exchange Commission (or any Governmental Authority substituted therefor).

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Other Benchmark Rate Election**” means, if the then-current Benchmark is LIBOR, the occurrence of:

(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a LIBOR-based rate, a term benchmark rate that is not a SOFR-based rate as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 4.6.).

“**Ownership Share**” means, with respect to any Subsidiary of a Person (other than a Wholly Owned Subsidiary) or any Unconsolidated Affiliate of a Person, the greater of (a) such Person’s relative nominal direct and indirect ownership interest (expressed as a percentage) in such Subsidiary or Unconsolidated Affiliate or (b) subject to compliance with Section 8.4.(r), such Person’s relative direct and indirect economic interest (calculated as a percentage) in such Subsidiary or Unconsolidated Affiliate

determined in accordance with the applicable provisions of the declaration of trust, articles or certificate of incorporation, articles of organization, partnership agreement, joint venture agreement or other applicable organizational document of such Subsidiary or Unconsolidated Affiliate.

“**Pari Passu Guaranteed Obligations**” means all Guaranteed Obligations and all “Guaranteed Obligations” as defined in the Existing Term Loan Agreement.

“**Pari Passu Obligations**” means all Obligations and all “Obligations” as defined in the Existing Term Loan Agreement.

“**Participant**” has the meaning given that term in Section 12.6.(d).

“**Participant Register**” has the meaning given that term in Section 12.6.(d).

“**Patriot Act**” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“**Payment Recipient**” has the meaning given that term in Section 11.14.(a).

“**PBGC**” means the Pension Benefit Guaranty Corporation and any successor agency.

“**Permitted Capital Expenditures**” has the meaning given that term in Section 9.12(b).

“**Permitted Liens**” means, as to any Person: (a) Liens securing (x) taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA) or (y) the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, in each case, (i) which are not at the time required to be paid or discharged under Section 7.6., or (ii) if such Lien is the responsibility of a financially responsible tenant, mortgagor or manager to discharge, or (iii) in the case of a Senior Housing Asset or Senior Housing Asset Pool, when considered in the aggregate with all other Liens on such Senior Housing Asset (or Senior Housing Asset Pool), which Lien does not materially detract from (A) if the Senior Housing Asset subject to such Lien is part of a Senior Housing Asset Pool, the value of such Senior Housing Asset Pool, or (B) if the Senior Housing Asset subject to such Lien is not part of a Senior Housing Asset Pool, the value of such Senior Housing Asset; (b) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers’ compensation, unemployment insurance or similar Applicable Laws; (c) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the use thereof in the business of such Person and, in the case of the Borrower or any Subsidiary, Liens granted by any tenant on its leasehold estate in a Property which are subordinate to the interest of the Borrower or a Subsidiary in such Property; (d) Liens in existence as of the Agreement Date and set forth in Part II of Item 6.1.(f) of the Borrower Letter; (e) deposits to secure trade contracts (other than for Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (f) the lessor’s interest in property leased to the Borrower or any of its Subsidiaries pursuant to a lease permitted by this Agreement; (g) the interests of tenants, operators or managers of Properties; (h) Liens on any assets of a TRS in favor of the Borrower or any other Subsidiary; (i) Liens in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations; (j) Liens required under Applicable Law, or by any Governmental Authority, as a condition to ownership or operation of Senior Housing Assets; (k) Liens which are also secured by restricted cash or Cash Equivalents of equal or greater value; (l) Liens securing judgments not constituting an Event of Default under Section 10.1.(h); (m) Liens (i) of a collection bank arising under

Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business, and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry; (n) Liens (i) on earnest money deposits in connection with purchases and sales of properties, (ii) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to this Agreement, or (iii) consisting of an agreement to dispose of any property; (o) Liens in favor of the Borrower or any of its Subsidiaries; and (p) Liens arising from precautionary UCC financing statement filings regarding operating leases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business.

“**Permitted Restricted Payments**” has the meaning given that term in Section 9.12(c).

“**Person**” means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

“**Plan**” means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (a) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding six years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

“**Pledge Agreement**” means the Pledge Agreement, executed and delivered by the applicable Loan Parties on the Second Amendment Effective Date in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations, together with each joinder agreement and supplement executed and delivered in connection therewith, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“**Pledged Interests**” has the meaning given that term in the Pledge Agreement.

“**Pledgor**” means any Person that is party to the Pledge Agreement as a “Pledgor”.

“**Post-Amendment Period Compliance Date**” means the earlier to occur of (i) the date upon which the Borrower delivers to the Administrative Agent a Compliance Certificate in accordance with Section 8.3 evidencing compliance with each of the covenants set forth in Section 9.1 as of September 30, 2022, and (ii) following the Amendment Period Termination Date, the date upon which the Borrower delivers to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent demonstrating the Borrower’s pro forma compliance with each of the covenants set forth in Section 9.1 (each as adjusted pursuant to the last paragraph of Section 9.1) using pro forma projections based upon results through the most recently ended period for which such financial information is available to the Borrower.

“**Post-Default Rate**” means, in respect of any principal of any Loan, any Reimbursement Obligation or any other Obligation, a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin for Base Rate Loans plus two percent (2.0%).

“**Preferred Dividends**” means, for any given period and without duplication, all Restricted Payments accrued or paid (and in the case of Restricted Payments paid, which were not accrued during a

prior period) during such period on Preferred Stock issued by the Borrower or a Subsidiary. Preferred Dividends shall not include dividends or distributions (a) paid or payable solely in Equity Interests (other than Mandatorily Redeemable Stock) payable to holders of such class of Equity Interests; (b) paid or payable to the Borrower or a Subsidiary; or (c) constituting or resulting in the redemption of Preferred Stock, other than scheduled redemptions not constituting balloon, bullet or similar redemptions in full.

“**Preferred Stock**” means, with respect to any Person, Equity Interests in such Person which are entitled to preference or priority over any other Equity Interest in such Person in respect of the payment of dividends or distribution of assets upon liquidation or both.

“**Prime Rate**” means, at any time, the rate of interest per annum publicly announced from time to time by the Lender acting as the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“**Principal Office**” means the office of the Administrative Agent located at 608 Second Ave. South, 11th Floor, Minneapolis, Minnesota 55402, or any other subsequent office that the Administrative Agent shall have specified as the Principal Office by written notice to the Borrower and the Lenders.

“**Property**” means any parcel of real property and related personal property, either owned in fee simple or leased pursuant to a ground lease by the Borrower, any Subsidiary or any Unconsolidated Affiliate. With respect to a mortgage note or other promissory note secured by real property, the term Property means each parcel of real property, and related personal property, securing such mortgage note or other promissory note.

“**Property Management Agreement**” means that certain Second Amended and Restated Property Management Agreement dated as of June 5, 2015, as amended to date, by and between RMR and the Borrower, on behalf of itself and its Subsidiaries.

“**Property Management Contract Assignment**” means an Assignment and Subordination of Management Agreement executed by a Loan Party in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations, in form and substance reasonably satisfactory to the Administrative Agent. Such document may, at the Administrative Agent’s election, constitute a subordination of the Property Management Agreement rather than an assignment thereof.

“**Pro Rata Share**” means, as to each Lender, the ratio, expressed as a percentage of (a) (i) the amount of such Lender’s Commitment plus (ii) the amount of outstanding Term Loans held by such Lender to (b) (i) the aggregate amount of the Commitments of all Lenders plus (ii) the aggregate amount of all outstanding Term Loans; provided, however, that if at the time of determination the Commitments have terminated or been reduced to zero, the “Pro Rata Share” of each Lender shall be the ratio, expressed as a percentage of (A) the sum of (x) the unpaid principal amount of all outstanding Revolving Loans, Swingline Loans and Letter of Credit Liabilities owing to such Lender as of such date plus (y) the unpaid principal amount of all outstanding Term Loans owing to such Lender as of such date to (B) the sum of (x) the aggregate unpaid principal amount of all outstanding Revolving Loans, Swingline Loans and Letter of Credit Liabilities of all Lenders as of such date plus (y) the aggregate unpaid principal amount of all outstanding Term Loans as of such date. For purposes of this definition, a Lender (other than the applicable Swingline Lender with respect to such Swingline Loan) shall be deemed to hold a Swingline Loan and a Lender (other than the applicable Issuing Bank with respect to such Letter of Credit) shall be deemed to hold a Letter of Credit Liability, in each case, to the extent such Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in

respect of such participation. If at the time of determination the Commitments have terminated and there are no outstanding Loans or Letter of Credit Liabilities, then the Pro Rata Shares of the Lenders shall be determined as of the most recent date on which Commitments were in effect or Loans or Letters of Credit Liabilities were outstanding. For purposes of this definition, the term “Lender” shall be deemed to include, without duplication, each Lender in its capacities as a Lender hereunder and as a Term Lender, as applicable, and each Term Lender in its capacities as a Term Lender and as a Lender hereunder, as applicable.

“**Protective Advance**” means all sums expended as determined by the Collateral Agent to be necessary or appropriate after the Borrower or any other Loan Party fails to do so when required: (a) to protect the validity, enforceability, perfection or priority of the Liens in any of the Collateral and the instruments evidencing the Pari Passu Guaranteed Obligations; (b) to prevent the value of any Collateral from being materially diminished (assuming the lack of such a payment within the necessary time frame could potentially cause such Collateral to lose value); or (c) to protect any of the Collateral from being materially damaged, impaired, mismanaged or taken, including, without limitation, any amounts expended in connection therewith in accordance with Section 11.10 or 12.2.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**QFC Credit Support**” has the meaning given that term in Section 12.24.

“**Qualified Collateral Property Sale**” means a sale of any Collateral Property (or 100% of the ownership interests therein) to an unaffiliated third party purchaser (excluding, for the avoidance of doubt, any Affiliate of the Borrower or any Subsidiary of the Borrower) on arms’-length terms, which sale and the terms thereof shall be reasonably acceptable to the Administrative Agent in all respects.

“**Qualified Notes Issuance**” means any issuance by the Borrower of unsecured notes with an initial term of at least three (3) years (and in any event not sooner than 91 days prior to the Termination Date), and in respect of which no scheduled principal repayments or other mandatory prepayments are required to be paid, nor will be paid, by the Borrower within the first three (3) years (and in any event not sooner than 91 days prior to the Termination Date) following the date of issuance thereof.

“**Qualified Plan**” means a Benefit Arrangement that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

“**Qualified Refinancing Issuance**” means an issuance by the Borrower of unsecured notes with an initial term extending at least three (3) years beyond the latest Termination Date as extended or proposed to be extended pursuant to Section 2.12, and in respect of which no scheduled principal repayments or other mandatory prepayments are required to be paid, nor will be paid, by the Borrower within such period.

“**Rating Agency**” means S&P, Moody’s or any other nationally recognized securities rating agency selected by the Borrower and approved of by the Administrative Agent in writing.

“**Recipient**” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding

the date of such setting, and (2) if such Benchmark is not LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“**Register**” has the meaning given that term in Section 12.6.(c).

“**Regulatory Change**” means, with respect to any Lender, any change effective after the Agreement Date in Applicable Law (including without limitation, Regulation D of the ~~Board of Governors of the Federal Reserve System~~FRB) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks, including such Lender, of or under any Applicable Law (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof or compliance by any Lender with any request or directive regarding capital adequacy or liquidity. Notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) 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 “Regulatory Change”, regardless of the date enacted, adopted, implemented or issued.

“**Reimbursement Obligation**” means the absolute, unconditional and irrevocable obligation of the Borrower to reimburse an Issuing Bank for any drawing honored by such Issuing Bank under a Letter of Credit.

“**REIT**” means a Person qualifying for treatment as a “real estate investment trust” under the Internal Revenue Code.

“**RMR**” means The RMR Group LLC, together with its successors and permitted assigns.

“**RMR Inc.**” means The RMR Group Inc., a Maryland corporation, together with its successors and permitted assigns.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“**Relevant Governmental Body**” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“**Requisite Extending Lenders**” means, as of any date, (a) Extending Lenders having more than 50% of the aggregate amount of the Extended Commitments of all Extending Lenders or (b) if the Extended Commitments have been terminated or reduced to zero, Extending Lenders holding more than 50% of the principal amount of the aggregate outstanding Loans and Letter of Credit Liabilities; provided, that (i) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and (ii) at all times when two or more Lenders (excluding Defaulting Lenders) are party to this Agreement, the term “Requisite Extending Lenders” shall in no event mean fewer than two Lenders.

“**Requisite Lenders**” means, as of any date, (a) Lenders having more than 50% of the aggregate amount of the Commitments of all Lenders or (b) if the Commitments have been terminated or reduced to zero, Lenders holding more than 50% of the principal amount of the aggregate outstanding Loans and

Letter of Credit Liabilities; provided, that (i) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and (ii) at all times when two or more Lenders (excluding Defaulting Lenders) are party to this Agreement, the term “Requisite Lenders” shall in no event mean less than two Lenders. For purposes of this definition, a Lender shall be deemed to hold a Swingline Loan or a Letter of Credit Liability to the extent such Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Responsible Officer**” means (a) with respect to the Borrower, the Borrower’s President or Treasurer or any Managing Trustee of the Borrower and (b) with respect to any other Loan Party, such Loan Party’s chief executive officer or chief financial officer.

“**Restricted Payment**” means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend or distribution payable solely in shares of that class of Equity Interests to the holders of that class; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any Equity Interest of the Borrower or any of its Subsidiaries now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding.

“**Revolving Credit Exposure**” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in Letter of Credit Liabilities and Swingline Loans at such time.

“**Revolving Loan**” means a loan made by a Lender to the Borrower pursuant to Section 2.1.(a).

“**Revolving Note**” means a promissory note of the Borrower substantially in the form of Exhibit G, payable to the order of a Lender in a principal amount equal to the amount of such Lender’s Commitment.

“**Sanctioned Country**” means, at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Effective Date, Cuba, Iran, North Korea, Syria and Crimea).

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“**Sanctions**” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those

imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, Her Majesty's Treasury, or other relevant sanctions authority in any jurisdiction (a) in which the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Loans will be used, or (c) from which repayment of the Loans will be derived.

"Second Amendment" means that certain Second Amendment to Amended and Restated Credit Agreement, dated as of January 29, 2021, among the Borrower, the Guarantors party thereto, the Lenders party thereto and the Administrative Agent.

"Second Amendment Effective Date" has the meaning given that term in the Second Amendment.

"Second Extension Option" has the meaning given that term in Section 2.12(a).

"Secured Indebtedness" means, with respect to a Person as of any given date, the aggregate principal amount of all Indebtedness of such Person outstanding on such date and that is secured in any manner by any Lien on any property and, in the case of the Borrower and its Subsidiaries, shall include (without duplication) the Borrower's Ownership Share of the Secured Indebtedness of its Unconsolidated Affiliates. For the avoidance of doubt, at all times following the delivery of any Security Instrument and for so long as any Security Instrument is required to secure any Pari Passu Guaranteed Obligations in accordance with the terms of this Agreement and/or the Existing Term Loan Agreement, all Indebtedness under the Loan Documents and the Term Loan Documents shall constitute Secured Indebtedness.

"Securities Act" means the Securities Act of 1933, as amended from time to time, together with all rules and regulations issued thereunder.

"Security Documents" means, collectively, the Pledge Agreement, any Security Instrument, any Property Management Contract Assignment, and any other security agreement, pledge agreement, financing statement, or other document, instrument or agreement creating, evidencing or perfecting the Liens granted to the Collateral Agent, for the benefit of the holders of Pari Passu Guaranteed Obligations, in any of the Collateral, including, without limitation, any assignment of leases and rents and any collateral assignment of reciprocal easement agreements, tax credit or abatement program, architectural and construction related contracts, permits, or licenses, in each case, to the extent the Administrative Agent determines applicable or appropriate.

"Security Instrument" means a mortgage, deed of trust, deed to secure debt, or equivalent instrument executed by a Subsidiary of the Borrower in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations, in form and substance satisfactory to the Administrative Agent.

"Senior Housing Asset" means any Property on which the improvements consist only of one or more of the following: (a) senior residences, (b) independent living facilities, (c) congregate communities, (d) assisted living facilities, (e) nursing homes, (f) hospitals and (g) other Property primarily used for senior citizen residences or health care services, together with other improvements incidental thereto.

"Senior Housing Asset Pool" means any group of two or more Properties, substantially all of the value of which is attributable to Senior Housing Assets, that are (a) leased to a Lessee pursuant to a single Lease, (b) leased pursuant to Leases that are cross-defaulted (as to defaults by Lessee) and which the Borrower has designated in a notice to the Administrative Agent (which designation has not been

withdrawn by the Borrower) to be a Senior Housing Asset Pool, or (c) Managed Properties managed under one management agreement (or multiple management agreements with the same or affiliated managers that are cross-defaulted) and which the Borrower has designated in a notice to the Administrative Agent (which designation has not been withdrawn by the Borrower) to be a Senior Housing Asset Pool.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Solvent**” means, when used with respect to any Person, that (a) the fair value and the fair salable value of its assets (excluding any Indebtedness due from any Affiliate of such Person) are each in excess of the fair valuation of its total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability); (b) such Person is able to pay its debts or other obligations in the ordinary course as they mature; and (c) such Person has capital not unreasonably small to carry on its business and all business in which it proposes to be engaged.

“**Specified Derivatives Contract**” means any Derivatives Contract, together with any Derivatives Support Document relating thereto, that is made or entered into at any time, or in effect at any time now or hereafter, whether as a result of an assignment or transfer or otherwise, between the Borrower or any Subsidiary of the Borrower and any Specified Derivatives Provider.

“**Specified Derivatives Obligations**” means all indebtedness, liabilities, obligations, covenants and duties of the Borrower or its Subsidiaries under or in respect of any Specified Derivatives Contract, whether direct or indirect, absolute or contingent, due or not due, liquidated or unliquidated, and whether or not evidenced by any written confirmation.

“**Specified Derivatives Provider**” means any Lender, or any Affiliate of a Lender that is a party to a Derivatives Contract at the time the Derivatives Contract is entered into.

“**S&P**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services, LLC business, or any successors.

“**Stated Amount**” means the amount available to be drawn by a beneficiary under a Letter of Credit from time to time, as such amount may be increased or reduced from time to time in accordance with the terms of such Letter of Credit.

“**Stimulus Transaction**” means any loans, equity investments, grants or other transactions pursuant to which the Borrower, any of its Subsidiaries or any Unconsolidated Affiliate thereof receives funds in connection with any federal COVID-19 stimulus legislation, including, without limitation, any loan made pursuant any program implemented by the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”, or any similar program now or hereafter in effect.

“**Subsidiary**” means, for any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other individuals performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

“**Supplemental Indenture**” means the Supplemental Indenture No. 6, dated as of December 8, 2011, supplemental to the Indenture dated as of December 20, 2001 between the Borrower and U.S. Bank National Association, as trustee.

“**Supported QFC**” has the meaning given that term in Section 12.24.

“**Swingline Commitment**” means each Swingline Lender’s obligation to make Swingline Loans pursuant to Section 2.3. in an amount up to, but not exceeding the amount set forth in the first sentence of Section 2.3.(a), as such amount may be reduced from time to time in accordance with the terms hereof.

“**Swingline Lenders**” means each of Wells Fargo, Royal Bank of Canada, Citibank, N.A. and PNC Bank, National Association, together with its respective successors and assigns.

“**Swingline Loan**” means a loan made by a Swingline Lender to the Borrower pursuant to Section 2.3.

“**Swingline Maturity Date**” means the date which is seven (7) Business Days prior to the Termination Date.

“**Swingline Note**” means a promissory note of the Borrower substantially in the form of Exhibit H, payable to the order of each Swingline Lender in a principal amount equal to the amount of the Swingline Commitment as originally in effect and otherwise duly completed.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Termination Date**” means January 15, 2022, or such later date to which the Termination Date may be extended pursuant to Section 2.12.

“**Term Lender**” has the meaning given to the defined term “Lender” in the Existing Term Loan Agreement.

“**Term Loan Administrative Agent**” means Wells Fargo Bank, National Association, as administrative agent under the Existing Term Loan Agreement or any successor thereto acting in such capacity.

“**Term Loan Documents**” has the meaning given to the defined term “Loan Documents” in the Existing Term Loan Agreement.

“**Term Loans**” has the meaning given to the defined term “Loans” in the Existing Term Loan Agreement. [As of the Third Amendment Effective Date, the outstanding principal balance of the Term](#)

Loans is \$0.00, and all Term Loan commitments in respect thereof have been terminated and are no longer available for disbursement.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.2.(b) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

“Third Amendment” means that certain Third Amendment to Amended and Restated Credit Agreement, dated as of September 3, 2021, among the Borrower, the other Loan Parties party thereto, the Lenders party thereto and the Administrative Agent.

“Third Amendment Effective Date” has the meaning given that term in the Third Amendment.

“Titled Agent” has the meaning given that term in Section 11.9.

“Title Insurance Company” means (i) First American Title Insurance Company or (ii) any other title company reasonably acceptable to the Administrative Agent.

“Title Policy” means, with respect to each Collateral Property, an ALTA standard form title insurance policy (or, if such form is not available, an equivalent, legally promulgated form of mortgagee title insurance policy reasonably acceptable to the Administrative Agent) issued by a Title Insurance Company (with such co-insurance or reinsurance as the Administrative Agent may require) in an amount as the Administrative Agent may reasonably require based on the As-Is Appraised Value of such Collateral Property insuring the priority of the Security Instrument thereon and that the Borrower or a Loan Party, as applicable, holds marketable or indefeasible (with respect to Texas) fee simple (or leasehold, if applicable) title to such parcel, subject only to encumbrances reasonably acceptable to the Administrative Agent and which shall not contain standard exceptions for mechanics liens, persons in occupancy (other than tenants as tenants only under tenant leases with no rights of purchase) or matters which would be shown by a survey, shall not insure over any matter except to the extent that any such affirmative insurance is acceptable to the Administrative Agent in its reasonable discretion, and shall contain such endorsements and affirmative insurance as the Administrative Agent may reasonably require to the extent available in the jurisdiction in which such Collateral Property is located, including, but not limited to, an aggregation endorsement to the extent available in the jurisdiction in which such Collateral Property is located, but may exclude, in any event, affirmative coverage for preferential transfers.

“Total Asset Value” means the sum of the following (without duplication) of the Borrower and its Subsidiaries for the period of four fiscal quarters most recently ended (or for such other period as provided in the last paragraph of Section 9.1): (a) with respect to all Properties owned (or leased pursuant to a Ground Lease) by the Borrower or any Subsidiary at all times during the applicable test period, (i) Adjusted EBITDA attributable to such Properties for the applicable test period (annualized, to the

extent provided in the last paragraph of Section 9.1), divided by (ii) the applicable Capitalization Rate; (b) the purchase price paid for any Property acquired during the applicable test period (less any amounts paid as a purchase price adjustment, held in escrow, retained as a contingency reserve, or other similar arrangements and prior to allocations of property purchase prices pursuant to Statement of FASB ASC 805 and the like); (c) the value of the Borrower's equity Investments in RMR Inc. and Five Star as of the end of the applicable test period, such value determined at Fair Market Value; (d) all Marketable Securities, cash and Cash Equivalents; (e) the book value of all Assets Under Development as of the end of the applicable test period; (f) the book value of all Mortgage Receivables, and all other promissory notes secured by a Lien on any Property, as of the end of the applicable test period; and (g) the Borrower's Ownership Share of the preceding items (other than those referred to in clause (c)) of any Unconsolidated Affiliate of the Borrower. For purposes of determining Total Asset Value, to the extent the amount of Total Asset Value attributable to (w) Unconsolidated Affiliates would exceed 20.0% of Total Asset Value, (x) Assets Under Development (determined as the aggregate Construction Budget for all such Assets Under Development) would exceed 10.0% of Total Asset Value, (y) Mortgage Receivables would exceed 10.0% of Total Asset Value and (z) Unimproved Land would exceed 5.0% of Total Asset Value, in each case, such excess shall be excluded. To the extent that the value of the Borrower's equity Investments in RMR Inc. and Five Star would in the aggregate account for more than 3.0% of Total Asset Value, such excess shall be excluded. Notwithstanding the foregoing, for purposes of determining Total Asset Value at any time, (i) the Borrower may, in addition to the Properties referred to in the immediately preceding clause (b), include the purchase price paid for any Property acquired during the period following the end of the fiscal quarter most recently ended through the time of such determination (less any such amounts paid during such period as a purchase price adjustment or held in escrow at the time of such determination, retained as a contingency reserve at the time of such determination, or subject to other similar arrangements at the time of such determination) and (ii) for purposes of the immediately preceding clause (d), the amount of Marketable Securities, cash, and Cash Equivalents shall be calculated as of such date of determination rather than as of the end of the applicable test period most recently ended.

"Total Indebtedness" means, as of a given date, all liabilities of the Borrower and its Subsidiaries which would, in conformity with GAAP, be properly classified as a liability on a consolidated balance sheet of the Borrower and its Subsidiaries as of such date (excluding allocations of property purchase prices pursuant to FASB ASC 805 and the like), and in any event shall include (without duplication): (a) all Indebtedness of the Borrower and its Subsidiaries, (b) the Borrower's Ownership Share of Indebtedness of its Unconsolidated Affiliates, and (c) net obligations of the Borrower and its Subsidiaries under any Derivatives Contracts not entered into as a hedge against existing Indebtedness, in an amount equal to the Derivatives Termination Value thereof.

"Total Unencumbered Assets" means, as of any date, the sum of (i) Undepreciated Real Estate Assets not securing any portion of Secured Debt and (ii) the amount of all other assets of the Borrower and its Subsidiaries not securing any portion of Secured Debt, in each case on such date determined on a consolidated basis in accordance with GAAP (but excluding accounts receivable and intangibles); *provided that*, any joint venture interests shall be excluded from the calculation of Total Unencumbered Assets. For purposes of this definition, "Undepreciated Real Estate Assets" and "Secured Debt" shall have the meanings assigned thereto in the definition of "Amendment Period Incurrence Conditions".

"Trading with the Enemy Act" has the meaning given to that term in Section 6.1.(y).

"TRS" means any direct or indirect Subsidiary of the Borrower that is classified as a "taxable REIT subsidiary" under Section 856(l) of the Internal Revenue Code.

“**Type**” with respect to any Revolving Loan, refers to whether such Loan or portion thereof is a LIBOR Loan or a Base Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**Unconsolidated Affiliate**” means, with respect to any Person, any other Person in whom such Person holds an Investment, which Investment is accounted for in the financial statements of such Person on an equity basis of accounting and whose financial results would not be consolidated under GAAP with the financial results of such Person on the consolidated financial statements of such Person. Notwithstanding the foregoing, neither of RMR Inc. and Five Star shall be considered to be an Unconsolidated Affiliate of the Borrower or any of its Subsidiaries.

“**Unencumbered Asset**” means each Property that satisfies all of the following requirements: (a) such Property is (i) owned in fee simple solely by the Borrower or a Wholly Owned Subsidiary or (ii) leased solely by the Borrower or a Wholly Owned Subsidiary pursuant to a Ground Lease; (b) such Property is not an Asset Under Development and is in service; (c) neither such Property, nor any interest of the Borrower or such Subsidiary therein, is subject to any Lien (other than Permitted Liens of the types described in clauses (a) through (c) and (e) through (j) of the definition thereof) or to any Negative Pledge other than Negative Pledges permitted under Sections 9.2.(b)(iii) and (iv); (d) regardless of whether such Property is owned or leased by the Borrower or a Subsidiary, the Borrower has the right directly, or indirectly through a Subsidiary, to take the following actions without the need to obtain the consent of any Person: (i) to create Liens on such Property (or its leasehold interest therein, as applicable) as security for Indebtedness of the Borrower or such Subsidiary, as applicable, and (ii) to sell, transfer or otherwise dispose of such Property (or its leasehold interest therein, as applicable); (e) neither such Property, nor if such Property is owned by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien (other than Permitted Liens of the types described in clauses (a) through (c) or (e) through (j) of the definition thereof) or (ii) any Negative Pledge other than Negative Pledges permitted under Sections 9.2.(b)(iii) and (iv); (f) such Property is free of structural defects or major architectural deficiencies, title defects, environmental conditions or other adverse matters which, individually or collectively, materially impair the value of such Property; and (g) any Lessee of more than a majority of the leasable space in such Property is not more than 120 days past due with respect to any fixed rental payment obligations under any Lease for such Property. Notwithstanding the immediately preceding sentence, a Property owned by a Foreign Subsidiary will be considered to be an Unencumbered Asset so long as: (1) such Property is (i) owned in fee simple (or the legal equivalent in the jurisdiction where such Property is located) by such Foreign Subsidiary or (ii) leased solely by such Foreign Subsidiary pursuant to a long-term lease having terms and conditions reasonably acceptable to the Administrative Agent; (2) all of the issued and outstanding Equity Interests of such Foreign Subsidiary are legally and beneficially owned by one or more of the Borrower and Wholly Owned Subsidiaries;

(3) such Foreign Subsidiary has no Indebtedness other than (x) Nonrecourse Indebtedness and (y) other Indebtedness in an aggregate outstanding principal amount of less than 2.0% of the value of the assets of such Foreign Subsidiary (such value to be determined in a manner consistent with the definition of Total Asset Value or, if not contemplated under the definition of Total Asset Value, in a manner acceptable to the Administrative Agent); (4) neither such Property, nor any interest of such Foreign Subsidiary therein, is subject to any Lien (other than Permitted Liens of the types described in clauses (a) through (c) or (e) through (j) of the definition thereof) or to any Negative Pledge other than Negative Pledges permitted under Sections 9.2.(b)(iii) and (iv); and (5) such Property satisfies the requirements set forth in the immediately preceding clauses (b), (c), (d), (e), (f) and (g). In addition, a Senior Housing Asset Pool or the portion thereof comprised of Properties which are individually Unencumbered Assets shall constitute an Unencumbered Asset for purposes of this Agreement.

“**Unencumbered Asset Certificate**” has the meaning given that term in Section 8.3.

“**Unimproved Land**” means land on which no development (other than improvements that are not material and are temporary in nature) has occurred.

“**Unsecured Debt**” means any Debt of the Borrower or its Subsidiaries which is not Secured Debt (as such terms are defined in the definition of “Amendment Period Incurrence Conditions”).

“**Unsecured Indebtedness**” means, with respect to a Person as of any given date, the aggregate principal amount of all Indebtedness of such Person outstanding at such date that is not Secured Indebtedness (excluding Indebtedness associated with Unconsolidated Affiliates that is not Guaranteed by the Borrower or any of its Subsidiaries) and in the case of the Borrower shall include (without duplication) Indebtedness that does not constitute Secured Indebtedness. Indebtedness secured solely by a pledge of Equity Interests in a Subsidiary owning one or more Properties which is also recourse to the Borrower or a Subsidiary shall not be treated as Secured Indebtedness.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“**U.S. Special Resolution Regimes**” has the meaning given that term in Section 12.24.

“**Wells Fargo**” means Wells Fargo Bank, National Association, and its successors and assigns.

“**Wholly Owned Subsidiary**” means any Subsidiary of a Person in respect of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares) are at the time directly or indirectly owned and controlled by such Person or one or more other Subsidiaries of such Person.

“**Withdrawal Liability**” means any liability as a result of a complete or partial withdrawal from a Multiemployer Plan as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” means (a) the Borrower, (b) any other Loan Party and (c) the Administrative Agent, as applicable.

“**Write-Down and Conversion Powers**” means (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify

or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2. General; References to Eastern Time.

Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP in effect as of the Agreement Date. Notwithstanding the preceding sentence, the calculation of liabilities shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other standards of the Financial Accounting Standards Board allowing entities to elect fair value option for financial liabilities. References in this Agreement to “Sections”, “Articles”, “Exhibits” and “Schedules” are to sections, articles, exhibits and schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Borrower or a Subsidiary of such Subsidiary and a reference to an “Affiliate” means a reference to an Affiliate of the Borrower. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, all references to time are references to Eastern time.

Section 1.3. Rates.

~~The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of “LIBOR” or with respect to any rate that is an alternative or replacement for or successor to any such rate or the effect of any of the foregoing.~~

The interest rate on LIBOR Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) may be determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, ICE Benchmark Administration (“IBA”), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the “FCA”), the regulatory supervisor of IBA, announced in public statements (the “Announcements”) that the final publication or representativeness date for the London interbank offered rate for Dollars for: (a) 1-week and 2-month tenor settings will be December 31, 2021 and (b) overnight, 1-month, 3-month, 6-month and 12-month tenor settings will be June 30, 2023. No successor administrator for IBA was identified in such Announcements. As a result, it is possible that commencing immediately after such dates, the London interbank offered rate may no longer be available for such tenors or may no longer be deemed a representative reference rate upon which to determine the interest rate on LIBOR Loans or Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate). There is no assurance that the dates set forth in the Announcements will not change or that IBA or the FCA will not take further

action that could impact the availability, composition or characteristics of any London interbank offered rate. Public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to implement new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 4.2.(b), such Section 4.2.(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 4.2.(b), of any change to the reference rate upon which the interest rate on LIBOR Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other rates in the definition of "LIBOR" or with respect to any alternative, successor, or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 4.2.(b), will be similar to, or produce the same value or economic equivalence of, LIBOR or any other Benchmark, or have the same volume or liquidity as did the London interbank offered rate or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of a Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any Benchmark, any component definition thereof or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.4. Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II. CREDIT FACILITY

Section 2.1. Revolving Loans.

(a) Making of Revolving Loans. Subject to the terms and conditions set forth in this Agreement, including without limitation, Section 2.14., each Lender severally and not jointly agrees to make Revolving Loans in Dollars to the Borrower during the period from and including the Effective Date to but excluding the Termination Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, (i) at any time prior to the satisfaction of the Initial Mortgage Collateral Requirement, such Lender's Commitment, and (ii) upon and following satisfaction of the Initial Mortgage Collateral Requirement, the lesser of (A) the amount of such Lender's Commitment and (B) such Lender's Commitment Percentage of the then Net Collateral Property Availability. Each borrowing of Base Rate Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of

\$500,000 in excess thereof. Each borrowing and Continuation under Section 2.8. of, and each Conversion under Section 2.9. of Base Rate Loans into, LIBOR Loans shall be in an aggregate minimum of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount. Notwithstanding the immediately preceding two sentences but subject to Section 2.14., a borrowing of Revolving Loans may be in the aggregate amount of the unused Commitments or the aggregate amount of the unused Net Collateral Property Availability, as then applicable pursuant to the terms of this Agreement. Within the foregoing limits and subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans.

(b) Requests for Revolving Loans. Not later than 10:00 a.m. Eastern time at least one (1) Business Day prior to a borrowing of Revolving Loans that are to be Base Rate Loans and not later than 10:00 a.m. Eastern time at least three (3) Business Days prior to a borrowing of Revolving Loans that are to be LIBOR Loans, the Borrower shall deliver to the Administrative Agent a Notice of Borrowing. Each Notice of Borrowing shall specify the aggregate principal amount of the Revolving Loans to be borrowed, the date such Revolving Loans are to be borrowed (which must be a Business Day), the use of the proceeds of such Revolving Loans, the Type of the requested Revolving Loans, and if such Revolving Loans are to be LIBOR Loans, the initial Interest Period for such Revolving Loans. Each Notice of Borrowing shall be irrevocable once given and binding on the Borrower. Prior to delivering a Notice of Borrowing, the Borrower may (without specifying whether a Revolving Loan will be a Base Rate Loan or a LIBOR Loan) request that the Administrative Agent provide the Borrower with the most recent LIBOR available to the Administrative Agent. The Administrative Agent shall provide such quoted rate to the Borrower on the date of such request or as soon as possible thereafter.

(c) Funding of Revolving Loans. Promptly after receipt of a Notice of Borrowing under the immediately preceding subsection (b), the Administrative Agent shall notify each Lender of the proposed borrowing. Each Lender shall deposit an amount equal to the Revolving Loan to be made by such Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 11:00 a.m. Eastern time on the date of such proposed Revolving Loans. Subject to fulfillment of all applicable conditions set forth herein, the Administrative Agent shall make available to the Borrower in the account specified in the Disbursement Instruction Agreement, not later than 1:00 p.m. Eastern time on the date of the requested borrowing of Revolving Loans, the proceeds of such amounts received by the Administrative Agent.

(d) Assumptions Regarding Funding by Lenders. With respect to Revolving Loans to be made after the Effective Date, unless the Administrative Agent shall have been notified by any Lender that such Lender will not make available to the Administrative Agent a Revolving Loan to be made by such Lender in connection with any borrowing, the Administrative Agent may assume that such Lender will make the proceeds of such Revolving Loan available to the Administrative Agent in accordance with this Section, and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower the amount of such Revolving Loan to be provided by such Lender. In such event, if such Lender does not make available to the Administrative Agent the proceeds of such Revolving Loan on the date and at the time specified in Section 2.1.(c), then such Lender and the Borrower severally agree to pay to the Administrative Agent on demand the amount of such Revolving Loan with interest thereon, for each day from and including the date such Revolving Loan is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. Notwithstanding the prior sentence, if any Lender shall fail to make available to the Administrative Agent the proceeds of a Revolving Loan on the date and at the time specified in Section 2.1.(c) but shall make such proceeds available to the Administrative Agent at a later time on such date, such Lender shall pay to

the Administrative Agent one day's worth of interest computed in accordance with clause (i) of the immediately preceding sentence, unless such Lender can provide evidence reasonably satisfactory to the Administrative Agent that such Lender has timely made such proceeds available to the Administrative Agent, including, without limitation, a Fed Reference Number screen shot evidencing the date and time such Lender's wire was sent. If the Borrower and such Lender shall pay the amount of such interest to the Administrative Agent for the same or overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays to the Administrative Agent the amount of such Revolving Loan, the amount so paid shall constitute such Lender's Revolving Loan included in the borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make available the proceeds of a Revolving Loan to be made by such Lender.

Section 2.2. Letters of Credit.

(a) Letters of Credit. Subject to the terms and conditions of this Agreement, including without limitation, Section 2.14., each Issuing Bank, on behalf of the Lenders, agrees to issue for the account of the Borrower (which may be issued in support of obligations of any Subsidiary of the Borrower) during the period from and including the Effective Date to, but excluding, the date 30 days prior to the Termination Date, one or more standby letters of credit (each a "Letter of Credit") up to a maximum aggregate Stated Amount at any one time outstanding not to exceed \$50,000,000 as such amount may be reduced from time to time in accordance with the terms hereof (the "L/C Commitment Amount"); provided, that an Issuing Bank shall not be obligated to issue any Letter of Credit if, after giving effect to such issuance, the aggregate Stated Amount of the outstanding Letters of Credit issued by such Issuing Bank would exceed (i) at any time prior to the satisfaction of the Initial Mortgage Collateral Requirement, the lesser of (A) 25% of the L/C Commitment Amount and (B) the Commitment of such Issuing Bank in its capacity as a Lender, and (ii) upon and following satisfaction of the Initial Mortgage Collateral Requirement, the least of (A) 25.0% of the L/C Commitment Amount, (B) the Commitment of such Issuing Bank in its capacity as a Lender, and (C) such Issuing Bank's Commitment Percentage of the then Net Collateral Property Availability (in its capacity as a Lender).

(b) Terms of Letters of Credit. At the time of issuance, the amount, form, terms and conditions of each Letter of Credit, and of any drafts or acceptances thereunder, shall be subject to approval by the applicable Issuing Bank and the Borrower. Notwithstanding the foregoing, in no event may (i) the expiration date of any Letter of Credit extend beyond the Termination Date, or (ii) any Letter of Credit have an initial duration in excess of one year; provided, however, a Letter of Credit may contain a provision providing for the automatic extension of the expiration date in the absence of a notice of non-renewal from the applicable Issuing Bank but in no event shall any such provision permit the extension of the expiration date of such Letter of Credit beyond the Termination Date; provided, further, that a Letter of Credit may, as a result of its express terms or as the result of the effect of an automatic extension provision, have an expiration date of not more than one year beyond the Termination Date (any such Letter of Credit referred to as an "Extended Letter of Credit") so long as the Borrower delivers to the Administrative Agent for the benefit of the applicable Issuing Bank no later than 30 days prior to the Termination Date, Cash Collateral for such Letter of Credit for deposit into the Letter of Credit Collateral Account in an amount equal to the Stated Amount of such Letter of Credit; provided, that the obligations of the Borrower under this Section in respect of such Extended Letters of Credit shall survive the termination of this Agreement and shall remain in effect until no such Extended Letters of Credit remain outstanding. If the Borrower fails to provide Cash Collateral with respect to any Extended Letter of Credit by the date 30 days prior to the Termination Date, such failure shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to the maximum Stated Amount of such Letter of Credit), which shall be reimbursed (or participations therein funded) by the Lenders in accordance with the immediately following subsections (i) and (j), with the proceeds being utilized to provide Cash

Collateral for such Letter of Credit. The initial Stated Amount of each Letter of Credit shall be at least \$500,000 (or such lesser amount as may be acceptable to the applicable Issuing Bank, the Administrative Agent and the Borrower).

(c) Requests for Issuance of Letters of Credit. The Borrower shall give the applicable Issuing Bank and the Administrative Agent written notice at least five (5) Business Days prior to the requested date of issuance of a Letter of Credit, such notice to describe in reasonable detail the proposed terms of such Letter of Credit and the nature of the transactions or obligations proposed to be supported by such Letter of Credit, and in any event shall set forth with respect to such Letter of Credit the proposed (i) initial Stated Amount, (ii) beneficiary, and (iii) expiration date. The Borrower shall also execute and deliver such customary applications and agreements for standby letters of credit, and other forms as requested from time to time by the applicable Issuing Bank. Provided the Borrower has given the notice prescribed by the first sentence of this subsection and delivered such applications and agreements referred to in the preceding sentence, subject to the other terms and conditions of this Agreement, including the satisfaction of any applicable conditions precedent set forth in Section 5.2., the applicable Issuing Bank shall issue the requested Letter of Credit on the requested date of issuance for the benefit of the stipulated beneficiary but in no event shall the applicable Issuing Bank be required to issue the requested Letter of Credit prior to the date five (5) Business Days following the date after which such Issuing Bank has received all of the items required to be delivered to it under this subsection. An Issuing Bank shall not at any time be obligated to issue any Letter of Credit if such issuance would conflict with, or cause the Administrative Agent or any Lender to exceed any limits imposed by, any Applicable Law. References herein to “issue” and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. Upon the written request of the Borrower, the applicable Issuing Bank shall deliver to the Borrower a copy of each Letter of Credit issued by it within a reasonable time after the date of issuance thereof. To the extent any term of a Letter of Credit Document is inconsistent with a term of any Loan Document, the term of such Loan Document shall control.

(d) Reimbursement Obligations. Upon receipt by an Issuing Bank from the beneficiary of a Letter of Credit issued by such Issuing Bank of any demand for payment under such Letter of Credit and such Issuing Bank’s determination that such demand for payment complies with the requirements of such Letter of Credit, such Issuing Bank shall promptly notify the Borrower and the Administrative Agent of the amount to be paid by such Issuing Bank as a result of such demand and the date on which payment is to be made by such Issuing Bank to such beneficiary in respect of such demand; provided, however, that an Issuing Bank’s failure to give, or delay in giving, such notice shall not discharge the Borrower in any respect from the applicable Reimbursement Obligation. The Borrower hereby absolutely, unconditionally and irrevocably agrees to pay and reimburse each Issuing Bank for the amount of each demand for payment under each Letter of Credit issued by such Issuing Bank at or prior to the date on which payment is to be made by such Issuing Bank to the beneficiary thereunder, without presentment, demand, protest or other formalities of any kind. Upon receipt by an Issuing Bank of any payment in respect of any Reimbursement Obligation, such Issuing Bank shall promptly pay to the Administrative Agent for the account of each Lender that has acquired a participation therein under the second sentence of the immediately following subsection (i) such Lender’s Commitment Percentage of such payment.

(e) Manner of Reimbursement. Upon its receipt of a notice referred to in the immediately preceding subsection (d), the Borrower shall advise the Administrative Agent and the applicable Issuing Bank whether or not the Borrower intends to borrow hereunder to finance its obligation to reimburse such Issuing Bank for the amount of the related demand for payment and, if it does, the Borrower shall submit a timely request for such borrowing as provided in the applicable provisions of this Agreement. If the Borrower fails to so advise the Administrative Agent and the applicable Issuing Bank, or if the Borrower fails to reimburse the applicable Issuing Bank for a demand for payment under a Letter of Credit by the

date of such payment, the failure of which the applicable Issuing Bank shall promptly notify the Administrative Agent, then (i) if the applicable conditions contained in Article V. would permit the making of Revolving Loans, the Borrower shall be deemed to have requested a borrowing of Revolving Loans (which shall be Base Rate Loans) in an amount equal to the unpaid Reimbursement Obligation and the Administrative Agent shall give each Lender prompt notice of the amount of the Revolving Loan to be made available to the Administrative Agent not later than 11:00 a.m. Eastern time and (ii) if such conditions would not permit the making of Revolving Loans, the provisions of subsection (j) of this Section shall apply. The limitations set forth in the second sentence of Section 2.1.(a) shall not apply to any borrowing of Base Rate Loans under this subsection.

(f) Effect of Letters of Credit on Commitments. Upon the issuance by an Issuing Bank of a Letter of Credit and until such Letter of Credit shall have expired or been cancelled, the Commitment of each Lender shall be deemed to be utilized for all purposes of this Agreement in an amount equal to the product of (i) such Lender's Commitment Percentage and (ii) the sum of (A) the Stated Amount of such Letter of Credit plus (B) any related Reimbursement Obligations then outstanding.

(g) Issuing Banks' Duties Regarding Letters of Credit; Unconditional Nature of Reimbursement Obligations. In examining documents presented in connection with drawings under Letters of Credit and making payments under Letters of Credit issued by an Issuing Bank against such documents, such Issuing Bank shall only be required to use the same standard of care as it uses in connection with examining documents presented in connection with drawings under letters of credit in which it has not sold participations and making payments under such letters of credit. The Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, none of the Issuing Banks, the Administrative Agent or any of the Lenders shall be responsible for, and the Borrower's obligations in respect of Letters of Credit shall not be affected in any manner by, (i) the form, validity, sufficiency, accuracy, genuineness or legal effects of any document submitted by any party in connection with the application for and issuance of or any drawing honored under any Letter of Credit even if such document should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit, or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any Letter of Credit to comply fully with conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, facsimile, electronic mail, telecopy or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit, or of the proceeds thereof; (vii) the misapplication by the beneficiary of any Letter of Credit, or of the proceeds of any drawing under any Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Banks, the Administrative Agent or the Lenders. None of the above shall affect, impair or prevent the vesting of any of the Issuing Bank's or Administrative Agent's rights or powers hereunder. Any action taken or omitted to be taken by an Issuing Bank under or in connection with any Letter of Credit issued by such Issuing Bank, if taken or omitted in the absence of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable judgment), shall not create against such Issuing Bank any liability to the Borrower, the Administrative Agent or any Lender. In this connection, the obligation of the Borrower to reimburse an Issuing Bank for any drawing made under any Letter of Credit issued by such Issuing Bank, and to repay any Revolving Loan made pursuant to the second sentence of the immediately preceding subsection (e), shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement and any other applicable Letter of Credit Document under all circumstances whatsoever, including without limitation, the following circumstances: (A) any lack of validity or enforceability of any Letter of

Credit Document or any term or provisions therein; (B) any amendment or waiver of or any consent to departure from all or any of the Letter of Credit Documents; (C) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against such Issuing Bank, any other Issuing Bank, the Administrative Agent, any Lender, any beneficiary of a Letter of Credit or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or in the Letter of Credit Documents or any unrelated transaction; (D) any breach of contract or dispute between the Borrower, such Issuing Bank, any other Issuing Bank, the Administrative Agent, any Lender or any other Person; (E) any demand, statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein or made in connection therewith being untrue or inaccurate in any respect whatsoever; (F) any non-application or misapplication by the beneficiary of a Letter of Credit or of the proceeds of any drawing under such Letter of Credit; (G) payment by such Issuing Bank under any Letter of Credit against presentation of a draft or certificate which does not strictly comply with the terms of such Letter of Credit; and (H) any other act, omission to act, delay or circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable defense to or discharge of the Borrower's Reimbursement Obligations. Notwithstanding anything to the contrary contained in this Section or Section 12.10., but not in limitation of the Borrower's unconditional obligation to reimburse an Issuing Bank for any drawing made under a Letter of Credit as provided in this Section and to repay any Revolving Loan made pursuant to the second sentence of the immediately preceding subsection (e), the Borrower shall have no obligation to indemnify the Administrative Agent, an Issuing Bank or any Lender in respect of any liability incurred by the Administrative Agent, such Issuing Bank or such Lender arising solely out of the gross negligence or willful misconduct of the Administrative Agent, the Issuing Bank or such Lender in respect of a Letter of Credit as determined by a court of competent jurisdiction in a final, non-appealable judgment. Except as otherwise provided in this Section, nothing in this Section shall affect any rights the Borrower may have with respect to the gross negligence or willful misconduct of the Administrative Agent, an Issuing Bank or any Lender with respect to any Letter of Credit.

(h) Amendments, Etc. The issuance by an Issuing Bank of any amendment, supplement or other modification to any Letter of Credit issued by such Issuing Bank shall be subject to the same conditions applicable under this Agreement to the issuance of new Letters of Credit (including, without limitation, that the request therefor be made through the applicable Issuing Bank and the Administrative Agent), and no such amendment, supplement or other modification shall be issued unless either (i) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended, supplemented or modified form or (ii) the Administrative Agent and Requisite Lenders (or all of the Lenders if required by Section 12.7.) shall have consented thereto. In connection with any such amendment, supplement or other modification, the Borrower shall pay the fees, if any, payable under the last sentence of Section 3.5.(c).

(i) Lenders' Participation in Letters of Credit. Immediately upon (i) the Effective Date with respect to all Existing Letters of Credit and (ii) the issuance by an Issuing Bank of any Letter of Credit each Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased and received from the applicable Issuing Bank, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Commitment Percentage of the liability of such Issuing Bank with respect to such Letter of Credit and each Lender thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such Issuing Bank to pay and discharge when due, to the extent and in the manner set forth in the immediately following subsection (j) below, such Lender's Commitment Percentage of such Issuing Bank's liability under such Letter of Credit. In addition, upon the making of each payment by a Lender to the Administrative Agent for the account of an Issuing Bank in respect of any Letter of Credit issued by it pursuant to the immediately following subsection (j), such Lender shall, automatically and without any further action on the part of such Issuing Bank, Administrative Agent or such Lender, acquire (i) a participation in an amount equal to

such payment in the Reimbursement Obligation owing to such Issuing Bank by the Borrower in respect of such Letter of Credit and (ii) a participation in a percentage equal to such Lender's Commitment Percentage in any interest or other amounts payable by the Borrower in respect of such Reimbursement Obligation (other than the Fees payable to such Issuing Bank pursuant to the second and the last sentences of Section 3.5.(c)).

(j) Payment Obligation of Lenders. Each Lender severally agrees to pay to the Administrative Agent, for the account of each Issuing Bank, on demand in immediately available funds in Dollars the amount of such Lender's Commitment Percentage of each drawing paid by such Issuing Bank under each Letter of Credit issued by it to the extent such amount is not reimbursed by the Borrower pursuant to the immediately preceding subsection (d); provided, however, that in respect of any drawing under any Letter of Credit, the maximum amount that any Lender shall be required to fund, whether as a Revolving Loan or as a participation, shall not exceed such Lender's Commitment Percentage of such drawing except as otherwise provided in Section 3.9.(d). If the notice referenced in the second sentence of Section 2.2.(e) is received by a Lender not later than 10:00 a.m. Eastern time, then such Lender shall make such payment available to the Administrative Agent not later than 1:00 p.m. Eastern time on the date of demand therefor; otherwise, such payment shall be made available to the Administrative Agent not later than 12:00 p.m. Eastern time on the next succeeding Business Day. Each Lender's obligation to make such payments to the Administrative Agent under this subsection, and the Administrative Agent's right to receive the same for the account of the applicable Issuing Bank, shall be absolute, irrevocable and unconditional and shall not be affected in any way by any circumstance whatsoever, including without limitation, (i) the failure of any other Lender to make its payment under this subsection, (ii) the financial condition of the Borrower or any other Loan Party, (iii) the existence of any Default or Event of Default, including any Event of Default described in Section 10.1.(e) or (f), (iv) the termination of the Commitments or (v) the delivery of Cash Collateral in respect of any Extended Letter of Credit. Each such payment to the Administrative Agent for the account of an Issuing Bank shall be made without any offset, abatement, withholding or deduction whatsoever.

(k) Information to Lenders. Promptly following any change in Letters of Credit outstanding, the applicable Issuing Bank shall deliver to the Administrative Agent, who shall promptly deliver the same to each Lender and the Borrower, a notice describing the aggregate amount of all Letters of Credit issued by such Issuing Bank outstanding at such time. Upon the request of any Lender from time to time, an Issuing Bank shall deliver any other information reasonably requested by such Lender with respect to such Letter of Credit then outstanding. Other than as set forth in this subsection, the Issuing Banks and the Administrative Agent shall have no duty to notify the Lenders regarding the issuance or other matters regarding Letters of Credit issued hereunder. The failure of any Issuing Bank or Administrative Agent to perform its requirements under this subsection shall not relieve any Lender from its obligations under the immediately preceding subsection (j).

(l) Extended Letters of Credit. Each Lender confirms that its obligations under the immediately preceding subsections (i) and (j) shall be reinstated in full and apply if the delivery of any Cash Collateral in respect of an Extended Letter of Credit is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise.

Section 2.3. Swingline Loans.

(a) Swingline Loans. Subject to the terms and conditions hereof, including without limitation Section 2.14., each Swingline Lender severally and not jointly agrees to make Swingline Loans to the Borrower, during the period from the Effective Date to but excluding the Swingline Maturity Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, the least (such

least amount being referred to as the “Swingline Availability” of a given Swingline Lender) of (i) \$100,000,000, as such amount may be reduced from time to time in accordance with the terms hereof, (ii) the difference of (A) the Commitment of such Swingline Lender in its capacity as a Lender minus (B) the aggregate outstanding principal amount of Loans and outstanding Swingline Loans, in each such case, made by such Swingline Lender and the Letter of Credit Liabilities of such Swingline Lender in its capacity as a Lender, and (iii) upon and following satisfaction of the Initial Mortgage Collateral Requirement, the difference of (A) such Swingline Lender’s Commitment Percentage of the then Net Collateral Property Availability (in its capacity as a Lender) minus (B) the aggregate outstanding principal amount of the Loans and outstanding Swingline Loans, in each such case, made by such Swingline Lender and the Letter of Credit Liabilities of such Swingline Lender in its capacity as a Lender. If at any time the aggregate principal amount of the Swingline Loans made by a Swingline Lender outstanding at such time exceeds the Swingline Availability of such Swingline Lender in effect at such time, the Borrower shall immediately pay the Administrative Agent for the account of such Swingline Lender the amount of such excess. The borrowing of a Swingline Loan shall constitute usage of the Commitments, in an amount equal to (i) for each Lender other than the Swingline Lender making such Swingline Loan, each such Lender’s Commitment Percentage, multiplied by the outstanding amount of such Swingline Loan and (ii) for the applicable Swingline Lender making such Swingline Loan, the outstanding amount of such Swingline Loan. Subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Swingline Loans hereunder.

(b) Procedure for Borrowing Swingline Loans. The Borrower shall give the Administrative Agent and the Swingline Lender selected by the Borrower to make a Swingline Loan notice pursuant to a Notice of Swingline Borrowing or telephonic notice of each borrowing of a Swingline Loan. Each Notice of Swingline Borrowing shall be delivered to the applicable Swingline Lender and the Administrative Agent no later than 10:00 a.m. Eastern time on the proposed date of such borrowing. Any telephonic notice shall include all information to be specified in a written Notice of Swingline Borrowing and shall be promptly confirmed in writing by the Borrower pursuant to a Notice of Swingline Borrowing sent to the applicable Swingline Lender and the Administrative Agent by telecopy on the same day of the giving of such telephonic notice. Not later than 11:00 a.m. Eastern time on the date of the requested Swingline Loan, the applicable Swingline Lender will make the proceeds of such Swingline Loan available to the Administrative Agent at its Principal Office in Dollars, in immediately available funds for the account of the Borrower. The amount so received by the Administrative Agent shall, subject to the satisfaction of the applicable conditions set forth in Section 5.2. for such borrowing, be made available to the Borrower no later than 12:00 p.m. Eastern time on such date by depositing same, in immediately available funds, in an account of the Borrower designated by the Borrower in the Disbursement Instruction Agreement.

(c) Interest. Swingline Loans shall bear interest at a per annum rate equal to the Base Rate as in effect from time to time plus the Applicable Margin or at such other rate or rates as the Borrower and the applicable Swingline Lender may agree (with written notice thereof to the Administrative Agent) from time to time in writing. Interest on a Swingline Loan is solely for the account of the Swingline Lender that made such Swingline Loan (except to the extent a Lender acquires a participating interest in such Swingline Loan pursuant to the immediately following subsection (e)). All accrued and unpaid interest on Swingline Loans shall be payable on the dates and in the manner provided in Section 2.4. with respect to interest on Base Rate Loans (except as the applicable Swingline Lender and the Borrower may otherwise agree in writing (with written notice thereof to the Administrative Agent) in connection with any particular Swingline Loan made by such Swingline Lender).

(d) Swingline Loan Amounts, Etc. Each Swingline Loan shall be in the minimum amount of \$1,000,000 and integral multiples of \$500,000 in excess thereof, or such other minimum amounts agreed to by a Swingline Lender and the Borrower. Any voluntary prepayment of a Swingline Loan must be in integral multiples of \$100,000 or the aggregate principal amount of all outstanding Swingline Loans (or

such other minimum amounts upon which the Swingline Lender that made such Swingline Loans and the Borrower may agree) and in connection with any such prepayment, the Borrower must give such Swingline Lender and the Administrative Agent prior written notice thereof no later than 11:00 a.m. Eastern time on the day prior to the date of such prepayment. The Swingline Loans owing to a Swingline Lender shall, in addition to this Agreement, be evidenced by a Swingline Note in favor of such Swingline Lender.

(e) Repayment and Participations of Swingline Loans. The Borrower agrees to repay each Swingline Loan within one Business Day of demand therefor by the Swingline Lender that made such Swingline Loan and, in any event, within five (5) Business Days after the date such Swingline Loan was made; provided, that the proceeds of a Swingline Loan may not be used to pay a Swingline Loan. Any Swingline Lender making demand for repayment of a Swingline Loan made by such Swingline Lender shall notify the Administrative Agent of such demand on the date such demand is made. Notwithstanding the foregoing, the Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Swingline Loans on the Swingline Maturity Date (or such earlier date as a Swingline Lender and the Borrower may agree in writing with respect to Swingline Loans made by such Swingline Lender). In lieu of demanding repayment of any outstanding Swingline Loan from the Borrower, the Swingline Lender that made such Swingline Loan may, on behalf of the Borrower (which hereby irrevocably directs each applicable Swingline Lender to act on its behalf for such purpose), request a borrowing of Revolving Loans that are Base Rate Loans from the Lenders in an amount equal to the principal balance of such Swingline Loan. The amount limitations contained in the second sentence of Section 2.1.(a) shall not apply to any borrowing of such Revolving Loans made pursuant to this subsection. Such Swingline Lender shall give notice to the Administrative Agent of any such borrowing of Revolving Loans not later than 10:00 a.m. Eastern time at least one Business Day prior to the proposed date of such borrowing. Promptly after receipt of such notice of borrowing of Revolving Loans from a Swingline Lender under the immediately preceding sentence, the Administrative Agent shall notify each Lender of the proposed borrowing. Not later than 11:00 a.m. Eastern time on the proposed date of such borrowing, each Lender will make available to the Administrative Agent at the Principal Office for the account of the applicable Swingline Lender, in immediately available funds, the proceeds of the Revolving Loan to be made by such Lender. The Administrative Agent shall pay the proceeds of such Revolving Loans to the applicable Swingline Lender, which shall apply such proceeds to repay such Swingline Loan. If the Lenders are prohibited from making Revolving Loans required to be made under this subsection for any reason whatsoever, including without limitation, the occurrence of any of the Defaults or Events of Default described in Sections 10.1.(e) or (f), each Lender shall purchase from the applicable Swingline Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Commitment Percentage of such Swingline Loan, by directly purchasing a participation in such Swingline Loan in such amount and paying the proceeds thereof to the Administrative Agent for the account of the applicable Swingline Lender in Dollars and in immediately available funds. A Lender's obligation to purchase such a participation in a Swingline Loan shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including without limitation, (i) any claim of setoff, counterclaim, recoupment, defense or other right which such Lender or any other Person may have or claim against the Administrative Agent, any Swingline Lender or any other Person whatsoever, (ii) the occurrence or continuation of a Default or Event of Default (including without limitation, any of the Defaults or Events of Default described in Sections 10.1. (e) or (f)), or the termination of any Lender's Commitment, (iii) the existence (or alleged existence) of an event or condition which has had or could have a Material Adverse Effect, (iv) any breach of any Loan Document by the Administrative Agent, any Lender, the Borrower or any other Loan Party, 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 applicable Swingline Lender by any Lender, such Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof, at the Federal Funds Rate. If such Lender

does not pay such amount forthwith upon the applicable Swingline Lender's demand therefor, and until such time as such Lender makes the required payment, the applicable Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of such unpaid participation obligation for all purposes of the Loan Documents (other than those provisions requiring the other Lenders to purchase a participation therein). Further, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Revolving Loans, and any other amounts due it hereunder, to the applicable Swingline Lender to fund Swingline Loans in the amount of the participation in Swingline Loans that such Lender failed to purchase pursuant to this Section until such amount has been purchased (as a result of such assignment or otherwise).

Section 2.4. Rates and Payment of Interest on Loans.

(a) Rates. The Borrower promises to pay to the Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of the making of such Loan to but excluding the date such Loan shall be paid in full, at the following per annum rates:

- (i) during such periods as such Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Base Rate Loans; and
- (ii) during such periods as such Loan is a LIBOR Loan, at LIBOR for such Loan for the Interest Period therefor, plus the Applicable Margin for LIBOR Loans.

Notwithstanding the foregoing, while an Event of Default exists, the Borrower shall pay to the Administrative Agent for the account of each Lender and each Issuing Bank, as the case may be, interest at the Post-Default Rate on the outstanding principal amount of any Loan made by such Lender, on all Reimbursement Obligations and on any other amount payable by the Borrower hereunder or under the Notes held by such Lender to or for the account of such Lender (including without limitation, accrued but unpaid interest to the extent permitted under Applicable Law).

(b) Payment of Interest. All accrued and unpaid interest on the outstanding principal amount of each Loan shall be payable (i) monthly in arrears on the first day of each month, commencing with the first full calendar month occurring after the Effective Date and (ii) on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

(c) Borrower Information Used to Determine Applicable Interest Rates. The parties understand that the applicable interest rate for the Obligations and certain fees set forth herein may be determined and/or adjusted from time to time based upon certain financial ratios and/or other information to be provided or certified to the Lenders by the Borrower (the "Borrower Information"). If it is subsequently determined that any such Borrower Information was incorrect (for whatever reason, including without limitation because of a subsequent restatement of earnings by the Borrower) at the time it was delivered to the Administrative Agent, and if the applicable interest rate or fees calculated for any period were lower than they should have been had the correct information been timely provided, then, such interest rate and such fees for such period shall be automatically recalculated using correct Borrower Information. The Administrative Agent shall promptly notify the Borrower in writing of any additional interest and fees due because of such recalculation, and the Borrower shall pay such additional interest or fees due to the Administrative Agent, for the account of each Lender, within five (5) Business Days of receipt of such written notice. Any recalculation of interest or fees required by this provision shall

survive the termination of this Agreement, and this provision shall not in any way limit any of the Administrative Agent's, any Issuing Bank's, or any Lender's other rights under this Agreement.

Section 2.5. Number of Interest Periods.

There may be no more than 6 different Interest Periods outstanding at the same time.

Section 2.6. Repayment of Loans.

The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Revolving Loans on the Termination Date.

Section 2.7. Prepayments.

(a) Optional. Subject to Section 4.4., the Borrower may prepay any Loan at any time without premium or penalty. The Borrower shall give the Administrative Agent at least three (3) Business Days prior written notice of the prepayment of any Loan. Each voluntary prepayment of Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$500,000 in excess thereof.

(b) Mandatory.

(i) Commitment Overadvance. If at any time the aggregate principal amount of all outstanding Loans, together with the aggregate amount of all Letter of Credit Liabilities, exceeds the aggregate amount of the Commitments, the Borrower shall immediately upon demand pay to the Administrative Agent for the account of the Lenders the amount of such excess.

(ii) Collateral Property Availability Overadvance. If at any time following the satisfaction of the Initial Mortgage Collateral Requirement the aggregate principal amount of all outstanding Loans and Swingline Loans, together with the aggregate amount of all Letter of Credit Liabilities, exceeds the Net Collateral Property Availability, then the Borrower shall notify the Administrative Agent of such excess and within thirty (30) days following a written request for repayment from the Administrative Agent, pay to the Administrative Agent, for the account of the Lenders, the amount of such excess; provided, however, that notwithstanding the foregoing provisions, if at any time during the Amendment Period and continuing thereafter until the Post-Amendment Period Compliance Date, the Borrower fails to satisfy the conditions precedent set forth in Section 5.2 solely as a result of its failure to satisfy any of the Amendment Period Incurrence Conditions, then the Borrower shall instead notify the Administrative Agent of such failure and within thirty (30) days following a written request for repayment under this Section 2.7(b)(ii) from the Administrative Agent, (A) first, repay Term Loans in the amount of such excess, and (B) second, if any such excess remains following the repayment of Term Loans in accordance with the foregoing clause (A), pay to the Administrative Agent, for the account of the Lenders, the amount of any such remaining excess.

(iii) Amendment Period. No later than the third Business Day following the date of receipt by the Borrower, any of its Subsidiaries or Unconsolidated Affiliates of any Net Cash Proceeds at any time during the Amendment Period, the Borrower shall (to the extent any Obligations remain outstanding) (A) give the Administrative Agent written notice of the receipt of such Net Cash Proceeds and (B) pay to the Administrative Agent one hundred percent (100%) of all such Net Cash Proceeds, which prepayment shall be applied in accordance with Section 2.7(b)(v)(B).

(iv) Qualified Collateral Property Sale. If the Borrower or any Guarantor consummates a Qualified Collateral Property Sale and in connection therewith requests a Property Release in accordance with Section 7.15(b), then, no later than the third Business Day following the date of receipt by the Borrower of the Net Cash Proceeds from such sale the Borrower or the applicable Guarantor shall (to the extent any Pari Passu Obligations remain outstanding) (1) give the Administrative Agent written notice of the receipt of such Net Cash Proceeds and (2) pay to the Collateral Agent the greater of (x) one hundred percent (100%) of all such Net Cash Proceeds and (y) the amount required to maintain compliance with the Net Collateral Property Availability (recalculated to exclude the Collateral Property that is the subject of such Qualified Collateral Property Sale), which prepayment shall be applied in accordance with Section 2.7(b)(v)(B).

(v) Application of Mandatory Prepayments.

(A) Generally. Amounts paid under the preceding subsections (i) and (ii) to the Administrative Agent in respect of the Obligations shall be applied to pay all amounts of principal outstanding on the Loans and any Reimbursement Obligations pro rata in accordance with Section 3.2. and if any Letters of Credit are outstanding at such time, the remainder, if any, shall be deposited into the Letter of Credit Collateral Account for application to any Reimbursement Obligations. If the Borrower is required to pay any outstanding LIBOR Loans by reason of this Section 2.7(b) prior to the end of the applicable Interest Period therefor, the Borrower shall pay all amounts due under Section 4.4.

(B) Amendment Period; Qualified Collateral Property Sale. So long as no Event of Default has occurred and is continuing, amounts paid under the preceding subsections (iii) and (iv) shall be applied as follows: (1) first, to repay in full the existing “6.75% Senior Notes due 2021” issued by the Borrower, in the original principal amount of \$300,000,000 with a stated maturity date of December 15, 2021 (the “**6.75% Senior Notes**”) (provided, however, that Borrower may elect to deposit such repayment amount in a cash collateral account pledged to the Collateral Agent as collateral for the Pari Passu Guaranteed Obligations pursuant to documentation in form and substance satisfactory to the Administrative Agent (an “**Approved Cash Collateral Account**”) until such time as the Make-Whole Amount (as defined in the Supplemental Indenture) with respect to such repayment of the 6.75% Senior Notes shall be zero, at which time the Administrative Agent shall direct the Collateral Agent to make such amounts available to repay in full the 6.75% Senior Notes), (2) second, to repay the outstanding principal amount of Term Loans on a pro rata basis in accordance with Section 3.2 of the Existing Term Loan Agreement, and then all other outstanding “Obligations” under and as defined in the Existing Term Loan Agreement, in each case, to the full extent thereof, (3) third, to repay the principal outstanding on Swingline Loans, from nearest Swingline Maturity Date to latest Swingline Maturity Date, to the full extent thereof, (4) fourth, to repay the principal outstanding on the Revolving Loans and any Reimbursement Obligations pro rata in accordance with Section 3.2. and then if any Letters of Credit are outstanding at such time, the undrawn amount thereof deposited into the Letter of Credit Collateral Account for application to any Reimbursement Obligations, in each such case, to the full extent thereof, (5) fifth, to repay all other outstanding Obligations hereunder, in the order and manner provided in Section 10.5, to the full extent thereof, and (6) sixth, after all Obligations have been repaid in full, to the Borrower either, at the Borrower’s discretion, (i) to repay any other unsecured notes issued by Borrower or other Indebtedness then outstanding, or (ii) to be retained by the Borrower (provided that any amounts so retained by the Borrower may not be applied to repay any Indebtedness (other than amounts subsequently due under the Loan Documents or as permitted pursuant to the foregoing clauses (B)(1) through (B)(4)) or in a manner that violates this Agreement). Notwithstanding the

immediately preceding sentence, if at any time during the Amendment Period and continuing thereafter until the Post-Amendment Period Compliance Date, the Borrower fails to satisfy the conditions precedent set forth in Section 5.2 solely as a result of its failure to satisfy any of the Amendment Period Incurrence Conditions, then the Borrower shall notify the Administrative Agent of any such failure, and any amounts paid under the preceding subsections (b)(iii) and (b)(iv) during such time shall instead be applied as follows: (1) first, to repay in full the 6.75% Senior Notes (provided, however, that Borrower may elect to deposit such repayment amount in an Approved Cash Collateral Account until such time as the Make-Whole Amount (as defined in the Supplemental Indenture) with respect to such repayment of the 6.75% Senior Notes shall be zero, at which time the Administrative Agent shall direct the Collateral Agent to make such amounts available to repay in full the 6.75% Senior Notes), (2) second, to repay the outstanding principal amount of Term Loans on a pro rata basis in accordance with Section 3.2 of the Existing Term Loan Agreement, and then all other outstanding "Obligations" under and as defined in the Existing Term Loan Agreement, in each case, to the full extent thereof, (3) third, to repay the principal outstanding on Swingline Loans, from nearest Swingline Maturity Date to latest Swingline Maturity Date, to the full extent thereof, (4) fourth, solely in the case of amounts paid under the preceding subsection (b)(iv), to repay the principal outstanding on the Revolving Loans and any Reimbursement Obligations pro rata in accordance with Section 3.2 in the amount necessary to maintain compliance with the Collateral Property Availability (recalculated to exclude the Collateral Property that is the subject of such Qualified Collateral Property Sale), and (5) fifth, to be deposited in an Approved Cash Collateral Account, which cash collateral may be used, so long as all conditions precedent set forth in Section 5.2 (other than Section 5.2(e) and any other condition precedent set forth in Section 5.2 which would not be satisfied as a result of any such failure specified in Section 5.2(e)) are satisfied, to repay Indebtedness and for working capital purposes of the Borrower and its Subsidiaries, in each such case, in a manner consistent with the then-applicable Approved Budget; *provided, however*, that if any Default or Event of Default, other than as a result of the Borrower's failure to satisfy the Amendment Period Incurrence Conditions, shall exist, then, subject to the provisions of the Intercreditor Agreement, the Administrative Agent may, in its sole and absolute discretion, direct the Collateral Agent to apply the amount of such cash collateral to repay the Obligations in the order and manner provided in Section 10.5.

(c) No Effect on Derivatives Contracts. No prepayment of the Loans pursuant to this Section or otherwise shall affect any of the Borrower's obligations under any Derivatives Contract entered into with respect to any of the Loans.

Section 2.8. Continuation.

So long as no Default or Event of Default exists, the Borrower may on any Business Day, with respect to any LIBOR Loan, elect to maintain such LIBOR Loan or any portion thereof as a LIBOR Loan by selecting a new Interest Period for such LIBOR Loan. Each Continuation of a LIBOR Loan shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 10:00 a.m. Eastern time on the third Business Day prior to the date of any such Continuation. Such notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the LIBOR Loans and portions thereof subject to such Continuation and (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder. Each Notice of Continuation shall be irrevocable by and binding on the

Borrower once given. Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any LIBOR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a LIBOR Loan with an Interest Period of one month; provided, however that if a Default or Event of Default exists, such Loan will automatically, on the last day of the current Interest Period therefor, Convert into a Base Rate Loan notwithstanding the first sentence of Section 2.9. or the Borrower's failure to comply with any of the terms of such Section.

Section 2.9. Conversion.

The Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Revolving Loan of one Type into a Revolving Loan of another Type; provided, however, a Base Rate Loan may not be Converted into a LIBOR Loan if a Default or Event of Default exists. Each Conversion of Base Rate Loans into LIBOR Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount. Each such Notice of Conversion shall be given not later than 10:00 a.m. Eastern time 3 Business Days prior to the date of any proposed Conversion. Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender of the proposed Conversion. Subject to the restrictions specified above, each Notice of Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion specifying (a) the requested date of such Conversion, (b) the Type of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into and (e) if such Conversion is into a LIBOR Loan, the requested duration of the Interest Period of such Loan. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

Section 2.10. Notes.

(a) Notes. Except in the case of a Lender that has requested not to receive a Revolving Note, the Revolving Loans made by each Lender shall, in addition to this Agreement, also be evidenced by a Revolving Note, payable to the order of such Lender in a principal amount equal to the amount of its Commitment as originally in effect and otherwise duly completed. The Swingline Loans made by a Swingline Lender to the Borrower shall, in addition to this Agreement, also be evidenced by a Swingline Note payable to the order of such Swingline Lender.

(b) Records. The date, amount, interest rate, Type and duration of Interest Periods (if applicable) of each Loan made by each Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by such Lender on its books and such entries shall be binding on the Borrower absent manifest error; provided, however, that (i) the failure of a Lender to make any such record shall not affect the obligations of the Borrower under any of the Loan Documents and (ii) if there is a discrepancy between such records of a Lender and the statements of accounts maintained by the Administrative Agent pursuant to Section 3.8., in the absence of manifest error, the statements of account maintained by the Administrative Agent pursuant to Section 3.8. shall be controlling.

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed or mutilated, and (ii)(A) in the case of loss, theft or destruction, an unsecured agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, or (B) in the case of mutilation, upon surrender and cancellation of such Note, the Borrower shall at its own expense execute and deliver to such Lender a new Note dated the date of such lost, stolen, destroyed or mutilated Note.

Section 2.11. Voluntary Reductions of the Commitment.

The Borrower shall have the right to terminate or reduce the aggregate unused amount of the Commitments (for which purpose use of the Commitments shall be deemed to include the aggregate amount of all Letter of Credit Liabilities and the aggregate principal amount of all outstanding Swingline Loans) at any time and from time to time without penalty or premium upon not less than five (5) Business Days prior written notice to the Administrative Agent of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction (which in the case of any partial reduction of the Commitments shall not be less than \$10,000,000 and integral multiples of \$5,000,000 in excess of that amount in the aggregate) and shall be irrevocable once given and effective only upon receipt by the Administrative Agent (“Commitment Reduction Notice”). Promptly after receipt of a Commitment Reduction Notice the Administrative Agent shall notify each Lender of the proposed termination or Commitment reduction. The Commitments, once reduced or terminated pursuant to this Section, may not be increased or reinstated. The Borrower shall pay all interest on the Loans, and the Fees under Section 3.5.(b) with respect to the amount of the Commitment being reduced, accrued to the date of such reduction or termination of the Commitments to the Administrative Agent for the account of the Lenders, including but not limited to any applicable compensation due to each Lender in accordance with Section 4.4.

Section 2.12. Extension of Termination Date.

(a) Generally. The Borrower shall have the right, exercisable two times, to extend the current Termination Date in effect as of the date each such right is exercised by one year (the first such right to extend, the “**First Extension Option**” and, following the successful exercise of the First Extension Option, the second such right to extend, the “**Second Extension Option**”; the First Extension Option and the Second Extension Option, collectively, the “**Extension Options**” and each an “**Extension Option**”). The Borrower may exercise each Extension Option only by executing and delivering to the Administrative Agent at least 30 days but not more than 90 days prior to the current Termination Date, a written request for such extension (an “**Extension Request**”). The Administrative Agent shall notify the Lenders if it receives an Extension Request promptly upon receipt thereof.

(b) First Extension Option. Solely in the case of the First Extension Option, subject to satisfaction of the following conditions, the Termination Date with respect to all Commitments shall be extended for one year (as so extended, the “**First Extended Termination Date**”) effective upon receipt by the Administrative Agent of the Extension Request in connection with the First Extension Option and payment of the fee referred to in the following clause (ii): (i) immediately prior to such extension and immediately after giving effect thereto, (x) no Default or Event of Default shall exist and (y) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents, (ii) the Borrower shall have paid the Fees payable under Section 3.5.(d), and (iii) (x) the 6.75% Senior Notes shall have been paid in full or refinanced pursuant to a Qualified Refinancing Issuance, and (y) the Term Loans shall have been repaid in full. At any time prior to the effectiveness of the First Extension Option, upon the Administrative Agent’s request, the

Borrower shall deliver to the Administrative Agent a certificate from the chief executive officer or chief financial officer certifying the matters referred to in the immediately preceding clauses (i)(x) and (i)(y).

(c) Second Extension Option.

(i) Solely in the case of the Second Extension Option, subject to satisfaction of the following conditions, the then current Termination Date with respect to the Extended Commitments shall be extended for one year, effective upon the First Extended Termination Date: (A) the Borrower shall have delivered to the Administrative Agent an Extension Request in connection with the Second Extension Option in accordance with Section 2.12(a), (B) immediately prior to such extension and immediately after giving effect thereto, (x) no Default or Event of Default shall exist and (y) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents, (C) the Borrower shall have paid the Fees payable under Section 3.5.(d), and (D) if (x) immediately prior to giving effect to the Second Extension Option the aggregate Revolving Credit Exposure of all Lenders exceeds the aggregate Extended Commitments of the Extending Lenders or (y) immediately upon giving effect to the Second Extension Option any Extending Lender's Commitment Percentage (recalculated solely with respect to the Extended Commitments in accordance with Section 2.12(c)(ii)) of the aggregate Revolving Credit Exposure would exceed the amount of such Extending Lender's Extended Commitment, then, on the First Extended Termination Date, the Borrower shall have repaid Loans or otherwise reduced the Revolving Credit Exposure in an amount sufficient to cure each such excess under the foregoing clause (x) or (y) (it being understood and agreed that, notwithstanding Section 3.2 or anything herein to the contrary, any repayment of principal of or interest on the Loans in accordance with this clause (D)(x) shall be paid to the Administrative Agent for the account of those Lenders with Commitments other than Extended Commitments pro rata in accordance with their respective Commitments (exclusive of Extended Commitments)). At any time prior to the effectiveness of the Second Extension Option, upon the Administrative Agent's request, the Borrower shall deliver to the Administrative Agent a certificate from the chief executive officer or chief financial officer certifying the matters referred to in the immediately preceding clauses (B)(x) and (B)(y).

(ii) The Administrative Agent, the Borrower and each Extending Lender agree that upon the effectiveness of the Second Extension Option, Schedule I shall be amended within the sole discretion of the Administrative Agent to reflect the Commitment of each Extending Lender immediately upon the effectiveness of the Second Extension Option and their respective Commitment Percentages (recalculated solely with respect to the Extended Commitments). Simultaneously with the effectiveness of the Second Extension Option and subject to the immediately preceding Section 2.12(c)(i), the Revolving Credit Exposure as in effect immediately prior to the effectiveness of the Second Extension Option shall be reallocated among the Extending Lenders pro rata in accordance with their respective Commitment Percentages (recalculated solely with respect to the Extended Commitments). To effect such reallocations, each Extending Lender whose Revolving Credit Exposure upon the effectiveness of the Second

Extension Option exceeds its Revolving Credit Exposure immediately prior to the effectiveness of the Second Extension Option (I) shall make such advances and cash settlements among themselves, through the Administrative Agent, as the Administrative Agent may direct (after giving effect to the termination of any Commitments or the repayment or reduction of any Revolving Credit Exposure on the First Extended Termination Date and any netting transactions effected by the Administrative Agent) so that the Revolving Credit Exposure shall be held by the Extended Lenders pro rata in accordance with their respective Commitment Percentages (recalculated solely with respect to the Extended Commitments) and (II) shall be deemed to hold participation interests in any then outstanding Letter of Credit and Swingline Loans pursuant to Section 2.2(i) and Section 2.3(e), respectively, pro rata in accordance with their respective Commitment Percentages (recalculated solely with respect to the Extended Commitments).

(iii) Subject to Section 12.7(c), any term of this Agreement or of any other Loan Document relating to the rights or obligations of the Extending Lenders, and not any other Lenders, may be amended, and the performance or observance by the Borrower or any other Loan Party or any Subsidiary of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, and only with, the written consent of the Requisite Extending Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto), and no consent of any other Lender shall be necessary.

Section 2.13. Expiration Date of Letters of Credit Past Commitment Termination.

If on the date the Commitments are terminated or reduced to zero (whether voluntarily, by reason of the occurrence of an Event of Default or otherwise), there are any Letters of Credit outstanding hereunder with respect to which the Borrower has not complied with the conditions set forth in the second proviso of the second sentence of Section 2.2.(b), the Borrower shall, on such date, pay to the Administrative Agent, for its benefit and the benefit of the Lenders and the Issuing Banks, an amount of money sufficient to cause the balance of available funds on deposit in the Letter of Credit Collateral Account to equal the aggregate Stated Amount of such Letters of Credit for deposit into the Letter of Credit Collateral Account.

Section 2.14. Amount Limitations.

Notwithstanding any other term of this Agreement or any other Loan Document, no Lender shall be required to make a Loan, the Issuing Banks shall not be required to issue a Letter of Credit and no reduction of the Commitments pursuant to Section 2.11. shall take effect, if immediately after the making of such Loan, the issuance of such Letter of Credit or such reduction in the Commitments the aggregate principal amount of all outstanding Loans, together with the aggregate amount of all Letter of Credit Liabilities, would exceed the aggregate amount of the Commitments at such time.

Section 2.15. Increase in Commitments.

The Borrower shall have the right at any time and from time to time during the period beginning on the Effective Date to but excluding the Termination Date to request increases in the aggregate amount of the Commitments by providing written notice to the Administrative Agent, which notice shall be irrevocable once given; provided, however, that after giving effect to any such increases the aggregate amount of the Commitments shall not exceed \$2,000,000,000 (less the aggregate amount of reductions of Commitments effected pursuant to Section 2.11.). Each such increase in the Commitments must be an aggregate minimum amount of \$50,000,000 and integral multiples of \$10,000,000 in excess thereof. The Administrative Agent, in consultation with the Borrower, shall manage all aspects of the syndication of

such increase in the Commitments, including decisions as to the selection of the existing Lenders and/or other banks, financial institutions and other institutional lenders to be approached with respect to such increase and the allocations of the increase in the Commitments among such existing Lenders and/or other banks, financial institutions and other institutional lenders. No Lender shall be obligated in any way whatsoever to increase its Commitment or provide a new Commitment, and any new Lender becoming a party to this Agreement in connection with any such requested increase must be an Eligible Assignee. If a new Lender becomes a party to this Agreement, or if any existing Lender is increasing its Commitment, such Lender shall on the date it becomes a Lender hereunder (or in the case of an existing Lender, increases its Commitment) (and as a condition thereto) purchase from the other Lenders its Commitment Percentage (determined with respect to the Lenders' respective Commitments and after giving effect to the increase of Commitments) of any outstanding Revolving Loans, by making available to the Administrative Agent for the account of such other Lenders, in same day funds, an amount equal to the sum of (A) the portion of the outstanding principal amount of such Revolving Loans to be purchased by such Lender, plus (B) the aggregate amount of payments previously made by the other Lenders under Section 2.2.(j) that have not been repaid, plus (C) interest accrued and unpaid to and as of such date on such portion of the outstanding principal amount of such Revolving Loans. The Borrower shall pay to the Lenders amounts payable, if any, to such Lenders under Section 4.4. as a result of the prepayment of any such Revolving Loans. Effecting the increase of the Commitments under this Section is subject to the following conditions precedent: (x) no Default or Event of Default shall be in existence on the effective date of such increase, (y) the representations and warranties made or deemed made by the Borrower or any other Loan Party in any Loan Document to which such Loan Party is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on the effective date of such increase except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder, and (z) the Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent: (i) if not previously delivered to the Administrative Agent, copies certified by the Secretary or Assistant Secretary of (A) all corporate and other necessary action taken by the Borrower to authorize such increase and (B) all corporate, partnership, member and other necessary action taken by each Guarantor authorizing the guaranty of such increase; (ii) an opinion of counsel to the Borrower and the Guarantors, and addressed to the Administrative Agent and the Lenders covering such matters as reasonably requested by the Administrative Agent; and (iii) new Revolving Notes executed by the Borrower, payable to any new Lenders and replacement Revolving Notes executed by the Borrower, payable to any existing Lenders increasing their Commitments, in the amount of such Lender's Commitment at the time of the effectiveness of the applicable increase in the aggregate amount of the Commitments. In connection with any increase in the aggregate amount of the Commitments pursuant to this Section 2.15., any Lender becoming a party hereto shall (1) execute such documents and agreements as the Administrative Agent may reasonably request and (2) in the case of any Lender that is organized under the laws of a jurisdiction outside of the United States of America, provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act.

Section 2.16. Funds Transfer Disbursements.

The Borrower hereby authorizes the Administrative Agent to disburse the proceeds of any Loan made by the Lenders or any of their Affiliates pursuant to the Loan Documents as requested by

an authorized representative of the Borrower to any of the accounts designated in the Disbursement Instruction Agreement.

Section 2.17. Collateral Property Amount Limitations.

Notwithstanding any other term of this Agreement or any other Loan Document, at any time following the satisfaction of the Initial Mortgage Collateral Requirement, no Lender shall be required to make a Loan, the Issuing Banks shall not be required to issue a Letter of Credit and no reduction of the Commitments pursuant to Section 2.11 shall take effect, if immediately after the making of such Loan, the issuance of such Letter of Credit or such reduction in the Commitments the aggregate principal amount of all outstanding Loans and Swingline Loans, together with aggregate amount of all Letter of Credit Liabilities, would exceed the Net Collateral Property Availability at such time. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the consent of all Lenders shall be required to amend or otherwise modify the provisions of this Section 2.17.

ARTICLE III. PAYMENTS, FEES AND OTHER GENERAL PROVISIONS

Section 3.1. Payments.

(a) Payments by Borrower. Except to the extent otherwise provided herein, all payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim, to the Administrative Agent at the Principal Office, not later than 12:00 p.m. Eastern time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Subject to Section 10.5., the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. Each payment received by the Administrative Agent for the account of an Issuing Bank under this Agreement shall be paid to such Issuing Bank by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Issuing Bank to the Administrative Agent from time to time, for the account of such Issuing Bank. In the event the Administrative Agent fails to pay such amounts to such Lender or such Issuing Bank, as the case may be, (i) by 5:00 p.m. Eastern time on the Business Day such funds are received by the Administrative Agent, if such amounts are received by 12:00 p.m. Eastern time on such date or (ii) by 5:00 p.m. Eastern time on the Business Day following the date such funds are received by the Administrative Agent, if such amounts are received after 12:00 p.m. Eastern time on any Business Day, the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

(b) Presumptions Regarding Payments by Borrower. 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 (but shall not be obligated to), in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In

such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent on demand that 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 3.2. Pro Rata Treatment.

Except to the extent otherwise provided herein: (a) each borrowing from the Lenders under Sections 2.1.(a), 2.2.(e) and 2.3.(e) shall be made from the Lenders, each payment of the fees under Sections 3.5.(a), 3.5.(b), the first sentence of 3.5.(c), and 3.5.(d) shall be made for the account of the Lenders, and each termination or reduction of the amount of the Commitments under Section 2.11. shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (b) each payment or prepayment of principal of Revolving Loans shall be made for the account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Revolving Loans held by them, provided that, subject to Section 3.9., if immediately prior to giving effect to any such payment in respect of any Revolving Loans the outstanding principal amount of the Revolving Loans shall not be held by the Lenders pro rata in accordance with their respective Commitments in effect at the time such Revolving Loans were made, then such payment shall be applied to the Revolving Loans in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Revolving Loans being held by the Lenders pro rata in accordance with their respective Commitments; (c) each payment of interest on Revolving Loans shall be made for the account of the Lenders, pro rata in accordance with the amounts of interest on such Revolving Loans then due and payable to the respective Lenders; (d) the making, Conversion and Continuation of Revolving Loans of a particular Type (other than Conversions provided for by Sections 4.1.(c) and 4.5.) shall be made pro rata among the Lenders according to the amounts of their respective Revolving Loans and the then current Interest Period for each Lender's portion of each such Loan of such Type shall be coterminous; (e) the Lenders' participation in, and payment obligations in respect of, Swingline Loans under Section 2.3., shall be in accordance with their respective Commitment Percentages; and (f) the Lenders' participation in, and payment obligations in respect of, Letters of Credit under Section 2.2., shall be in accordance with their respective Commitment Percentages. All payments of principal, interest, fees and other amounts in respect of the Swingline Loans shall be for the account of the applicable Swingline Lender only (except to the extent any Lender shall have acquired a participating interest in any such Swingline Loan pursuant to Section 2.3.(e), in which case such payments shall be pro rata in accordance with such participating interests). Any payment or prepayment of principal or interest made during the existence of a Default or Event of Default shall be made for the account of the Lenders and the Issuing Banks in accordance with the order set forth in Section 10.5.

Section 3.3. Sharing of Payments, Etc.

If a Lender shall obtain payment of any principal of, or interest on, any Loan made by it to the Borrower under this Agreement or shall obtain payment on any other Obligation owing by the Borrower or any other Loan Party through the exercise of any right of set-off, banker's lien, counterclaim or similar right or otherwise or through voluntary prepayments directly to a Lender or other payments made by or on behalf the Borrower or any other Loan Party to a Lender (other than any payment in respect of Specified Derivatives Obligations) not in accordance with the terms of this Agreement and such payment should be distributed to the Lenders in accordance with Section 3.2. or Section 10.5., as applicable, such Lender shall promptly purchase from the other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans made by the other Lenders or other Obligations owed to such other Lenders in such amounts, and make such other adjustments from time to time as shall be

equitable, to the end that all the Lenders shall share the benefit of such payment (net of any reasonable expenses which may actually be incurred by such Lender in obtaining or preserving such benefit) in accordance with the requirements of Section 3.2. or Section 10.5., as applicable. To such end, all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender so purchasing a participation (or direct interest) in the Loans or other Obligations owed to such other Lenders may exercise all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

Section 3.4. Several Obligations.

No Lender shall be responsible for the failure of any other Lender to make a Loan or to perform any other obligation to be made or performed by such other Lender hereunder, and the failure of any Lender to make a Loan or to perform any other obligation to be made or performed by it hereunder shall not relieve the obligation of any other Lender to make any Loan or to perform any other obligation to be made or performed by such other Lender.

Section 3.5. Fees.

(a) Closing Fee. On the Effective Date, the Borrower agrees to pay to the Administrative Agent and each Lender all loan fees as have been agreed to in writing by the Borrower and the Administrative Agent.

(b) Facility Fees. During the period from the Effective Date to but excluding the Termination Date, the Borrower agrees to pay to the Administrative Agent for the account of the Lenders a facility fee equal to the daily aggregate amount of the Commitments (whether or not utilized) times a rate per annum equal to the Applicable Facility Fee. Such fee shall be payable quarterly in arrears on the first day of each January, April, July and October during the term of this Agreement and on the Termination Date or any earlier date of termination of the Commitments or reduction of the Commitments to zero. The Borrower acknowledges that the fee payable hereunder is a bona fide commitment fee and is intended as reasonable compensation to the Lenders for committing to make funds available to the Borrower as described herein and for no other purposes.

(c) Letter of Credit Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a letter of credit fee at a rate per annum equal to the Applicable Margin times the daily average Stated Amount of each Letter of Credit for the period from and including the date of issuance of such Letter of Credit (x) to and including the date such Letter of Credit expires or is cancelled or (y) to but excluding the date such Letter of Credit is drawn in full. In addition to such fees, the Borrower shall pay to the applicable Issuing Bank solely for its own account, a fronting fee in respect of each Letter of Credit issued by such Issuing Bank equal to one-eighth of one percent (0.125%) of the initial Stated Amount of such Letter of Credit; provided, however, in no event shall the aggregate amount of such fee in respect of any Letter of Credit be less than \$1,000. The fees provided for in this subsection shall be nonrefundable and payable, in the case of the fee provided for in the first sentence, in arrears (i) quarterly on the first day of January, April, July and October, (ii) on the Termination Date, (iii) on the date the Commitments are terminated or reduced to zero and (iv) thereafter from time to time on demand of the Administrative Agent and in the case of the fee provided for in the second sentence, at the time of issuance of such Letter of Credit. The Borrower shall pay directly to the applicable Issuing Bank from time to time on demand all commissions, charges, costs and expenses in the amounts customarily charged

or incurred by the applicable Issuing Bank from time to time in like circumstances with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued by such Issuing Bank or any other transaction relating thereto.

(d) **Extension Fee.** If the Borrower exercises its right to extend the Termination Date in accordance with Section 2.12., pursuant to the First Extension Option and the Second Extension Option, in each case, the Borrower agrees to pay (i) in connection with the First Extension Option, to the Administrative Agent for the account of each Lender a fee equal to fifteen one-hundredths of one percent (0.15%) of the amount of such Lender's Commitment (whether or not utilized), and (ii) in connection with the Second Extension Option, notwithstanding anything to the contrary in Section 3.2, to the Administrative Agent for the account of each Extending Lender a fee equal to fifteen one-hundredths of one percent (0.15%) of the amount of such Extending Lender's Extended Commitment (whether or not utilized). Such fees shall be due and payable in full on the date the Administrative Agent receives the Extension Request with respect to the First Extension Option or the Second Extension Option, as applicable, pursuant to such Section.

(e) **Administrative and Other Fees.** The Borrower agrees to pay the administrative and other fees of the Administrative Agent as provided in the Fee Letter and as may be otherwise agreed to in writing from time to time by the Borrower and the Administrative Agent.

Section 3.6. Computations.

Unless otherwise expressly set forth herein, any accrued interest on any Loan, any Fees or any other Obligations due hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed.

Section 3.7. Usury.

In no event shall the amount of interest due or payable on the Loans or other Obligations exceed the maximum rate of interest allowed by Applicable Law and, if any such payment is paid by the Borrower or any other Loan Party or received by any Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the respective Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lenders not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under Applicable Law. The parties hereto hereby agree and stipulate that the only charge imposed upon the Borrower for the use of money in connection with this Agreement is and shall be the interest specifically described in Section 2.4.(a)(i) and (ii) and, with respect to Swingline Loans, in Section 2.3.(c). Notwithstanding the foregoing, the parties hereto further agree and stipulate that all agency fees, syndication fees, facility fees, closing fees, letter of credit fees, underwriting fees, default charges, late charges, funding or "breakage" charges, increased cost charges, attorneys' fees and reimbursement for costs and expenses paid by the Administrative Agent or any Lender to third parties or for damages incurred by the Administrative Agent or any Lender, in each case, in connection with the transactions contemplated by this Agreement and the other Loan Documents, are charges made to compensate the Administrative Agent or any such Lender for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by the Administrative Agent and the Lenders in connection with this Agreement and shall under no circumstances be deemed to be charges for the use of money. All charges other than charges for the use of money shall be fully earned and nonrefundable when due.

Section 3.8. Statements of Account.

The Administrative Agent will account to the Borrower monthly with a statement of Loans, accrued interest and Fees, charges and payments made pursuant to this Agreement and the other Loan Documents, and such account rendered by the Administrative Agent shall be deemed conclusive upon the Borrower absent manifest error. The failure of the Administrative Agent to deliver such a statement of accounts shall not relieve or discharge the Borrower from any of its obligations hereunder.

Section 3.9. Defaulting Lenders.

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:

(a) Waivers and Amendments. 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 Requisite Lenders.

(b) Defaulting Lender Waterfall. 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 X. or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.3 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 any Issuing Bank or any Swingline Lender hereunder; third, to Cash Collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender in accordance with subsection (e) below; 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 Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with subsection (e) below; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or any 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 amounts owing by such Defaulting Lender under Section 2.2.(j) in respect of Letters of Credit (such amounts "L/C 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 Article V. were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Liabilities and Swingline Loans are held by the Lenders pro rata in accordance with their respective Commitment Percentages (determined without giving effect to the immediately following subsection (d)). 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 subsection shall

be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any Fee payable under Section 3.5.(b) 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).

(ii) Each Defaulting Lender shall be entitled to receive any Fee payable under Section 3.5.(c) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to the immediately following subsection (e).

(iii) With respect to any Fee not required to be paid to any Defaulting Lender pursuant to the immediately preceding clauses (i) or (ii), 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 Letter of Credit Liabilities or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to the immediately following subsection (d), (y) pay to each Issuing Bank and each 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 or such Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Liabilities and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Commitment Percentages (determined without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 12.22., 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.

(e) Cash Collateral, Repayment of Swingline Loans.

(i) If the reallocation described in the immediately preceding subsection (d) 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 Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Banks' Fronting Exposure in accordance with the procedures set forth in this subsection.

(ii) At any time that there shall exist a Defaulting Lender, within 1 Business Day following the written request of the Administrative Agent or the applicable Issuing Bank (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize such Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to the immediately preceding subsection (d) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the aggregate Fronting Exposure of such Issuing Bank with respect to Letters of Credit issued and outstanding at such time.

(iii) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the Issuing Banks, and agree 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 Letter of Credit Liabilities, to be applied pursuant to the immediately following clause (iv). 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 aggregate Fronting Exposure of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time, 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).

(iv) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Liabilities (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.

(v) Cash Collateral (or the appropriate portion thereof) provided to reduce an Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this subsection following (x) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (y) the determination by the Administrative Agent and the applicable Issuing Bank that there exists excess Cash Collateral; provided that, subject to the immediately preceding subsection (b), the Person providing Cash Collateral and the applicable Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting 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.

(f) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lenders and the 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 their respective Commitment Percentages (determined without giving effect to the immediately preceding subsection (d)), 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.

(g) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) each Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) each Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 3.10. Taxes; Foreign Lenders.

- (a) Issuing Banks. For purposes of this Section, the term “Lender” includes the Issuing Banks and the term “Applicable Law” includes FATCA.
- (b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or other applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.
- (c) Payment of Other Taxes by the Borrower. The Borrower and the other Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (d) Indemnification by the Borrower. The Borrower and the other Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient (whether directly or pursuant to Section 3.10.(e)(i)) or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, however, that neither the Borrower nor any other Loan Party shall be liable to indemnify any Lender or Participant for any Taxes attributable to Lender’s failure to comply with the provisions of Section 12.6. relating to the maintenance of a Participant Register. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.
- (e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or another Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower and the other Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 12.6. 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.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section, the Borrower or such other Loan Party shall deliver to the Administrative Agent the 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.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation 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. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the immediately following clauses (ii)(A), (ii)(B) and (ii)(D)) shall not be required if in the applicable Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) 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), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the 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, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, 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, IRS Form W-8BEN or

IRS Form W-8BEN-E, as applicable, 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;

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit K-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-2 or Exhibit K-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit K-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) 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 Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Applicable 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 Internal Revenue 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. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. 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 Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 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 subsection (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 subsection, in no event will an indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection the payment of which would place such indemnified party in a less favorable net after-Tax position than such 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 subsection 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, or apply for or seek any refund for or on behalf of, any indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 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.

(j) FATCA Determination. For purposes of determining withholding Taxes imposed under FATCA, from and after the Effective Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

ARTICLE IV. YIELD PROTECTION, ETC.

Section 4.1. Additional Costs; Capital Adequacy.

(a) Capital Adequacy. If any Lender determines that any Regulatory Change affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or the participations in Letters of Credit or Swingline Loans held by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change

(taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(b) Additional Costs. In addition to, and not in limitation of the immediately preceding subsection, the Borrower shall promptly pay to the Administrative Agent for the account of a Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs incurred by such Lender that it determines are attributable to its making, maintaining, continuing or converting of any Loans or its obligation to make any Loans hereunder, any reduction in any amount receivable by such Lender under this Agreement or any of the other Loan Documents in respect of any of such Loans or such obligation or the maintenance by such Lender of capital in respect of its Loans or its Commitments (such increases in costs and reductions in amounts receivable being herein called "**Additional Costs**"), resulting from any Regulatory Change that: (i) changes the basis of taxation of any amounts payable to such Lender under this Agreement or any of the other Loan Documents in respect of any of such Loans or its Commitments (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes), or (ii) imposes or modifies any reserve, special deposit, compulsory loan insurance charge, or similar requirements (other than Regulation D of the ~~Board of Governors of the Federal Reserve System~~FRB or other similar reserve requirement applicable to any other category of liabilities or category of extensions of credit or other assets by reference to which the interest rate on Loans is determined to the extent utilized when determining the interest rate for such Loans) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, or other credit extended by, or any other acquisition of funds by such Lender (or its parent corporation), or any commitment of such Lender (including, without limitation, the Commitments of such Lender hereunder) or (iii) imposes on any Lender or the London interbank market, any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loans made by such Lender.

(c) Lender's Suspension of LIBOR Loans. Without limiting the effect of the provisions of the immediately preceding subsection (a) and (b), if by reason of any Regulatory Change, any Lender either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Lender that includes deposits by reference to which the interest rate on LIBOR Loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Lender that includes LIBOR Loans or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets that it may hold, then, if such Lender so elects by notice to the Borrower (with a copy to the Administrative Agent), the obligation of such Lender to make or Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended until such Regulatory Change ceases to be in effect (in which case the provisions of Section 4.5. shall apply).

(d) Additional Costs in Respect of Letters of Credit. Without limiting the obligations of the Borrower under the preceding subsections of this Section (but without duplication), if as a result of any Regulatory Change or any risk-based capital guideline or other requirement heretofore or hereafter issued by any Governmental Authority there shall be imposed, modified or deemed applicable any Tax (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes), reserve, special deposit, capital adequacy or similar requirement against or with respect to or measured by reference to Letters of Credit and the result shall be to increase the cost to the applicable Issuing Bank of issuing (or any Lender of purchasing participations in) or maintaining its obligation hereunder to issue (or purchase participations in) any Letter of Credit or reduce any amount receivable by an Issuing Bank or any Lender hereunder in respect of any Letter of Credit, then, upon demand by such Issuing Bank or such Lender, the Borrower shall pay promptly, and in any event within 3

Business Days of demand, to such Issuing Bank or, in the case of such Lender, to the Administrative Agent for the account of such Lender, from time to time as specified by such Issuing Bank or such Lender, such additional amounts as shall be sufficient to compensate such Issuing Bank or such Lender for such increased costs or reductions in amount.

(e) Notification and Determination of Additional Costs. Each of the Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to notify the Borrower (and in the case of a Lender, to notify the Administrative Agent) of any event occurring after the Agreement Date entitling the Administrative Agent, such Issuing Bank or such Lender to compensation under any of the preceding subsections of this Section as promptly as practicable; provided, however, that the failure of the Administrative Agent, any Issuing Bank or any Lender to give such notice shall not release the Borrower from any of its obligations hereunder (and in the case of a Lender, to the Administrative Agent); provided, further, that notwithstanding the foregoing provisions of this Section, the Administrative Agent or a Lender, as the case may be, shall not be entitled to compensation for any such amount relating to any period ending more than six months prior to the date that the Administrative Agent or such Lender, as applicable, first notifies the Borrower in writing thereof or for any amounts resulting from a change by any Lender of its Lending Office (other than changes required by Applicable Law). The Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to furnish to the Borrower (and in the case of an Issuing Bank or a Lender to the Administrative Agent as well) a certificate setting forth the basis and amount of each request for compensation under this Section. Determinations by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, absent manifest error. The Borrower shall pay the Administrative Agent, any such Issuing Bank and/or any such Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 4.2. Suspension of LIBOR Loans.

(a) ~~Anything herein to the contrary notwithstanding~~ Subject to Section 4.2.(b) below, if, on or prior to the determination of LIBOR for any Interest Period:

(ai) the Administrative Agent shall determine (which determination shall be conclusive absent manifest error) that reasonable and adequate means do not exist for ascertaining LIBOR for such Interest Period, or the Administrative Agent reasonably determines (which determination shall be conclusive absent manifest error) that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Loans as provided herein; or

(bii) the Administrative Agent reasonably determines (which determination shall be conclusive absent manifest error) that the relevant rates of interest referred to in the definition of LIBOR upon the basis of which the rate of interest for LIBOR Loans for such Interest Period is to be determined are not likely to adequately cover the cost to any Lender of making or maintaining LIBOR Loans for such Interest Period,

then the Administrative Agent shall give the Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, all of the Lenders, in the case of the immediately preceding clause (ai), and any Lender affected thereby, in the case of the immediately preceding clause (bii), shall be under no obligation to, and shall not, make additional LIBOR Loans, Continue LIBOR Loans or Convert Loans into LIBOR Loans, unless and until the Administrative Agent or such Lender, as the case may be, gives notice as provided in Section 4.5. that such condition no longer exists, and, so long as such

condition remains in effect, the Lenders or such Lender's LIBOR Loans, as the case may be, shall be treated in accordance with Section 4.5.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement.

(A) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, an Early Opt-in Election, or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) or clause (c) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Requisite Lenders. If an Unadjusted Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 12.6.), in connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) *Notices; Standards for Decisions and Determinations.* The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.2.(b)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 4.2.(b), including, without limitation, any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion, as applicable, and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 4.2.(b).

(iv) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) *Benchmark Unavailability Period.* Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a borrowing of, Conversion to or Continuation of LIBOR Loans to be made, Converted or Continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have Converted any such request into a request for a borrowing of or Conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(vi) *London Interbank Offered Rate Benchmark Transition Event.* On March 5, 2021, the IBA and the FCA announced in the Announcements that the final publication or representativeness date for Dollars for (i) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (ii) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement

and that any obligation of the Administrative Agent to notify any parties of such Benchmark Transition Event pursuant to Section 4.2.(b)(iii) shall be deemed satisfied.

Section 4.3. Illegality.

Notwithstanding any other provision of this Agreement, if any Lender shall determine (which determination shall be conclusive and binding) that due to a Regulatory Change it is unlawful for such Lender to honor its obligation to make or maintain LIBOR Loans hereunder, then such Lender shall promptly notify the Borrower thereof (with a copy of such notice to the Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBOR Loans shall be suspended until such time as such Lender may again make and maintain LIBOR Loans (in which case the provisions of Section 4.5. shall be applicable).

Section 4.4. Compensation.

The Borrower shall pay to the Administrative Agent for the account of each Lender, upon the request of the Administrative Agent, such amount or amounts as the Administrative Agent shall determine in its sole discretion shall be sufficient to compensate such Lender for any loss, cost or expense attributable to:

(a) any payment or prepayment (whether mandatory or optional) of a LIBOR Loan, or Conversion of a LIBOR Loan, made by such Lender for any reason (including, without limitation, acceleration) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower for any reason (including, without limitation, the failure of any of the applicable conditions precedent specified in Section 5.2. to be satisfied) to borrow a LIBOR Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBOR Loan or Continue a LIBOR Loan on the requested date of such Conversion or Continuation.

Not in limitation of the foregoing, such compensation shall include, without limitation, in the case of a LIBOR Loan, an amount equal to the then present value of (A) the amount of interest that would have accrued on such LIBOR Loan for the remainder of the Interest Period at the rate applicable to such LIBOR Loan, less (B) the amount of interest that would accrue on the same LIBOR Loan for the same period if LIBOR were set on the date on which such LIBOR Loan was repaid, prepaid or Converted or the date on which the Borrower failed to borrow, Convert or Continue such LIBOR Loan, as applicable, calculating present value by using as a discount rate LIBOR quoted on such date. Upon the Borrower's request, the Administrative Agent shall provide the Borrower with a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof. Any such statement shall be conclusive absent manifest error.

Section 4.5. Treatment of Affected Loans.

If the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 4.1.(c), Section 4.2.(a) or (b)(v), or Section 4.3. then such Lender's LIBOR Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for LIBOR Loans (or, in the case of a Conversion required by Section 4.1.(c), Section 4.2.(a) or (b)(v), or Section 4.3. on such earlier date as such Lender or the Administrative Agent, as applicable, may specify to the Borrower (with a copy to the Administrative Agent, as applicable)) and, unless and until such Lender or the Administrative Agent, as applicable, gives

notice as provided below that the circumstances specified in Section 4.1., Section 4.2.(a) or Section 4.3. that gave rise to such Conversion no longer exist (or until a Benchmark Replacement is implemented in accordance with Section 4.2.(b)):

(a) to the extent that such Lender's LIBOR Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its Base Rate Loans; and

(b) all Loans that would otherwise be made or Continued by such Lender as LIBOR Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be Converted into LIBOR Loans shall remain as Base Rate Loans.

If such Lender or the Administrative Agent, as applicable, gives notice to the Borrower (with a copy to the Administrative Agent, as applicable) that the circumstances specified in Section 4.1.(c) or 4.3. that gave rise to the Conversion of such Lender's LIBOR Loans pursuant to this Section no longer exist (which such Lender or the Administrative Agent, as applicable, agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans made by other Lenders are outstanding, then such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

Section 4.6. Affected Lenders.

If (a) a Lender requests compensation pursuant to Section 3.10. or 4.1., and the Requisite Lenders are not also doing the same, (b) the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 4.1.(c) or 4.3. but the obligation of the Requisite Lenders shall not have been suspended under such Sections, (c) a Lender does not vote in favor of any amendment, modification or waiver to this Agreement or any other Loan Document which, pursuant to Section 12.7., requires the vote of such Lender, and the Requisite Lenders shall have voted in favor of such amendment, modification or waiver or (d) a Lender becomes a Defaulting Lender, then, so long as there does not then exist any Default or Event of Default, the Borrower may demand that such Lender (the "Affected Lender"), and upon such demand the Affected Lender shall promptly, assign its Commitment to an Eligible Assignee subject to and in accordance with the provisions of Section 12.6.(b) for a purchase price equal to (x) the aggregate principal balance of all Loans then owing to the Affected Lender, plus (y) the aggregate amount of payments previously made by the Affected Lender under Section 2.2.(j) that have not been repaid, plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Affected Lender, or any other amount as may be mutually agreed upon by such Affected Lender and Eligible Assignee. Each of the Administrative Agent and the Affected Lender shall reasonably cooperate in effectuating the replacement of such Affected Lender under this Section, and such Affected Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest to the purchaser or assignee thereof, including an appropriate Assignment and Assumption, but at no time shall the Administrative Agent, such Affected Lender nor any other Lender nor any Titled Agent be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent, the Affected Lender or any of the other Lenders. The terms of this Section shall not in any way limit the Borrower's obligation to pay to any Affected Lender compensation owing to such Affected Lender pursuant to this Agreement (including, without limitation, pursuant to Sections 3.10., 4.1. or 4.4.) with respect to any period up to the date of replacement.

Section 4.7. Change of Lending Office.

Each Lender agrees that it will use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate an alternate Lending Office with respect to any of its Loans affected by the matters or circumstances described in Sections 3.10., 4.1. or 4.3. to reduce the liability of the Borrower or avoid the results provided thereunder, so long as such designation is not disadvantageous to such Lender as determined by such Lender in its sole discretion, except that such Lender shall have no obligation to designate a Lending Office located in the United States of America.

Section 4.8. Assumptions Concerning Funding of LIBOR Loans.

Calculation of all amounts payable to a Lender under this Article shall be made as though such Lender had actually funded LIBOR Loans through the purchase of deposits in the relevant market bearing interest at the rate applicable to such LIBOR Loans in an amount equal to the amount of the LIBOR Loans and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be used only for calculation of amounts payable under this Article.

ARTICLE V. CONDITIONS PRECEDENT

Section 5.1. Initial Conditions Precedent.

The obligation of the Lenders to effect or permit the occurrence of the first Credit Event hereunder, whether as the making of a Loan or the issuance of a Letter of Credit, is subject to the satisfaction or waiver of the following conditions precedent:

- (a) The Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent:
 - (i) counterparts of this Agreement executed by each of the parties hereto;
 - (ii) Revolving Notes executed by the Borrower, payable to each Lender (other than any Lender that has requested that it not receive a Revolving Note) and complying with the terms of Section 2.10.(a) and the Swingline Note executed by the Borrower;
 - (iii) the Guaranty executed by each of the Guarantors initially to be a party thereto;
 - (iv) an opinion of Sullivan & Worcester LLP, and an opinion of Saul Ewing LLP, special Maryland counsel, in each case, counsel to the Borrower and the other Loan Parties, addressed to the Administrative Agent and the Lenders and covering such matters as the Administrative Agent may reasonably request;
 - (v) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Loan Party;
 - (vi) a certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party and certificates of qualification to transact business or other comparable

certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which such Loan Party is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect and each state in which a Collateral Property owned by such Loan Party is located;

(vii) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party with respect to each of the officers of such Loan Party authorized to execute and deliver the Loan Documents to which such Loan Party is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower Notices of Borrowing, Notices of Swingline Borrowing, requests for Letters of Credit, Notices of Conversion and Notices of Continuation;

(viii) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party of (A) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Loan Party to authorize the execution, delivery and performance of the Loan Documents to which it is a party;

(ix) a Compliance Certificate calculated as of the Effective Date on a pro forma basis for the Borrower's fiscal quarter ending March 31, 2017;

(x) a Disbursement Instruction Agreement effective as of the Agreement Date;

(xi) [intentionally omitted];

(xii) evidence that the Fees, if any, then due and payable under Section 3.5., together with all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent and any of the Lenders, including without limitation, the fees and expenses of counsel to the Administrative Agent, have been paid;

(xiii) the Borrower Letter executed by the Borrower; and

(xiv) such other documents, agreements and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request; and

(b) In the good faith judgment of the Administrative Agent:

(i) there shall not have occurred or become known to the Administrative Agent or any of the Lenders any event, condition, situation or status since the date of the information contained in the financial and business projections, budgets, pro forma data and forecasts concerning the Borrower and its Subsidiaries delivered to the Administrative Agent and the Lenders prior to the Agreement Date that has had or could reasonably be expected to result in a Material Adverse Effect;

(ii) no litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding shall be pending or threatened which could reasonably be expected to (A) result in a Material Adverse Effect or (B) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect, the ability of the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party;

(iii) the Borrower and its Subsidiaries shall have received all approvals, consents and waivers, and shall have made or given all necessary filings and notices as shall be required to consummate the transactions contemplated hereby without the occurrence of any default under, conflict with or violation of (A) any Applicable Law or (B) any agreement, document or instrument to which any Loan Party is a party or by which any of them or their respective properties is bound, except for such approvals, consents, waivers, filings and notices the receipt, making or giving of which could not reasonably be likely to (A) have a Material Adverse Effect, or (B) restrain or enjoin impose materially burdensome conditions on, or otherwise materially and adversely affect the ability of the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party;

(iv) the Borrower and each other Loan Party shall have provided all information requested by the Administrative Agent and each Lender in order to comply with the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)); and

(v) there shall not have occurred or exist any other material disruption of financial or capital markets that could reasonably be expected to materially and adversely affect the transactions contemplated by the Loan Documents.

Section 5.2. Conditions Precedent to All Loans and Letters of Credit.

The obligations of (i) Lenders to make any Loans and (ii) the Issuing Banks to issue, to extend the expiration date of, or to increase the Stated Amount of, Letters of Credit are each subject to the further conditions precedent that: (a) no Default or Event of Default shall exist as of the date of the making of such Loan or date of issuance of such Letter of Credit or would exist immediately after giving effect thereto, and no violation of the limits described in Section 2.14. would occur after giving effect thereto; (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of the making of such Loan or date of issuance of such Letter of Credit with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder, (c) in the case of the borrowing of Revolving Loans, the Administrative Agent shall have received a timely Notice of Borrowing, or in the case of a Swingline Loan, the applicable Swingline Lender and the Administrative Agent shall have received a timely Notice of Swingline Borrowing, (d) in the case of any Credit Event occurring during the period commencing on the date immediately following the Amendment Period Expiration Date and ending on the Post-Amendment Period Compliance Date, the Borrower shall have delivered to the Administrative Agent evidence of the Borrower's compliance with the financial covenants set forth in Sections 9.1 (each as adjusted pursuant to the last paragraph of Section 9.1) using pro forma projections based upon results through the most recently ended period for which such financial information is available to the Borrower, (e) in the case of any Credit Event occurring during the Amendment Period and continuing thereafter until the Post-Amendment Period Compliance Date, upon giving effect to such Credit Event, the Borrower shall be in compliance with the Amendment Period Incurrence Conditions, and (f) in the case of any Credit Event occurring on or after May 29, 2021, the Initial Mortgage Collateral Requirement shall have been satisfied. Each Credit Event shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of the

giving of notice relating to such Credit Event and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of such Credit Event, as of the date of the occurrence of such Credit Event). In addition, the Borrower shall be deemed to have represented to the Administrative Agent and the Lenders at the time any Loan is made or any Letter of Credit is issued, extended or increased that all conditions to the making of such Loan or issuing, extending or increasing of such Letter of Credit contained in this Article V. have been satisfied. Unless set forth in writing to the contrary, the making of its initial Loan by a Lender shall constitute a certification by such Lender to the Administrative Agent and the other Lenders that the conditions precedent for initial Loans set forth in Sections 5.1. and 5.2. that have not previously been waived by the Lenders in accordance with the terms of this Agreement have been satisfied.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

Section 6.1. Representations and Warranties.

In order to induce the Administrative Agent and each Lender to enter into this Agreement and to make Loans and, in the case of an Issuing Bank, to issue Letters of Credit, the Borrower represents and warrants to the Administrative Agent, each Issuing Bank and each Lender as follows:

(a) Organization; Power; Qualification. Each of the Borrower, the other Loan Parties and the other Subsidiaries is a corporation, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect.

(b) Ownership Structure. Part I of Item 6.1.(b) of the Borrower Letter is, as of the Agreement Date, a complete and correct list of all Subsidiaries of the Borrower setting forth for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding any Equity Interest in such Subsidiary, (iii) the nature of the Equity Interests held by each such Person, (iv) the percentage of ownership of such Subsidiary represented by such Equity Interests and (v) whether such Subsidiary is an Excluded Subsidiary and/or a Foreign Subsidiary. As of the Agreement Date, except as disclosed in such Item of the Borrower Letter, (A) each of the Borrower and its Subsidiaries owns, free and clear of all Liens, and has the unencumbered right to vote, all outstanding Equity Interests in each Person shown to be held by it on such Item, (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, any such Person. As of the Agreement Date, Part II of Item 6.1.(b) of the Borrower Letter correctly sets forth all Unconsolidated Affiliates of the Borrower, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Borrower.

(c) Authorization of Loan Documents and Borrowings. The Borrower has the right and power, and has taken all necessary action to authorize it, to borrow and obtain other extensions of credit hereunder. The Borrower and each other Loan Party has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform each of the Loan Documents and the Fee Letter to

which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby. The Loan Documents and the Fee Letter to which the Borrower or any other Loan Party is a party have been duly executed and delivered by the duly authorized officers of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

(d) Compliance of Loan Documents with Laws. The execution, delivery and performance of this Agreement, the other Loan Documents to which any Loan Party is a party and of the Fee Letter in accordance with their respective terms and the borrowings and other extensions of credit hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Governmental Approval or violate any Applicable Law (including all Environmental Laws) relating to the Borrower or any other Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of any Loan Party, or any indenture, agreement or other instrument to which the Borrower or any other Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by any Loan Party other than in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations.

(e) Compliance with Law; Governmental Approvals. Each of the Borrower, the other Loan Parties and the other Subsidiaries is in compliance with each Governmental Approval and all other Applicable Laws relating to it except for noncompliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to cause a Default or Event of Default or have a Material Adverse Effect.

(f) Title to Properties; Liens. Each of the Borrower, each other Loan Party and each other Subsidiary has good, marketable and legal title to, or a valid leasehold interest in, its respective assets. As of the Agreement Date, there are no Liens against any assets of the Borrower, any Subsidiary or any other Loan Party except for Permitted Liens. No Collateral Property nor any direct or indirect interest of the Borrower therein is subject to any Lien (other than Permitted Liens described in clauses (c), (g), (i) and (j) of the definition of that term) or any Negative Pledge. Each Collateral Property satisfies all requirements set forth in the definition of "Eligible Property".

(g) Existing Indebtedness. As of the Agreement Date, the Borrower, the other Loan Parties and the other Subsidiaries have performed and are in compliance with all of the terms of such Indebtedness and all instruments and agreements relating thereto, and no default or event of default, or event or condition which with the giving of notice, the lapse of time, or both, would constitute a default or event of default, exists with respect to any such Indebtedness.

(h) [Intentionally Omitted.]

(i) Litigation. Except as set forth on Schedule 6.1.(i), there are no actions, suits or proceedings pending (nor, to the knowledge of any Loan Party, are there any actions, suits or proceedings threatened, nor is there any basis therefor) against or in any other way relating adversely to or affecting the Borrower, any other Loan Party, any other Subsidiary or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which, (i) could reasonably be expected to have a Material Adverse Effect or (ii) in any manner draws into question the validity or enforceability of any Loan Document or the Fee Letter. There are no strikes, slow downs,

work stoppages or walkouts or other labor disputes in progress or threatened relating to, any Loan Party or any other Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(j) Taxes. All federal, state and other material tax returns of the Borrower, each other Loan Party and each other Subsidiary required by Applicable Law to be filed have been duly filed (after taking into account any extensions of time within which to file such tax returns), and all federal, state and other taxes, assessments and other governmental charges or levies upon, each Loan Party, each other Subsidiary and their respective properties, income, profits and assets which are due and payable have been paid, except any such nonpayment or non-filing which is at the time permitted under Section 7.6. As of the Agreement Date, none of the United States income tax returns of the Borrower, any other Loan Party or any other Subsidiary is under audit. All charges, accruals and reserves on the books of the Borrower, the other Loan Parties and the other Subsidiaries in respect of any taxes or other governmental charges are in accordance with GAAP.

(k) Financial Statements. The Borrower has furnished to each Lender copies of (i) the audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries for the fiscal year ended December 31, 2016, and the related audited consolidated statements of operations, shareholders' equity and cash flow for the fiscal year ended on such date, with the opinion thereon of Ernst & Young LLP, and (ii) the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries for the fiscal quarter ended March 31, 2017, and the related unaudited consolidated statements of operations, and cash flow of the Borrower and its consolidated Subsidiaries for the fiscal quarter ended on such date. Such financial statements (including in each case related schedules and notes) are complete and correct in all material respects and present fairly, in accordance with GAAP consistently applied throughout the periods involved, the consolidated financial position of the Borrower and its consolidated Subsidiaries as at their respective dates and the results of operations and the cash flow for such periods (subject, as to interim statements, to changes resulting from normal year-end audit adjustments). Neither the Borrower nor any of its Subsidiaries has on the Agreement Date any material contingent liabilities, liabilities, liabilities for taxes, unusual or long-term commitments or unrealized or forward anticipated losses from any unfavorable commitments that would be required to be set forth in its financial statements or notes thereto, except as referred to or reflected or provided for in said financial statements.

(l) No Material Adverse Change. Since December 31, 2016, there has been no material adverse change in the consolidated financial condition, results of operations or business of the Borrower and its consolidated Subsidiaries taken as a whole; *provided* that, during the Amendment Period, any such determination under this clause (l) shall exclude any event or circumstance resulting from the COVID-19 pandemic to the extent that (i) such event or circumstance has been disclosed in writing by the Borrower to the Lenders or publicly, or in the public domain, prior to the ~~Second~~Third Amendment Effective Date and (ii) the scope of such adverse effect is not materially greater than that which has been disclosed. Each of the Borrower, the other Loan Parties, and the Borrower and its Subsidiaries taken as a whole is, Solvent.

(m) REIT Status. The Borrower qualifies as, and has elected to be treated as, a REIT and is in compliance with all requirements and conditions imposed under the Internal Revenue Code to allow the Borrower to maintain its status as a REIT.

(n) ERISA.

(i) Each Benefit Arrangement is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other Applicable Laws in all material respects. Except with respect to Multiemployer Plans, each Qualified Plan (A) has received a favorable determination from the Internal Revenue Service applicable to such Qualified Plan's current

remedial amendment cycle (as defined in Revenue Procedure 2007-44 or “2007-44” for short), (B) has timely filed for a favorable determination letter from the Internal Revenue Service during its staggered remedial amendment cycle (as defined in 2007-44) and such application is currently being processed by the Internal Revenue Service, (C) had filed for a determination letter prior to its “GUST remedial amendment period” (as defined in 2007-44) and received such determination letter and the staggered remedial amendment cycle first following the GUST remedial amendment period for such Qualified Plan has not yet expired, or (D) is maintained under a prototype plan and may rely upon a favorable opinion letter issued by the Internal Revenue Service with respect to such prototype plan. To the best knowledge of the Borrower, nothing has occurred which would cause the loss of its reliance on each Qualified Plan’s favorable determination letter or opinion letter.

(ii) With respect to any Benefit Arrangement that is a retiree welfare benefit arrangement, all amounts have been accrued on the applicable ERISA Group’s financial statements in accordance with FASB ASC 715. The “benefit obligation” of all Plans does not exceed the “fair market value of plan assets” for such Plans by more than \$10,000,000 all as determined by and with such terms defined in accordance with FASB ASC 715.

(iii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no ERISA Event has occurred or is expected to occur; (ii) there are no pending, or to the best knowledge of the Borrower, threatened, claims, actions or lawsuits or other action by any Governmental Authority, plan participant or beneficiary with respect to a Benefit Arrangement; (iii) there are no violations of the fiduciary responsibility rules with respect to any Benefit Arrangement; and (iv) no member of the ERISA Group has engaged in a non-exempt “prohibited transaction,” as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code, in connection with any Plan, that would subject any member of the ERISA Group to a tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Internal Revenue Code.

(o) Absence of Default. None of the Loan Parties or any of the other Subsidiaries is in default under its certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents, and no event has occurred, which has not been remedied, cured or waived: (i) which constitutes a Default or an Event of Default; or (ii) which constitutes, or which with the passage of time, the giving of notice, or both, would constitute, a default or event of default by, any Loan Party or any other Subsidiary under any agreement (other than this Agreement) or judgment, decree or order to which any such Person is a party or by which any such Person or any of its respective properties may be bound where such default or event of default could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Environmental Laws. In the ordinary course of business and from time to time each of the Borrower, each other Loan Party and each other Subsidiary conducts reviews of the effect of Environmental Laws on its respective business, operations and properties, including without limitation, its respective Properties. Each of the Borrower, each other Loan Party and each other Subsidiary: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where the failure to obtain or to comply with each of the immediately preceding clauses (i) through (iii) could reasonably be expected to have a Material Adverse Effect with respect to such Collateral Property, individually, or the Collateral Properties taken as a whole, and with respect to all Properties other than Collateral Properties, where the failure to obtain or to comply with each of the immediately preceding clauses (i) through (iii) could reasonably be expected to have a

Material Adverse Effect. Except for any of the following matters that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, or has received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary, their respective businesses, operations or with respect to the Properties or any Collateral Property, may: (x) cause or contribute to an actual or alleged violation of or noncompliance with Environmental Laws, (y) cause or contribute to any other potential common-law or legal claim or other liability, or (z) cause any of the Properties to become subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law or require the filing or recording of any notice, approval or disclosure document under any Environmental Law and, with respect to the immediately preceding clauses (x) through (z) is based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any wastes or Hazardous Material, or any other requirement under Environmental Law. There is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, to the Borrower's knowledge after due inquiry, threatened, against the Borrower, any other Loan Party or any other Subsidiary relating in any way to Environmental Laws with respect to the Properties, any Collateral Property, individually, or the Collateral Properties taken as a whole, which reasonably could be expected to have a Material Adverse Effect. As of the Second Amendment Effective Date, none of the Properties is listed on or proposed for listing on the National Priority List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law. No Hazardous Materials have been transported, released, discharged or disposed on any of the Properties other than (x) in the case of the Collateral Properties, as could not reasonably be expected to have a Material Adverse Effect with respect to any such Collateral Property, individually, or the Collateral Properties taken as a whole and (y) in the case of Properties other than Collateral Properties, as could not reasonably be expected to have a Material Adverse Effect.

(q) Investment Company. None of the Borrower, any other Loan Party or any other Subsidiary is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (ii) subject to any other Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

(r) Margin Stock. None of the Borrower, any other Loan Party or any other Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying "margin stock" within the meaning of Regulation U of the ~~Board of Governors of the Federal Reserve System~~ [FRB](#).

(s) Affiliate Transactions. Except as permitted by Section 9.4, 9.8 or 9.12 or as otherwise set forth on Schedule 6.1.(s), none of the Borrower, any other Loan Party or any other Subsidiary is a party to or bound by any agreement or arrangement with any Affiliate.

(t) Intellectual Property. Each of the Loan Parties and each other Subsidiary owns or has the right to use, under valid license agreements or otherwise, all patents, licenses, franchises, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights, trade secrets and copyrights (collectively, "Intellectual Property") necessary to the conduct of its businesses, without known conflict with any patent, license, franchise, trademark, trademark right, service mark, service mark right, trade secret, trade name, copyright, or other proprietary right of any other Person except for such Intellectual Property, the absence of which, and for conflicts which, could not reasonably be expected to

have a Material Adverse Effect. Each of the Loan Parties and each other Subsidiary has taken all such steps as it deems reasonably necessary to protect its respective rights under and with respect to such Intellectual Property. No material claim has been asserted by any Person with respect to the use of any such Intellectual Property by the Borrower, any other Loan Party or any other Subsidiary, or challenging or questioning the validity or effectiveness of any such Intellectual Property. The use of such Intellectual Property by the Borrower, the other Loan Parties and the other Subsidiaries does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, give rise to any liabilities on the part of the Borrower, any other Loan Party or any other Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(u) Business. As of the Agreement Date, the Borrower, its Subsidiaries and the other Loan Parties are engaged primarily in the business of the acquisition, financing (including mortgage financing), and ownership of Senior Housing Assets, medical office buildings and wellness centers, and other businesses activities incidental thereto.

(v) Broker's Fees. No broker's or finder's fee, commission or similar compensation will be payable with respect to the transactions contemplated hereby. No other similar fees or commissions will be payable by any Loan Party for any other services rendered to the Borrower, any other Loan Party or any other Subsidiary ancillary to the transactions contemplated hereby.

(w) Accuracy and Completeness of Information. All written information, reports and other papers and data (other than financial projections and other forward looking statements, and information of a general economic or industry specific nature) furnished to the Administrative Agent or any Lender by, on behalf of, or at the direction of, the Borrower, any other Loan Party or any other Subsidiary were, at the time the same were so furnished, taken as a whole, complete and correct in all material respects, to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, or, in the case of financial statements, present fairly, in accordance with GAAP consistently applied throughout the periods involved, the financial position of the Persons involved as at the date thereof and the results of operations for such periods (subject, as to interim statements, to changes resulting from normal year end audit adjustments and absence of full footnote disclosure). All financial projections and other forward looking statements prepared by or on behalf of the Borrower, any other Loan Party or any other Subsidiary that have been or may hereafter be made available to the Administrative Agent or any Lender were or will be prepared in good faith based on reasonable assumptions. No fact is known to any Loan Party which has had, or may in the future have (so far as any Loan Party can reasonably foresee), a Material Adverse Effect which has not been set forth in the financial statements referred to in Section 6.1.(k) or in such information, reports or other papers or data or otherwise disclosed in writing to the Administrative Agent and the Lenders or in the public domain. No document furnished or written statement made to the Administrative Agent or any Lender in connection with the negotiation, preparation or execution of, or pursuant to, this Agreement or any of the other Loan Documents contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained therein not misleading.

(x) Not Plan Assets; No Prohibited Transactions. None of the assets of the Borrower, any other Loan Party or any other Subsidiary constitutes "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder. Assuming that no Lender funds any amount payable by it hereunder with "plan assets," as that term is defined in 29 C.F.R. 2510.3-101, the execution, delivery and performance of this Agreement and the other Loan Documents, and the extensions of credit and repayment of amounts hereunder, do not and will not constitute "prohibited transactions" under ERISA or the Internal Revenue Code.

(y) Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(i) None of (i) the Borrower, any other Loan Party, any Subsidiary, any of their respective directors, officers, employees or, to the knowledge of the Borrower, any Affiliates, or (ii) to the knowledge of the Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from this Agreement, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) is controlled by or is acting on behalf of a Sanctioned Person, (C) has its assets located in a Sanctioned Country, (D) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, or (E) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons.

(ii) Each of the Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, agents and, to the knowledge of the Borrower, any Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(iii) Each of the Borrower and its Subsidiaries, each director, officer, employee, agent and, to the knowledge of the Borrower, any Affiliate of Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all respects and applicable Sanctions.

(iv) No proceeds of any Loans have been used, directly or indirectly, by the Borrower, any of its Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 9.11(b).

(z) Unencumbered Assets. As of the Second Amendment Effective Date, Schedule 6.1.(z) sets forth a correct and complete list of all Unencumbered Assets.

(aa) Beneficial Ownership Certification. As of the Second Amendment Effective Date, all information included in the Beneficial Ownership Certification is true and correct to the knowledge of the officer of the Borrower that executes such certification.

(bb) Affected Financial Institutions. None of the Borrower or any of its Subsidiaries is an Affected Financial Institution.

(cc) Security Interests. Each of the Security Documents creates, or when executed and delivered hereunder, will create, as security for the Pari Passu Guaranteed Obligations, a valid and enforceable Lien on all of the Collateral granted pursuant thereto, superior to and prior to the rights of all third Persons (other than the rights of third Persons under Permitted Liens of the types described in clauses (a)(x) (solely to the extent constituting inchoate Liens for taxes not yet delinquent), (c), (g), (i) and (j) of the definition of that term), in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations.

(dd) Collateral Properties.

(i) Eligibility. Each Collateral Property is an Eligible Property.

(ii) Americans with Disabilities Act Compliance. To each Loan Party's knowledge, the Collateral Properties comply with the requirements and regulations of the Americans with Disabilities Act, of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101, et seq., in all material respects.

(iii) Property Agreements. The Borrower and each applicable Loan Party have delivered to the Administrative Agent true, correct and complete copies of the Property Management Agreement and each other management agreement (if any) for each Collateral Property. To each Loan Party's knowledge, as of the Second Amendment Effective Date, the Property Management Agreement and each other management agreement (if any) for each Collateral Property is in full force and effect, has not been amended or modified, and there are no defaults or events of default thereunder. Except for the Property Management Agreement and any other such management agreement delivered to the Administrative Agent, no agreements exist which are binding on any of the Loan Parties relating to the management of any of the Collateral Properties.

(iv) Certificate of Occupancy; Licenses. To each Loan Party's knowledge, all material certificates, permits, licenses and approvals, including certificates of completion and occupancy permits, required for the legal use, occupancy and operation of each Collateral Property (excluding, however, certificates of occupancy for tenant spaces and improvements) have been obtained and are in full force and effect. The Borrower shall cause all such material certificates, permits, licenses and approvals to be maintained in full force and effect. The use being made of each Collateral Property is in conformity with all material certificates, permits, licenses and approvals issued for and currently applicable to each Collateral Property.

(v) Physical Condition. To the knowledge of the Borrower, (a) each Collateral Property (including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, as applicable) is in good condition, order and repair in all material respects, subject to ordinary wear and tear; and (b) there exist no structural or other material defects in or damage to any Collateral Property, whether latent or otherwise. No Loan Party has received or has any knowledge of: (i) any written notice from any insurance company or bonding company of any defects or inadequacies in any Collateral Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon; or (ii) any written notice of any termination or threatened termination of any policy of insurance or bond.

(vi) Boundaries. (A) All of the improvements at each Collateral Property lie wholly within the boundaries and building restriction lines of such Collateral Property, and no improvements on adjoining properties encroach upon any Collateral Property, except, in each case, where such encroachment of an improvement does not and will not have an adverse effect on the use, operation or value of such Collateral Property and, with respect to any such encroachment of an improvement from a Collateral Property onto an adjoining property, for which affirmative coverage has been provided in the applicable Title Policy, and (B) no improvements encroach, in any material respect, upon or violate, in any material respect, any easements or other encumbrances upon any Collateral Property, except those for which affirmative coverage has been provided in the applicable Title Policy.

(vii) Flood Zone. Except as set forth on Schedule 6.1.(ee) (as such schedule may be supplemented from time to time by the Administrative Agent in its sole discretion without the

consent of any other Person), as of the date that a Security Instrument is delivered for any Collateral Property, no portion of such Collateral Property will be located in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

(viii) **Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes, personal property taxes or other amounts in the nature of transfer or debt taxes required to be paid under applicable law in connection with the transfer of or debt on the Collateral Properties prior to the Second Amendment Effective Date, if any, have been paid. Any mortgage or deed of trust recording, stamp, intangible, personal property or other similar taxes required to be paid under applicable law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Documents, were paid substantially concurrently with any Property becoming a Collateral Property, as applicable. All taxes and governmental assessments due and owing in respect of the Collateral Properties have been paid prior to delinquency.

(ix) **Property Information.** (A) To the knowledge of Borrower, the Collateral Properties include sufficient on-site parking to comply with Applicable Law; (B) the Collateral Properties currently abut completed and dedicated public thoroughfares or otherwise benefit from recorded and insurable easements sufficient to provide access (both ingress and egress) to and from the Collateral Properties and such dedicated public thoroughfares; and (C) to the knowledge of Borrower, no archaeological ruins, discoveries or specimens, or cemeteries exist on any Collateral Property.

(x) **Brokers.** No agreements exist which are binding on any of the Loan Parties relating to the future leasing of such rentable spaces within the Collateral Properties by brokers or other similar agents other than those such agreements which are terminable upon no more than thirty (30) days' notice.

(xi) **Parking.** No agreements exist which are binding on any of the Loan Parties relating to the rights of tenants at the Collateral Properties to park at locations other than at the Collateral Properties, except to the extent through recorded and insurable easements appurtenant to such Collateral Properties.

(ee) **Flood Hazard Insurance.** With respect to each Collateral Property as to which a Security Instrument has been delivered, the Administrative Agent has received (a) such flood hazard certifications, notices and confirmations thereof, and effective flood hazard insurance policies as described in Annex I, (b) all flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full, and (c) except as the Borrower has previously given written notice thereof to the Administrative Agent, there has been no redesignation of any Collateral Property into or out of a special flood hazard area.

Section 6.2. Survival of Representations and Warranties, Etc.

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party or any other Subsidiary to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents (including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Agreement Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Borrower under this Agreement. All representations and warranties made under

this Agreement and the other Loan Documents shall be deemed to be made at and as of the Agreement Date, the Effective Date, the date on which any extension of the Termination Date is effectuated pursuant to Section 2.12., the date on which any Collateral Property Addition is effectuated pursuant to Section 7.15(a), the date on which the Security Instrument with respect to any Initial Collateral Property is delivered to the Administrative Agent, and at and as of the date of the occurrence of each Credit Event, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances expressly and specifically permitted hereunder. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans and the issuance of the Letters of Credit.

ARTICLE VII. AFFIRMATIVE COVENANTS

For so long as this Agreement is in effect, the Borrower shall comply with the following covenants:

Section 7.1. Preservation of Existence and Similar Matters.

Except as otherwise permitted under Section 9.4., the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, preserve and maintain its respective existence, rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation and qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization and where the failure to be so authorized and qualified could reasonably be expected to have a Material Adverse Effect.

Section 7.2. Compliance with Applicable Law and Material Contracts; Beneficial Ownership Regulation.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, comply with (a) all Applicable Law, including the obtaining of all Governmental Approvals, the failure with which to comply could reasonably be expected to have a Material Adverse Effect and (b) all terms and conditions of all Material Contracts to which it is a party. The Borrower shall maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions. Borrower will (x) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification (or a certification that the Borrower qualifies for an express exclusion to the “legal entity customer” definition under the Beneficial Ownership Regulation) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein (or, if applicable, the Borrower ceasing to fall within an express exclusion to the definition of “legal entity customer” under the Beneficial Ownership Regulation) and (y) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

Section 7.3. Maintenance of Property.

In addition to the requirements of any of the other Loan Documents, the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (a) protect and preserve, or cause to be

protected and preserved, all of its respective material properties, including, but not limited to, all Intellectual Property necessary to the conduct of its respective business, and maintain, or cause to be maintained, in good repair, working order and condition all tangible properties, ordinary wear and tear excepted, and (b) from time to time make or cause to be made all needed and appropriate repairs, renewals, replacements and additions to such properties, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

Section 7.4. Conduct of Business.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, carry on its respective businesses as described in Section 6.1.(u).

Section 7.5. Insurance.

(a) In addition to the requirements of any of the other Loan Documents, the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain, or cause to be maintained, insurance (on a replacement cost basis) with financially sound and reputable insurance companies against such risks and in such amounts as is customarily maintained by Persons engaged in similar businesses or as may be required by Applicable Law. The Borrower shall from time to time deliver to the Administrative Agent upon request a detailed list, together with copies of all policies of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

(b) In addition to, and not in limitation of, the foregoing, the Borrower shall or shall cause each Guarantor owning a Collateral Property to maintain such additional insurance with respect to such Collateral Property as the Administrative Agent may reasonably require from time to time, including, without limitation, flood insurance coverage (including contents coverage, as applicable). All insurance policies shall be in amounts and have deductibles, limits and retentions as reasonably required by the Administrative Agent. All insurance policies shall be issued and maintained by insurers approved to do business in the jurisdiction in which the applicable Property is located and must have an A.M. Best Company financial rating and policyholder surplus acceptable to the Administrative Agent. The Borrower shall from time to time deliver to the Administrative Agent upon request a detailed list, together with copies of all policies of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby and insurance certificates, in each such case, in form acceptable to the Administrative Agent, providing that the insurance coverage required under this Section 7.5, is in full force and effect and stating that coverage shall not be cancelable or materially changed without ten (10) days prior written notice to the Administrative Agent of any cancellation for nonpayment of premiums, and not less than thirty (30) days prior written notice to the Administrative Agent of any other cancellation or any modification (including a reduction in coverage), together with appropriate evidence that the Collateral Agent, for the benefit of the holders of Pari Passu Guaranteed Obligations, is named as mortgagee lender's loss payee on each property casualty insurance policy and additional insured on all other insurance policies (in each such case, pursuant to endorsements acceptable to the Administrative Agent) that the Borrower or any Loan Party actually maintains with respect to any Collateral Property and improvements on such Property.

Section 7.6. Payment of Taxes and Claims.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, pay and discharge, or cause to be paid and discharged, when due (a) all federal and state income, and all other material taxes, assessments and governmental charges or levies imposed upon it or upon its income or

profits or upon any properties belonging to it, and (b) all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, might become a Lien on any properties of such Person; provided, however, that this Section shall not require the payment or discharge of any such tax, assessment, charge, levy or claim which is being contested in good faith by appropriate proceedings which operate to suspend the collection thereof and for which adequate reserves have been established on the books of such Person in accordance with GAAP.

Section 7.7. Books and Records; Inspections.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary 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 in accordance with GAAP and Applicable Law. The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, permit representatives of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (in the presence of an officer of the Borrower if an Event of Default does not then exist), all at such reasonable times during business hours and as often as may reasonably be requested and so long as no Event of Default exists, with reasonable prior notice. The Borrower shall be obligated to reimburse the Administrative Agent and the Lenders for their costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while a Default or Event of Default exists. If requested by the Administrative Agent, the Borrower shall execute an authorization letter addressed to its accountants authorizing the Administrative Agent or any Lender to discuss the financial affairs of the Borrower, any other Loan Party or any other Subsidiary with the Borrower's accountants.

Section 7.8. Use of Proceeds.

The Borrower will use the proceeds of the Loans only for the repayment of Indebtedness, the direct or indirect acquisition of properties, working capital and for other general business purposes.

Section 7.9. Environmental Matters.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, comply, or cause to be complied, in all material respects with all Environmental Laws with respect to all Properties. The Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary to comply, and the Borrower shall use, and shall cause each other Loan Party and each other Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply with all Environmental Laws with respect to the Properties and each Collateral Property the failure with which to comply could reasonably be expected to have a Material Adverse Effect with respect thereto. The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions and pay or arrange to pay all costs necessary for it and for the Properties to comply in all material respects with all Environmental Laws and all Governmental

Approvals, including actions to remove and dispose of all Hazardous Materials and to clean up the Properties as required under Environmental Laws. The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take, or cause to be taken, all actions necessary to prevent the imposition of any Liens on any of their respective properties arising out of or related to any Environmental Laws. Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

Section 7.10. Further Assurances.

At the Borrower's cost and expense and upon request of the Administrative Agent, the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (i) duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents, and (ii) take such additional actions and execute such documents as the Administrative Agent or the Collateral Agent may reasonably require from time to time in order to perfect and maintain the validity, effectiveness and (to the extent required hereby) priority of the Pledge Agreement, any of the Security Instruments, the other Security Documents, and the Liens intended to be created by any of the foregoing.

Section 7.11. REIT Status.

The Borrower shall maintain its status as, and election to be treated as, a REIT under the Internal Revenue Code.

Section 7.12. Exchange Listing.

The Borrower shall maintain at least one class of common shares of the Borrower having trading privileges on the New York Stock Exchange or the NYSE MKT LLC Exchange or which is subject to price quotations on The NASDAQ Stock Market's National Market System.

Section 7.13. Guarantors.

(a) Within 10 days after the date on which any of the following conditions first applies to any Subsidiary that is not already a Guarantor, the Borrower shall deliver to the Administrative Agent each of the following in form and substance satisfactory to the Administrative Agent: (i) an Accession Agreement executed by such Subsidiary (or if the Guaranty is not then in existence, a Guaranty executed by such Subsidiary), (ii) a Joinder (as defined in the Intercreditor Agreement) executed by such Subsidiary (if applicable), and (iii) the items that would have been delivered under subsections (iv) through (viii), (x) and (xiv) of Section 5.1.(a) and Section 5.1.(b)(iv) if such Subsidiary had been required to be a Guarantor on the Agreement Date:

(x) such Subsidiary Guarantees, or otherwise becomes obligated in respect of, any Indebtedness of the Borrower or any other Subsidiary of the Borrower; provided, that a Subsidiary shall not be required to become a Guarantor under this clause (x) if such Subsidiary is an Excluded Subsidiary that has Guaranteed, or otherwise become obligated in respect of, any Indebtedness of another Excluded Subsidiary; or

(y) such Subsidiary owns a Collateral Property or a Collateral Property Addition that has been approved to be a Collateral Property.

(b) The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release, a Guarantor from the Guaranty so long as: (i) either (A) simultaneously with its release from the Guaranty such Subsidiary will cease to be a Subsidiary or (B) such Guarantor is not otherwise required to be a party to the Guaranty under the immediately preceding subsection (a); (ii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 9.1.; (iii) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such release with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects)) and except for changes in factual circumstances expressly permitted under the Loan Documents; (iv) such Guarantor owns no Collateral Property (as such term is defined hereunder and under the Existing Term Loan Agreement) and the Liens of each Security Document (other than the Pledge Agreement, if applicable) granted by such Guarantor have been released in accordance with Section 7.15(b); and (v) the Administrative Agent shall have received such written request at least 10 Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request. Notwithstanding anything herein to the contrary, upon and after the Second Amendment Effective Date, no Guarantor that owns a Collateral Property shall be subject to release pursuant to this Section 7.13(b) (regardless of whether or not the Initial Mortgage Collateral Requirement has been satisfied).

Section 7.14. Equity Pledges.

(a) Initial Delivery of Pledged Collateral. Within 10 Business Days following the Second Amendment Effective Date or such later date acceptable to Administrative Agent, the Borrower shall deliver or cause to be delivered to the Collateral Agent the following each in form and substance reasonably acceptable to the Administrative Agent: (i) each certificate or other instrument in respect of the Pledged Interests, in the manner required under the Pledge Agreement, duly indorsed by such Pledgor to the Collateral Agent, together with an undated stock power covering such certificate (or other appropriate instrument of transfer) duly executed, in blank, by such Pledgor and countersigned by the issuer thereof, (ii) such other schedules, supplements, instruments, certificates, or information in connection therewith as required by the Pledge Agreement or as reasonably requested by the Administrative Agent and (iii) a legal opinion issued by a law firm reasonably acceptable to the Administrative Agent covering the creation and perfection of the security interest in the Pledged Interests upon indorsement and delivery to the Collateral Agent of such certificates or other instruments.

(b) Equity Pledge Requirement.

(i) Subject to Section 7.14(c) below, at all times on and after the Second Amendment Effective Date, the Pari Passu Guaranteed Obligations shall be secured equally and ratably by the Pledged Interests.

(ii) In connection with any Collateral Property Addition, in addition to the requirements set forth in Section 7.15(a), the Administrative Agent may require that the Equity Interests issued by the Subsidiary owning such additional Collateral Property be pledged to the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations. If so requested by the Administrative Agent, the Borrower shall promptly deliver to the Administrative Agent each of the following in form and substance satisfactory to the Administrative Agent: (i) a supplement to the Pledge Agreement executed by each Person that owns any such Equity Interests that are to become Pledged Interests, (ii) a Joinder (as defined in the Intercreditor Agreement) executed by each such Person, and (iii) such other schedules, supplements, instruments, certificates, or information in connection therewith as required by the Pledge Agreement (as though such Equity Interests were subject thereto on the Second Amendment Effective Date) or as reasonably requested by the Administrative Agent.

(c) Release of Certain Pledged Interests. In connection with a Property Release, the Borrower may request in writing that the Administrative Agent direct the Collateral Agent to release, and upon receipt of such request the Administrative Agent shall, pursuant to the terms of the Intercreditor Agreement, direct the Collateral Agent to release, the Lien in favor of the Collateral Agent on any Pledged Interests so long as: (i) no Default or Event of Default has occurred and is continuing or would occur as a result of such release, (ii) such Property Release is effected in accordance with Section 7.15(b) and all conditions set forth therein shall have been satisfied to the satisfaction of the Administrative Agent, (iii) the issuer of such Pledged Interest owns no Collateral Property, (iv) the conditions to such release set forth in Section 7.14(c) of the Existing Term Loan Agreement shall have been, or concurrently with the effectiveness of such release hereunder will be, satisfied or waived in accordance with the terms of the Existing Term Loan Agreement, and (v) the Administrative Agent shall have received such written request at least 10 Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of such request and as of the date of such release) are true and correct with respect to such request.

(d) No Liens or Negative Pledges. Neither the Pledged Interests nor any asset owned by the issuer of such Pledged Interest nor any direct or indirect interest of Borrower in such issuer shall be subject to any Lien (other than Permitted Liens of the types described in clauses (a)(x) and (i) of the definition thereof) or Negative Pledge, other than Negative Pledges permitted pursuant to Section 9.2.(b)(iii) and Section 9.2.(b)(iv).

(e) Security Interests. The Borrower represents, warrants and covenants that the Pledge Agreement creates as security for the Pari Passu Guaranteed Obligations a valid and enforceable Lien on all of the Collateral granted pursuant thereto in favor of the Collateral Agent for the benefit of the holders of Pari Passu Guaranteed Obligations, superior to and prior to the rights of all third parties.

(f) Other Indebtedness. Borrower represents, warrants and covenants that (i) no Indebtedness of the Borrower or its Subsidiaries prohibits or shall prohibit the Liens now or hereafter granted to the Collateral Agent, for the benefit of the holders of Pari Passu Guaranteed Obligations, in the Pledged Interests and (ii) none of the issuers of the Pledged Interests is or shall be required to be a Guarantor pursuant to Section 7.13(a)(x) (provided that, solely for purposes of this Section 7.14(f)(ii), the Guarantee obligations of any such issuer as a "Guarantor" under the Term Loan Documents shall be disregarded).

(g) Required Consents. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the consent of all Lenders and all Term Lenders shall be

required to (i) release any of the Collateral granted pursuant to the Pledge Agreement (except for releases thereof expressly permitted under or contemplated by this Agreement or the Pledge Agreement), (ii) subordinate any Lien granted to the Collateral Agent, for the benefit of the holders of Pari Passu Guaranteed Obligations, in any Pledged Interests, or (iii) permit any of the Collateral granted pursuant to the Pledge Agreement to secure any obligations other than the Pari Passu Guaranteed Obligations.

Section 7.15. Collateral Properties.

(a) Addition of Collateral Properties. If the Borrower desires to include any additional Property as a Collateral Property (each such addition, a “**Collateral Property Addition**”), then the Borrower shall so notify the Administrative Agent in writing (and the Administrative Agent shall promptly notify the Lenders thereof). No Property may become a Collateral Property unless it is an Eligible Property and unless and until each of the following conditions is satisfied or waived by the Administrative Agent in writing:

- (i) the Administrative Agent shall have approved such Collateral Property Addition;
- (ii) the Borrower shall have delivered to the Administrative Agent each of the following in form and substance satisfactory to the Administrative Agent:
 - (A) each of the items set forth on Annex I (or, if applicable, updates to such items), unless such item has been waived by the Administrative Agent in writing; *provided* that any such items requiring delivery of Security Documents that the Administrative Agent determines to be applicable, a Title Policy, flood hazard determinations or, to the extent applicable, evidence of flood insurance coverage as required by the Administrative Agent shall not be waived without the written consent of the Requisite Lenders;
 - (B) all of the items required to be delivered to the Administrative Agent under Section 7.13(a). (including, without limitation, a Joinder (as defined in the Intercreditor Agreement) executed by such Subsidiary) if not previously delivered unless such property is owned by a Subsidiary of the Borrower that is, at such time, a Guarantor and then only to the extent required by the Administrative Agent;
 - (C) if and to the extent required by the Administrative Agent, the items required to be delivered to the Administrative Agent under Section 7.14(b)(ii); and
 - (D) such other items or documents as may be appropriate under the circumstances or as the Administrative Agent may reasonably request; and
- (iii) the conditions to such Collateral Property Addition set forth in Section 7.15(a) of the Existing Term Loan Agreement shall have been, or concurrently with the effectiveness of such Collateral Property Addition hereunder will be, satisfied or waived in accordance with the terms of the Existing Term Loan Agreement.

(b) Borrower Requests for Property Releases. From time to time the Borrower may request that any Collateral Property be released from the Security Documents, and the Liens created thereby to the extent applicable to such Property and related Collateral, in connection with (i) a Qualified Collateral Property Sale, (ii) a permanent reduction of the Commitments in accordance with Section 2.11 or a repayment of Term Loans in accordance with the terms of the Existing Term Loan Agreement, or (iii)

such Property being excluded from Collateral Property Eligibility under Section 7.15(c), in each case, which release (the “**Property Release**”) shall be subject to the satisfaction of the following conditions:

(i) Upon giving effect to such Property Release, (A) the Net Collateral Property Availability shall be equal to or greater than \$600,000,000 and (B) the remaining Collateral Property Availability shall not be less than the sum of (1) the aggregate Commitments, plus (2) the outstanding principal amount of Term Loans (in each case, giving effect to any reduction in Commitments and/or repayment of Term Loans occurring in connection therewith, if applicable);

(ii) No Default or Event of Default has occurred and is continuing or would occur as a result of such Property Release;

(iii) All representations and warranties in the Loan Documents are true and accurate in all material respects (except that, to the extent any representation or warranty is qualified by materiality or Material Adverse Effect or similar language, such representation or warranty shall be true and correct in all respects) at the time of such Property Release and immediately after giving effect to such Property Release, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except that, to the extent any such representation or warranty is qualified by materiality or Material Adverse Effect or similar language, such representation or warranty shall have been true and correct in all respects) on and as of such earlier date);

(iv) Any prepayment to be made in accordance with Section 2.7(b)(iv) shall have been made or shall be made substantially concurrently with such Property Release pursuant to an escrow arrangement acceptable to the Administrative Agent;

(v) The conditions to such Property Release set forth in Section 7.15(b) of the Existing Term Loan Agreement shall have been, or concurrently with the effectiveness of such Property Release hereunder will be, satisfied or waived in accordance with the terms of the Existing Term Loan Agreement; and

(vi) The Administrative Agent shall have received such written request at least ten (10) Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release.

Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the foregoing conditions (both as of the date of such request and as of the date of such release) are true and correct with respect to such Property Release.

(c) Ineligibility of Properties. A Property shall be excluded from the calculation of Collateral Property Availability if, at any time: (i) such Property fails to qualify as an Eligible Property, and such failure is not cured within thirty (30) days after the Borrower obtains knowledge of such failure, (ii) the Collateral Agent shall cease to hold a valid and perfected first priority mortgage, deed of trust or deed to secure debt, as applicable, Lien in such Property, or (iii) there shall have occurred and be continuing a default (after giving effect to any applicable cure period) under any Security Document relating to such Property. Such Property shall not be released from the Liens of the applicable Security Instruments unless the requirements of Section 7.15(b) are satisfied with respect thereto. Upon the occurrence of any such event or circumstance described in the foregoing clause (i), (ii) or (iii), Collateral Property Availability shall be recalculated excluding such ineligible Property.

(d) Continuity of Liens. Except as set forth in Section 7.15(b), no Collateral Property shall be released from the Liens created by the Security Documents applicable thereto.

(e) Frequency of Appraisals. The As-Is Appraised Value of a Collateral Property shall be determined or redetermined, as applicable, pursuant to Appraisals conducted under each of the following circumstances:

(i) In connection with the proposal of a Property as a Collateral Property pursuant to Section 7.15(a), which shall include, without limitation, in connection with the initial encumbrance of the Initial Collateral Properties with Security Instruments;

(ii) If any Default or Event of Default exists, upon written request from the Administrative Agent to the Borrower;

(iii) If necessary in order to comply with FIRREA, other Applicable Law or the requirements of any Governmental Authority relating to the Administrative Agent or any of the Lenders; and

(iv) Upon written request from the Administrative Agent to the Borrower, not more than once every 12 months with respect to each Collateral Property.

All Appraisals shall be engaged by the Administrative Agent at the Borrower's expense and shall be subject to satisfactory review and approval of the Administrative Agent. Notwithstanding anything to the contrary herein, each Lender may conduct Appraisals of any Collateral Property at any time at such Lender's expense; provided that, for the avoidance of doubt, such Appraisal shall not be used in determining or redetermining the As-Is Appraised Value of a Collateral Property.

(f) MIRE Events. Notwithstanding anything to the contrary set forth herein, no MIRE Event may be closed until the date that is (a) if there are no Collateral Properties in a "special flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), twenty (20) days or (b) if there are any Collateral Properties in a "special flood hazard area", sixty (60) days, after the Administrative Agent has delivered to the Lenders the following documents in respect of such Property: (i) a completed flood hazard determination from a third party vendor; (ii) if such Property is located in a "special flood hazard area", (A) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Loan Parties of such notice; and (iii) if required by applicable Flood Laws, evidence of required flood insurance with respect to which flood insurance has been made available under applicable Flood Laws; provided that any such MIRE Event may be closed prior to such period expiring if the Administrative Agent shall have received confirmation from each Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

(g) Real Property Collateral. Notwithstanding anything to the contrary in the Loan Documents, it is the intention of the parties hereto that (i) each Security Instrument and each other Security Document with respect to any Collateral Property creates as security for the Pari Passu Guaranteed Obligations a valid and enforceable Lien on all of the Collateral granted pursuant thereto in favor of the Collateral Agent, for the equal and ratable benefit of the holders of Pari Passu Guaranteed Obligations, superior to and prior to the rights of all third parties (other than the rights of third parties under Permitted Liens of the types described in clauses (a)(x) (solely to the extent constituting inchoate Liens for taxes not yet delinquent), (c), (g), (i) and (j) of the definition of that term), and (ii) the Obligations of the Borrower and the "Guaranteed Obligations" (as defined in the Guaranty) of any

Guarantor that is not a direct owner of a Collateral Property, in each such case, under the Loan Documents shall not be directly secured by any real property interest whatsoever.

(h) **Other Indebtedness.** Borrower represents, warrants and covenants that no Subsidiary owning a Collateral Property (i) has or shall incur, acquire or suffer to exist any Indebtedness other than Nonrecourse Indebtedness in respect of which recourse is contractually limited to assets of such Subsidiary other than any Collateral Property (other than obligations in respect of Indebtedness under the Loan Documents and the Term Loan Documents), or (ii) is or shall become obligated in respect of any Indebtedness of the Borrower or any other Subsidiary (other than obligations in respect of Indebtedness under the Loan Documents and the Term Loan Documents (excluding, for the avoidance of doubt, any refinancing or replacement of any of the foregoing) in its capacity as a Guarantor hereunder).

(i) **Required Consents.** Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the consent of all Lenders and all Term Lenders shall be required to (i) release any Loan Party from its obligations under any Security Document (except as contemplated by Section 7.14(c) or 7.15(b)), (ii) release or dispose of any Collateral Property, or all or substantially all of the value of any other Collateral unless released or disposed of as permitted by, and in accordance with, Section 11.3., Section 11.10(b), Section 7.14(c) or Section 7.15(b), or (iii) permit the Collateral to secure any Indebtedness other than the Pari Passu Guaranteed Obligations, as applicable.

ARTICLE VIII. INFORMATION

For so long as this Agreement is in effect, the Borrower shall furnish to the Administrative Agent for distribution to each of the Lenders:

Section 8.1. Quarterly Financial Statements.

As soon as available and in any event within 5 days after the same is filed with the Securities and Exchange Commission (but in no event later than 45 days after the close of each of the first, second and third fiscal quarters of the Borrower) commencing with the fiscal quarter ending June 30, 2017, the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such period and the related unaudited consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such period, setting forth in each case in comparative form the figures as of the end of and for the corresponding periods of the previous fiscal year, all of which shall be certified by the chief financial officer or chief accounting officer of the Borrower, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as at the date thereof and the results of operations for such period (subject to normal year-end audit adjustments). Together with such financial statements, the Borrower shall deliver reports, in form and detail satisfactory to the Administrative Agent, setting forth: (a) a statement of Funds From Operations for the fiscal quarter then ending; (b) a listing of capital expenditures made during the fiscal quarter then ended; and (c) a listing of all Properties acquired during such fiscal quarter, including the net operating income of each such Property, acquisition costs and related mortgage debt, if any.

Section 8.2. Year-End Statements.

As soon as available and in any event within 5 days after the same is filed with the Securities and Exchange Commission (but in no event later than 90 days after the end of each fiscal year of the Borrower), the audited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, setting forth in comparative form the

figures as at the end of and for the previous fiscal year, all of which shall be (a) certified by the chief financial officer or chief accounting officer of the Borrower, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of the Borrower and its Subsidiaries as at the date thereof and the result of operations for such period and (b) accompanied by the report thereon of Deloitte or any other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent (it being acknowledged that any of Ernst & Young LLP, PricewaterhouseCoopers and KPMG shall be acceptable to the Administrative Agent), whose report shall not be subject to (i) any “going concern” or like qualification or exception or (ii) any qualification or exception as to the scope of such audit. Together with such financial statements, the Borrower shall deliver a report, certified by the chief financial officer or chief accounting officer of Borrower, in form and detail reasonably satisfactory to the Administrative Agent, setting forth the Net Operating Income for each Property for such fiscal year.

Section 8.3. Compliance Certificate.

At the time the financial statements are furnished pursuant to the immediately preceding Sections 8.1. and 8.2., and within 5 Business Days of the Administrative Agent’s request with respect to any other fiscal period, (i) a certificate substantially in the form of Exhibit J (a “**Compliance Certificate**”) executed on behalf of the Borrower by the chief financial officer or chief accounting officer of the Borrower (a) setting forth in reasonable detail as of the end of such quarterly accounting period or fiscal year, as the case may be, the calculations required to establish whether the Borrower was in compliance with the covenants contained in Section 9.1.; and (b) stating that, to the best of his or her knowledge, information and belief after due inquiry, no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred and the steps being taken by the Borrower with respect to such event, condition or failure, (ii) if, at such time, the Initial Mortgage Collateral Requirement has not yet been satisfied, a certificate (an “**Unencumbered Asset Certificate**”) executed by the chief financial officer of the Borrower that: (a) sets forth a list of all assets that meet the requirements of the definition of “Unencumbered Assets”; and (b) certifies that all Unencumbered Assets so listed fully qualify as such under the applicable criteria for inclusion as an Unencumbered Asset, and (iii) a report in form and substance satisfactory to the Administrative Agent setting forth a list of the Collateral Properties and detailing all financial information maintained on the Collateral Properties, including, without limitation, trailing twelve (12) month Net Operating Income, GAAP undepreciated cost basis, property Net Operating Income projections, As-Is Appraised Values (to the extent available), operating statements, aggregate capital investments and maintenance capital expenditures for each Collateral Property made during such quarterly accounting period or fiscal year, as the case may be, and sales reports (including occupancy costs, to the extent available).

Section 8.4. Other Information.

(a) Promptly upon receipt thereof, copies of all material reports, if any, submitted to the Borrower or its Board of Trustees by its independent public accountants, and in any event, all management reports;

(b) Within five (5) Business Days of the filing thereof, copies of all registration statements (excluding the exhibits thereto (unless requested by the Administrative Agent) and any registration statements on Form S-8 or its equivalent), reports on Forms 10-K, 10-Q and 8-K (or their equivalents) and all other periodic reports which any Loan Party or any other Subsidiary shall file with the Securities and Exchange Commission (or any Governmental Authority substituted therefor) or any national securities exchange;

(c) Promptly upon the mailing thereof to the shareholders of the Borrower generally, copies of all financial statements, reports and proxy statements so mailed and promptly upon the issuance thereof copies of all press releases issued by the Borrower, any Subsidiary or any other Loan Party;

(d) If any ERISA Event shall occur that individually, or together with any other ERISA Event that has occurred, could reasonably be expected to have a Material Adverse Effect, a certificate of the chief executive officer or chief financial officer of the Borrower setting forth details as to such occurrence and the action, if any, which the Borrower or applicable member of the ERISA Group is required or proposes to take;

(e) To the extent any Loan Party or any other Subsidiary is aware of the same, prompt notice of the commencement of any proceeding or investigation by or before any Governmental Authority and any action or proceeding in any court or other tribunal or before any arbitrator against or in any other way relating adversely to, or adversely affecting, any Loan Party or any other Subsidiary or any of their respective properties, assets or businesses which could reasonably be expected to have a Material Adverse Effect;

(f) A copy of any amendment to the certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents of the Borrower or any other Loan Party promptly upon the Administrative Agent's request;

(g) Prompt notice of any change in the senior management of the Borrower, any other Loan Party or any other Subsidiary, and any change in the business, assets, liabilities, financial condition, results of operations or business prospects of any Loan Party or any other Subsidiary which has had, or could reasonably be expected to have, a Material Adverse Effect;

(h) Prompt notice of the occurrence of any of the following promptly upon a Responsible Officer obtaining knowledge thereof: (i) Default or Event of Default, (ii) "Default" or "Event of Default" under and as defined in the Existing Term Loan Agreement, or (iii) any event which constitutes or which with the passage of time, the giving of notice, or otherwise, would constitute a default or event of default by the Borrower, any Subsidiary or any other Loan Party under any Material Contract to which any such Person is a party or by which any such Person or any of its respective properties may be bound;

(i) Prompt notice of any order, judgment or decree in excess of \$10,000,000 having been entered against any Loan Party or any other Subsidiary or any of their respective properties or assets;

(j) Prompt notice if the Borrower, any Subsidiary or any other Loan Party shall receive any notification from any Governmental Authority alleging a violation of any Applicable Law or any inquiry which could reasonably be expected to have a Material Adverse Effect;

(k) [Intentionally Omitted];

(l) Promptly upon the request of the Administrative Agent, evidence of the Borrower's calculation of the Ownership Share with respect to a Subsidiary or an Unconsolidated Affiliate, such evidence to be in form and detail satisfactory to the Administrative Agent;

(m) Promptly, upon the Borrower becoming aware of any change in the Borrower's Credit Rating, a certificate stating that the Borrower's Credit Rating has changed and the new Credit Rating that is in effect;

(n) Promptly, upon each request, information identifying the Borrower as a Lender may request in order to comply with applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the Patriot Act;

(o) Promptly, and in any event within 3 Business Days after the Borrower obtains knowledge thereof, written notice of the occurrence of any of the following: (i) the Borrower, any Loan Party or any other Subsidiary shall receive notice that any violation of or noncompliance with any Environmental Law has or may have been committed or is threatened; (ii) the Borrower, any Loan Party or any other Subsidiary shall receive notice that any administrative or judicial complaint, order or petition has been filed or other proceeding has been initiated, or is about to be filed or initiated against any such Person alleging any violation of or noncompliance with any Environmental Law or requiring any such Person to take any action in connection with the release or threatened release of Hazardous Materials; (iii) the Borrower, any Loan Party or any other Subsidiary shall receive any notice from a Governmental Authority or private party alleging that any such Person may be liable or responsible for any costs associated with a response to, or remediation or cleanup of, a release or threatened release of Hazardous Materials or any damages caused thereby; or (iv) the Borrower, any Loan Party or any other Subsidiary shall receive notice of any other fact, circumstance or condition that could reasonably be expected to form the basis of an environmental claim, in each of the cases described in the preceding clauses (i) through (iv), with respect to the Collateral Properties, in any material respect, and with respect to the Properties that are not Collateral Properties, where the matters covered by such notice(s) under the preceding clauses (i) through (iv), whether individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(p) Promptly, and in any event within three (3) Business Days after the Borrower obtains knowledge thereof, any Collateral Property failing to comply with the requirements for being an Eligible Property; and

(q) From time to time and promptly upon each request, such data, certificates, reports, statements, opinions of counsel, documents or further information regarding any Property or the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrower, any of its Subsidiaries, or any other Loan Party as the Administrative Agent or any Lender may reasonably request.

Section 8.5. Electronic Delivery of Certain Information.

(a) Documents required to be delivered pursuant to the Loan Documents shall be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website such as www.Edgar.com <<http://www.Edgar.com>> or a website sponsored or hosted by the Administrative Agent or the Borrower) provided that the foregoing shall not apply to (i) notices to any Lender (or any Issuing Bank) pursuant to Article II. and (ii) any Lender that has notified the Administrative Agent and the Borrower that it cannot or does not want to receive electronic communications. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically (other than by e-mail) shall be deemed to have been delivered (A) with respect to deliveries made pursuant to Sections 8.1., 8.2., 8.4.(b) and 8.4.(c) by proper filing with the Securities and Exchange Commission and available on www.sec.gov, on the date of filing thereof and (B) with respect to all other electronic deliveries (other than deliveries made by e-mail), twenty-four (24) hours after the date and time on which the Administrative Agent or the Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or the Borrower notifies each Lender of said posting and the Borrower notifies

Administrative Agent of said posting by causing an e-mail notification to be sent to an e-mail address specified from time to time by the Administrative Agent and provides a link thereto provided (x) if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 10:00 a.m. Eastern time on the next business day for the recipient and (y) if the deemed time of delivery occurs on a day that is not a business day for the recipient, the deemed time of delivery shall be 10:00 a.m. Eastern time on the next business day for the recipient. Notwithstanding anything contained herein, the Borrower shall deliver paper copies of any documents to the Administrative Agent or to any Lender that requests such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

(b) Documents required to be delivered pursuant to Article II. may be delivered electronically to a website provided for such purpose by the Administrative Agent pursuant to the procedures provided to the Borrower by the Administrative Agent.

Section 8.6. Public/Private Information.

The Borrower shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Borrower. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Borrower to the Administrative Agent and the Lenders (collectively, "Information Materials") pursuant to this Article and the Borrower shall designate Information Materials (a) that are either available to the public or not material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as "Public Information" and (b) that are not Public Information as "Private Information".

Section 8.7. USA Patriot Act Notice; Compliance.

The Patriot Act and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, a Lender (for itself and/or as agent for all Lenders hereunder) may from time-to-time request, and the Borrower shall, and shall cause the other Loan Parties to, provide promptly upon any such request to such Lender, such Loan Party's name, address, tax identification number and/or such other identification information as shall be necessary for such Lender to comply with federal law. An "account" for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

ARTICLE IX. NEGATIVE COVENANTS

For so long as this Agreement is in effect, the Borrower shall comply with the following covenants:

Section 9.1. Financial Covenants.

(a) Leverage Ratio. The Borrower shall not permit the ratio of (x) Total Indebtedness to (y) Total Asset Value to exceed 0.70 to 1.00 at any time; provided, however, that if such ratio is greater than 0.70 to 1.00 but is not greater than 0.75 to 1.00, then the Borrower shall be deemed to be in

compliance with this subsection (a) so long as (A) the Borrower has not previously maintained compliance with this subsection (a) in reliance on this proviso two times and (B) such ratio is not greater than 0.75 to 1.00 at any time.

(b) Minimum Fixed Charge Coverage Ratio. The Borrower shall not permit the ratio of (i) Adjusted EBITDA for the applicable test period most recently ending to (ii) Fixed Charges for such period, to be less than 1.25 to 1.00 at any time.

(c) Secured Indebtedness. The Borrower shall not permit the ratio of (i) Secured Indebtedness of the Borrower and its Subsidiaries to (ii) Total Asset Value to be greater than 0.40 to 1.00 at any time.

(d) [Intentionally Omitted.]

(e) [Intentionally Omitted.]

(f) Minimum Liquidity. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Borrower shall at all times maintain Liquidity of not less than \$200,000,000.

(g) Dividends and Other Restricted Payments. Subject to the following sentence, if an Event of Default exists, the Borrower shall not, and shall not permit any of its Subsidiaries to, declare or make any Restricted Payments except that the Borrower may declare and make cash distributions to its shareholders in an aggregate amount not to exceed the minimum amount necessary for the Borrower to remain in compliance with Section 7.11. and to avoid the imposition of income or excise taxes imposed under Sections 857(b)(1), 857(b)(3) and 4981 of the Internal Revenue Code, and Subsidiaries may pay Restricted Payments to the Borrower or any other Subsidiary. If an Event of Default specified in Section 10.1.(a), Section 10.1.(e) or Section 10.1.(f) shall exist, or if as a result of the occurrence of any other Event of Default any of the Obligations have been accelerated pursuant to Section 10.2.(a), the Borrower shall not, and shall not permit any Subsidiary to, make any Restricted Payments to any Person except that Subsidiaries may pay Restricted Payments to the Borrower or any other Subsidiary and, in the case of SNH Innovation LLC or any other non-Wholly Owned Subsidiary, to each other owner of Equity Interests of SNH Innovation LLC or such other non-Wholly Owned Subsidiary pro rata based on the relative ownership interests or as otherwise required by the terms of the organizational documents of SNH Innovation LLC or such other non-Wholly Owned Subsidiary.

(h) Total Unencumbered Assets. The Borrower shall at all times maintain Total Unencumbered Assets of not less than 150% of the aggregate outstanding principal amount of the Unsecured Debt of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

(i) Minimum Net Collateral Property Availability. Following the satisfaction of the Initial Mortgage Collateral Requirement, the Borrower shall not permit the Net Collateral Property Availability to be less than \$600,000,000 at any time.

During the Amendment Period (including, for the avoidance of doubt, financial covenant compliance for which the Amendment Period Termination Date is the applicable determination date), the Borrower shall deliver to the Administrative Agent duly completed Compliance Certificates as and when required under Section 8.3 certifying as to (i) the Borrower's calculations of each of the financial covenants set forth in Sections 9.1(a) through (i) above, (ii) compliance with the financial covenants set forth in Sections 9.1(f), (g), (h) and (i), but excluding, for the avoidance of doubt, Sections 9.1(a) through (c) (compliance with which shall not be required during the Amendment Period), and (iii) the other matters contained in the Compliance Certificate. Immediately following the Amendment Period

Termination Date, all financial covenants set forth in Section 9.1(a) through (i) shall be in full force and effect and the Borrower shall be required to be in compliance therewith. For the avoidance of doubt and without limiting the Indebtedness of the Borrower or any Subsidiary, Indebtedness of Unconsolidated Subsidiaries of the Borrower shall be limited to the Borrower's Ownership Share of such Indebtedness of its Unconsolidated Subsidiaries in the calculation of each of the financial covenants set forth in Section 9.1.

Commencing with the fiscal quarter ended June 30, 2020 and for each fiscal quarter thereafter, the applicable testing period for the covenants set forth in Sections 9.1(a) through (c) (including the related defined terms) shall be based upon the fiscal quarter of the Borrower most recently ending and the three immediately preceding fiscal quarters; provided, however, that immediately following the Amendment Period Termination Date, the applicable testing period for the covenants set forth in Sections 9.1(a) through (c) (including the related defined terms) shall be modified as follows: (i) for the first fiscal quarter ending after the Amendment Period, based upon the fiscal quarter of the Borrower most recently ending, annualized, (ii) for the second fiscal quarter ending after the Amendment Period, based upon the fiscal quarter of the Borrower most recently ending and the immediately preceding fiscal quarter, annualized, (iii) for the third fiscal quarter ending after the Amendment Period, based upon the fiscal quarter of the Borrower most recently ending and the two immediately preceding fiscal quarters, annualized, and (iv) for the fourth fiscal quarter ending after the Amendment Period and for each fiscal quarter thereafter, based upon the fiscal quarter of the Borrower most recently ending and the three immediately preceding fiscal quarters.

Section 9.2. Negative Pledge.

(a) The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, (i) create, assume, incur, permit or suffer to exist any Lien on any Collateral Property or any direct or indirect ownership interest of the Borrower in any Person owning any Collateral Property, now owned or hereafter acquired, except for Permitted Liens described in clauses (c), (g), (i) and (j) of the definition of that term, (ii) create, assume, incur, permit or suffer to exist any Lien on other Collateral, or any direct or indirect ownership interest of the Borrower in any Person owning any other Collateral, except for Permitted Liens described in clauses (c), (g), (i) and (j) of the definition of that term, or (iii) create, assume, or incur any Lien (other than Permitted Liens) upon any of its other properties, assets, income or profits of any character whether now owned or hereafter acquired if immediately prior to the creation, assumption or incurring of such Lien, or immediately thereafter, a Default or Event of Default is or would be in existence, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 9.1.

(b) The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, enter into, assume or otherwise be bound by any Negative Pledge except for a Negative Pledge contained in (i) an agreement (x) evidencing Indebtedness which (A) the Borrower, such Loan Party or such Subsidiary may create, incur, assume, or permit or suffer to exist without violation of this Agreement and (B) is secured by a Lien permitted to exist under the Loan Documents, and (y) which prohibits the creation of any other Lien on only the property securing such Indebtedness as of the date such agreement was entered into; (ii) the organizational documents or other agreements binding on any Subsidiary that is not a Wholly Owned Subsidiary (but only to the extent such Negative Pledge covers any Equity Interest in such Subsidiary or the property or assets of such Subsidiary); (iii) an agreement relating to the sale of a Subsidiary or assets pending such sale, provided that in any such case the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such sale or (iv) a Negative Pledge contained in any agreement that evidences unsecured Indebtedness which contains restrictions on encumbering assets that are substantially similar to those restrictions contained in the Loan Documents; *provided that*, notwithstanding the foregoing, the Borrower shall not,

and shall not permit any other Loan Party or any other Subsidiary to, permit any Collateral Property or any direct or indirect ownership interest of the Borrower in any Person owning any Collateral Property to be subject to a Negative Pledge.

Section 9.3. Restrictions on Intercompany Transfers.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary (other than an Excluded Subsidiary) to: (a) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other equity interests owned by the Borrower or any Subsidiary; (b) pay any Indebtedness owed to the Borrower or any Subsidiary; (c) make loans or advances to the Borrower or any Subsidiary; or (d) transfer any of its property or assets to the Borrower or any Subsidiary; other than (i) with respect to clauses (a) through (d) those encumbrances or restrictions contained in (A) any Loan Document, (B) any other agreement evidencing Unsecured Indebtedness that the Borrower, any other Loan Party or any other Subsidiary may create, incur, assume or permit or suffer to exist under this Agreement and containing encumbrances and restrictions imposed in connection with such Unsecured Indebtedness that are either substantially similar to, or less restrictive than, the encumbrances and restrictions set forth in Section 9.1.(g) and Section 9.4. of this Agreement and Section 13 of the Guaranty and (C) the organizational documents or other agreements binding on or applicable to any Subsidiary that is not a Wholly Owned Subsidiary (but only to the extent such encumbrance or restriction covers any Equity Interest in such Subsidiary or the property or assets of such Subsidiary), and (ii) with respect to clause (d), (A) customary provisions restricting assignment of any agreement entered into by the Borrower, any other Loan Party or any Subsidiary in the ordinary course of business or (B) transfer restrictions in any agreement relating to the sale of a Subsidiary or assets pending such sale or relating to Indebtedness secured by a Lien on assets that the Borrower or a Subsidiary may create, incur, assume or permit or suffer to exist under Section 9.2.(a); provided that in the case of this clause (B), the restrictions apply only to the Subsidiary or the assets that are the subject of such sale or Lien, as the case may be. Notwithstanding anything to the contrary in the foregoing, the restrictions in this Section shall not apply to any provision of any Guaranty entered into by the Borrower, any other Loan Party or any other Subsidiary relating to the Indebtedness of any Subsidiary permitted to be incurred hereunder, which provision subordinates any rights of Borrower, other Loan Party or any other Subsidiary to payment from such Subsidiary to the payment in full of such Indebtedness.

Section 9.4. Merger, Consolidation, Sales of Assets and Other Arrangements.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, (i) enter into any transaction of merger or consolidation; (ii) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution); or (iii) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, whether now owned or hereafter acquired; provided, however, that:

(a) any of the actions described in the immediately preceding clauses (i) through (iii) may be taken with respect to any Subsidiary or any other Loan Party (other than the Borrower or any Loan Party that directly or indirectly owns a Collateral Property; provided, however, that the Borrower or any Loan Party that directly or indirectly owns a Collateral Property may take such actions with respect to (A) any Subsidiary that is not a Pledgor, a Pledged Subsidiary (as defined in the Pledge Agreement) nor otherwise a direct or indirect owner of any Collateral Property or (B) any Property that is not a Collateral Property), including, for the avoidance of doubt, the sale, transfer or other disposition of the capital stock of or other Equity Interests in any Subsidiary of the Borrower, so long as immediately prior to the taking of such

action, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence;

(b) the Borrower, its Subsidiaries and the other Loan Parties may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business;

(c) a Person (other than any Loan Party that owns a Collateral Property) may merge with and into the Borrower so long as (i) the Borrower is the survivor of such merger, (ii) immediately prior to such merger, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence; and (iii) the Borrower shall have given the Administrative Agent and the Lenders at least 10 Business Days' prior written notice of such merger (except that such prior notice shall not be required in the case of the merger of a Subsidiary with and into the Borrower); and

(d) the Borrower and each Subsidiary may sell, transfer or dispose of assets among themselves (other than (i) Pledged Interests and (ii) Collateral Properties other than pursuant to a Qualified Collateral Property Sale in accordance with Section 7.15).

Section 9.5. Plans.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, permit any of its respective assets to become or be deemed to be "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder. The Borrower shall not cause or permit to occur, and shall not permit any other member of the ERISA Group to cause or permit to occur, any ERISA Event if such ERISA Event could reasonably be expected to have a Material Adverse Effect.

Section 9.6. Fiscal Year.

The Borrower shall not, and shall not permit any other Loan Party or other Subsidiary to, change its fiscal year from that in effect as of the Agreement Date.

Section 9.7. Modifications of Organizational Documents, Business Management Agreement and Property Management Agreement and Other Material Contracts.

(a) The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, amend, supplement, restate or otherwise modify its certificate or articles of incorporation or formation, by-laws, operating agreement, declaration of trust, partnership agreement or other applicable organizational document if such amendment, supplement, restatement or other modification (i) could reasonably be expected to be adverse to the interest of the Lenders in any material respect, (ii) could reasonably be expected to have a Material Adverse Effect, or (iii) could reasonably be expected to adversely affect the validity, perfection or priority of the Administrative Agent's security interest in the Collateral.

(b) The Borrower shall not, and shall not permit any Subsidiary or other Loan Party to, enter into any amendment or modification to any Material Contract which could reasonably be expected to have a Material Adverse Effect.

Section 9.8. Transactions with Affiliates.

The Borrower shall not permit to exist or enter into, and shall not permit any other Loan Party or any other Subsidiary to permit to exist or enter into, any transaction (including the purchase, sale, lease or

exchange of any property or the rendering of any service) with any Affiliate, except (a) as set forth on Schedule 6.1.(s), (b) transactions among the Borrower and any Wholly Owned Subsidiary or among Wholly Owned Subsidiaries or (c) transactions in the ordinary course of and pursuant to the reasonable requirements of the business of the Borrower, such other Loan Party or such other Subsidiary and upon fair and reasonable terms which are no less favorable to the Borrower, such other Loan Party or such other Subsidiary than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate.

Section 9.9. Environmental Matters.

The Borrower shall not, and shall not permit any other Loan Party, any other Subsidiary or any other Person to, use, generate, discharge, emit, manufacture, handle, process, store, release, transport, remove, dispose of or clean up any Hazardous Materials on, under or from the Properties or any Collateral Property in violation of any Environmental Law or in a manner that could lead to any environmental claim or pose a risk to human health, safety or the environment, in each case, that could reasonably be expected to have a Material Adverse Effect. Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

Section 9.10. Derivatives Contracts.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to enter into or become obligated in respect of, Derivatives Contracts, other than Derivatives Contracts entered into by the Borrower, any such Loan Party or any such Subsidiary in the ordinary course of business and which are intended to establish a hedge in respect of liabilities, commitments or assets held or reasonably anticipated by the Borrower, such other Loan Party or such other Subsidiary.

Section 9.11. Use of Proceeds.

(a) No part of the proceeds of any of the Loans or any other extension of credit hereunder shall be used for purchasing or carrying margin stock (within the meaning of Regulation T, U or X of the ~~Board of Governors of the Federal Reserve System~~[FRB](#)) or for any purpose which violates the provisions of Regulation T, U or X of the ~~Board of Governors of the Federal Reserve System~~[FRB](#). If requested by the Administrative Agent or any Lender (through the Administrative Agent), the Borrower shall promptly furnish to the Administrative Agent and each requesting Lender a statement in conformity with the requirements of Form G-3 or Form U-1, as applicable, under Regulation U of the ~~Board of Governors of the Federal Reserve System~~[FRB](#).

(b) The Borrower shall not use, and shall ensure that its Subsidiaries and Unconsolidated Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loans or any other extension of credit hereunder, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 9.12. Amendment Period.

Notwithstanding anything to the contrary contained herein, at all times during the Amendment Period and continuing thereafter until the Post-Amendment Period Compliance Date, the

Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to do any of the following without the prior written consent of the Requisite Lenders:

(a) incur any additional unsecured Indebtedness (including, without limitation, any increase in the Commitments pursuant to Section 2.15), other than (i) borrowings of Loans in accordance with the terms hereof, (ii) pursuant to one or more Stimulus Transactions, (iii) any issuance by the Borrower of unsecured notes pursuant to a Qualified Notes Issuance, provided that (A) the proceeds thereof are applied in accordance with Section 2.7(b)(iii)(B) and (B) no Default or Event of Default has occurred and is continuing or would result therefrom, and (iv) any other incurrence by the Borrower or any Subsidiary of unsecured Indebtedness, provided that (A) the proceeds thereof are applied in accordance with Section 2.7(b)(iii)(B), (B) no Default or Event of Default has occurred and is continuing or would result therefrom, and (C) unless the Borrower is not in compliance with the Amendment Period Incurrence Conditions, at the time of incurrence or as a result of the application of subclause (A) of this clause (iv), no Loans or Term Loans remain outstanding, and all Pari Passu Obligations have been repaid in full (or with respect to any issued but undrawn amount of an outstanding Letter of Credit, the amount thereof has been paid to the Administrative Agent for deposit into the Letter of Credit Collateral Account);

(b) acquire any real property or make any other Investments of any kind, other than: (i) renovations, improvements and capital expenditures in respect of any Property, collectively, in an aggregate amount not to exceed \$250,000,000 in any calendar year (to be automatically increased to \$350,000,000 for the calendar year in which the Term Loans and all other “Obligations” under and as defined in the Term Loan Agreement are discharged and repaid in full and for each calendar year thereafter), (ii) if Five Star conducts an equity offering, the acquisition by the Borrower of such minimum number of additional shares of Five Star as would permit the Borrower to retain pro rata ownership of 33.9% of Five Star, and (iii) acquisitions of any properties in the proximity of, and accretive to, existing real property assets of the Borrower and its Subsidiaries in an aggregate amount not to exceed \$50,000,000 in any calendar year (the foregoing clauses (i) through (iii), collectively, the “**Permitted Capital Expenditures**”);

(c) make any Restricted Payments, provided that (i) the Borrower may declare and make cash distributions to its shareholders in an aggregate amount not to exceed the minimum amount necessary for the Borrower to remain in compliance with Section 7.11. and to avoid the imposition of income or excise taxes imposed under Sections 857(b)(1), 857(b)(3) and 4981 of the Internal Revenue Code, (ii) the Borrower shall be permitted to make Restricted Payments of not more than \$0.01 per share in cash to the holders of its capital stock following the end of each fiscal quarter of Borrower, and (iii) any Subsidiary may make Restricted Payments to the Borrower or any Subsidiary of the Borrower (and, in the case of any Subsidiary that is not a Wholly Owned Subsidiary, to each other owner of equity interests in such Subsidiary pro rata based on such owner’s Ownership Share or as otherwise required by the terms of the organizational documents of such Subsidiary) (the foregoing clauses (i) through (iii), collectively, the “**Permitted Restricted Payments**”);

(d) take any action, or refrain from taking any action, that would be prohibited during a Default or Event of Default, including, without limitation, mergers, liquidations, liens, encumbrances, releases, and certain transfers in each case which would otherwise be permitted hereunder, other than (i) the borrowing of Revolving Loans or Swingline Loans and other Indebtedness otherwise permitted under Section 9.12(a), (ii) the issuance, extension or amendment of any Letter of Credit otherwise permitted hereunder, (iii) requesting a Conversion or Continuation of LIBOR Loans in accordance with Sections 2.8 and 2.9, as applicable, (iv) dispositions of property or other Investments, in each case, pursuant to an arm’s-length third party transactions in the ordinary course of business, and (v) Permitted Capital Expenditures; and

(e) use the proceeds of any Loans or other Credit Event to directly or indirectly repay any Indebtedness other than (i) first, the repayment or optional redemption of the 6.75% Senior Notes, to the full extent thereof, and (ii) second, the repayment of the Term Loans and any other “Obligations” under and as defined in the Term Loan Agreement.

ARTICLE X. DEFAULT

Section 10.1. Events of Default.

Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of Applicable Law or pursuant to any judgment or order of any Governmental Authority:

(a) Default in Payment. The Borrower (i) shall fail to pay when due under this Agreement or any other Loan Document (whether upon demand, at maturity, by reason of acceleration or otherwise) the principal of any of the Loans or any Reimbursement Obligation or (ii) shall fail to pay when due any interest on any of the Loans or any of the other payment Obligations owing by the Borrower under this Agreement, any other Loan Document or the Fee Letter or any other Loan Party shall fail to pay when due any payment Obligation owing by such other Loan Party under any Loan Document to which it is a party, and, in the case of a failure described in this clause (ii), such failure shall continue for a period of 5 Business Days.

(b) Default in Performance.

(i) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement on its part to be performed or observed and contained in Section 2.7(b), 7.14, 7.15 or 8.4.(h) or Article IX.; or

(ii) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement contained in this Agreement or any other Loan Document to which it is a party and not otherwise mentioned in this Section, and in the case of this subsection (b)(ii) only, such failure shall continue for a period of 30 days after the earlier of (x) the date upon which a Responsible Officer of the Borrower or such other Loan Party obtains knowledge of such failure or (y) the date upon which the Borrower has received written notice of such failure from the Administrative Agent.

(c) Misrepresentations. Any written statement, representation or warranty made or deemed made by or on behalf of any Loan Party under this Agreement or under any other Loan Document, or any amendment hereto or thereto, or in any other writing or statement at any time furnished by, or at the direction of, any Loan Party to the Administrative Agent, any Issuing Bank or any Lender, shall at any time prove to have been incorrect or misleading, in light of the circumstances in which made or deemed made, in any material respect when furnished or made or deemed made.

(d) Indebtedness Cross-Default.

(i) The Borrower, any other Loan Party or any other Subsidiary shall fail to pay when due and payable (after giving effect to any applicable grace or cure period) the principal of, or interest on, any Indebtedness (other than the Loans and Reimbursement Obligations) having an aggregate outstanding principal amount (or, in the case of any Derivatives Contract, having a Derivatives Termination Value) of, in each case individually or in the aggregate with all other Indebtedness as to which such a failure exists, of an aggregate outstanding principal amount

greater than or equal to (A) \$25,000,000 in the case of Indebtedness that is not Nonrecourse Indebtedness or (B) \$75,000,000 in the case of Indebtedness that is Nonrecourse Indebtedness ("Material Indebtedness"); or

(ii) (x) The maturity of any Material Indebtedness shall have been accelerated in accordance with the provisions of any indenture, contract or instrument evidencing, providing for the creation of or otherwise concerning such Material Indebtedness or (y) any Material Indebtedness shall have been required to be prepaid or repurchased prior to the stated maturity thereof; or

(iii) Any other event shall have occurred and be continuing which, with or without the passage of time, the giving of notice, or otherwise, would permit any holder or holders of any Material Indebtedness, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any such Material Indebtedness or require any such Material Indebtedness to be prepaid or repurchased prior to its stated maturity; or

(iv) An Event of Default under and as defined in the Existing Term Loan Agreement shall occur.

(e) Voluntary Bankruptcy Proceeding. The Borrower, any other Loan Party or any other Subsidiary (other than (x) an Excluded Subsidiary all Indebtedness of which is Nonrecourse Indebtedness, (y) a Guarantor (other than any Guarantor that directly or indirectly owns a Collateral Property) that, together with all other Guarantors then subject to a bankruptcy proceeding or other proceeding or condition described in this subsection or the immediately following subsection, does not account for more than \$25,000,000 of Total Asset Value, or (z) a Subsidiary (other than (1) any Subsidiary that directly or indirectly owns a Collateral Property and (2) an Excluded Subsidiary all the Indebtedness of which is Nonrecourse Indebtedness) that, together with all other Subsidiaries then subject to a bankruptcy proceeding or other proceeding or condition described in this subsection or the immediately following subsection, does not account for more than \$50,000,000 of Total Asset Value) shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (iii) consent to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection (f); (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate or partnership action for the purpose of effecting any of the foregoing.

(f) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against the Borrower, any other Loan Party or any other Subsidiary (other than (x) an Excluded Subsidiary all Indebtedness of which is Nonrecourse Indebtedness, (y) a Guarantor (other than any Guarantor that directly or indirectly owns a Collateral Property) that, together with all other Guarantors then subject to a bankruptcy proceeding or other proceeding or condition described in this subsection or the immediately preceding subsection, does not account for more than \$25,000,000 of Total Asset Value, or (z) a Subsidiary (other than (1) any Subsidiary that directly or indirectly owns a Collateral Property and (2) an Excluded Subsidiary all the Indebtedness of which is Nonrecourse Indebtedness) that, together with all other Subsidiaries then subject to a bankruptcy proceeding or other proceeding or condition described

in this subsection or the immediately preceding subsection, does not account for more than \$50,000,000 of Total Asset Value) in any court of competent jurisdiction seeking: (i) relief under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect) or under any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person, or of all or any substantial part of the assets, domestic or foreign, of such Person, and in the case of either clause (i) or (ii) such case or proceeding shall continue undismissed or unstayed for a period of 60 consecutive calendar days, or an order granting the remedy or other relief requested in such case or proceeding against the Borrower, such Subsidiary or such other Loan Party (including, but not limited to, an order for relief under such Bankruptcy Code or such other federal bankruptcy laws) shall be entered.

(g) Revocation of Loan Documents. Any Loan Party shall (or shall attempt to) disavow, revoke or terminate any Loan Document or the Fee Letter to which it is a party or shall otherwise challenge or contest in any action, suit or proceeding in any court or before any Governmental Authority the validity or enforceability of any Loan Document or the Fee Letter or any Loan Document or the Fee Letter shall cease to be in full force and effect (except as a result of the express terms thereof).

(h) Judgment. A judgment or order for the payment of money or for an injunction or other non-monetary relief shall be entered against the Borrower, any other Loan Party, or any other Subsidiary by any court or other tribunal and (i) such judgment or order shall continue for a period of 30 days without being paid, stayed or dismissed through appropriate appellate proceedings and (ii) either (A) the amount of such judgment or order (x) for which insurance has not been acknowledged in writing by the applicable insurance carrier (or the amount as to which the insurer has denied liability) or (y) is not otherwise subject to indemnification or reimbursement on reasonable terms and conditions by Persons reasonably likely to honor such indemnification or reimbursement obligations, exceeds, individually or together with all other such judgments or orders entered against (1) the Borrower, any Guarantor, or any Subsidiary that directly or indirectly owns a Collateral Property, \$25,000,000, or (2) any other Subsidiaries, \$50,000,000, or (B) in the case of an injunction or other non-monetary relief, such injunction or judgment or order could reasonably be expected to have a Material Adverse Effect.

(i) Attachment. A warrant, writ of attachment, execution or similar process shall be issued against any property of the Borrower, any other Loan Party or any other Subsidiary, which exceeds, individually or together with all other such warrants, writs, executions and processes, (1) for the Borrower, any Guarantor, or any Subsidiary that directly or indirectly owns a Collateral Property, \$25,000,000, or (2) for any other Subsidiaries, \$50,000,000, and such warrant, writ, execution or process shall not be paid, discharged, vacated, stayed or bonded for a period of 30 days; provided, however, that if a bond has been issued in favor of the claimant or other Person obtaining such warrant, writ, execution or process, the issuer of such bond shall execute a waiver or subordination agreement in form and substance satisfactory to the Administrative Agent pursuant to which the issuer of such bond subordinates its right of reimbursement, contribution or subrogation to the Obligations and waives or subordinates any Lien it may have on the assets of the Borrower or any Subsidiary.

(j) ERISA.

(i) Any ERISA Event shall have occurred that results or could reasonably be expected to result in liability to any member of the ERISA Group aggregating in excess of \$10,000,000; or

(ii) The “benefit obligation” of all Plans exceeds the “fair market value of plan assets” for such Plans by more than \$10,000,000, all as determined, and with such terms defined, in accordance with FASB ASC 715.

(k) Loan Documents. An Event of Default (as defined therein) shall occur under any of the other Loan Documents.

(l) Change of Control.

(i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have “beneficial ownership” of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 25% of the total voting power of the then outstanding voting stock of the Borrower; or

(ii) during any period of 12 consecutive months ending after the Agreement Date, individuals who at the beginning of any such 12-month period constituted the Board of Trustees of the Borrower (together with any new trustees whose election by such Board or whose nomination for election by the shareholders of the Borrower was approved by a vote of a majority of the trustees then still in office who were either trustees at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Trustees of the Borrower then in office; or

(iii) RMR shall cease for any reason to act as the sole business manager and property manager for the Borrower.

(m) Security Documents. Any provision of any Security Document, at any time after the execution and delivery of such Security Document and for any reason other than as expressly permitted hereunder or under such Security Document, shall for any reason cease to be valid and binding on or enforceable against any Loan Party or any Lien created under any Security Document ceases to be a valid and perfected first priority Lien in any of the Collateral purported to be covered thereby.

Section 10.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

(i) Automatic. Upon the occurrence of an Event of Default specified in Sections 10.1.(e) or 10.1.(f), (1)(A) the principal of, and all accrued interest on, the Loans and the Notes at the time outstanding, (B) an amount equal to the Stated Amount of all Letters of Credit outstanding as of the date of the occurrence of such Event of Default for deposit into the Letter of Credit Collateral Account and (C) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents shall become immediately and automatically due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties, and (2) the Commitments and the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit hereunder, shall all immediately and automatically terminate.

(ii) Optional. If any other Event of Default shall exist, the Administrative Agent may, and at the direction of the Requisite Lenders shall: (1) declare (A) the principal of, and accrued interest on, the Loans and the Notes at the time outstanding, (B) an amount equal to the

Stated Amount of all Letters of Credit outstanding as of the date of the occurrence of such Event of Default for deposit into the Letter of Credit Collateral Account and (C) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties, and (2) terminate the Commitments and the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit hereunder.

(b) Loan Documents. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise any and all of its rights under any and all of the other Loan Documents.

(c) Applicable Law. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise all other rights and remedies it may have under any Applicable Law.

(d) Appointment of Receiver. To the extent permitted by Applicable Law, the Administrative Agent and the Lenders shall be entitled to the appointment of a receiver for the assets and properties of the Borrower and its Subsidiaries, without notice of any kind whatsoever and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to take possession of all or any portion of the Collateral, the property and/or the business operations of the Borrower and its Subsidiaries and to exercise such power as the court shall confer upon such receiver.

(e) Specified Derivatives Contract Remedies. Notwithstanding any other provision of this Agreement or other Loan Document, each Specified Derivatives Provider shall have the right, with prompt notice to the Administrative Agent, but without the approval or consent of or other action by the Administrative Agent or the Lenders, and without limitation of other remedies available to such Specified Derivatives Provider under contract or Applicable Law, in each case, in accordance with the terms of the applicable Specified Derivatives Contract, to undertake any of the following: (a) to declare an event of default, termination event or other similar event under any Specified Derivatives Contract and to create an "Early Termination Date" (as defined therein) in respect thereof, (b) to determine net termination amounts in respect of any and all Specified Derivatives Contracts in accordance with the terms thereof, and to set off amounts among such contracts, (c) to set off or proceed against deposit account balances, securities account balances and other property and amounts held by such Specified Derivatives Provider pursuant to any Derivatives Support Document, including any "Posted Collateral" (as defined in any credit support annex included in any such Derivatives Support Document to which such Specified Derivatives Provider may be a party), and (d) to prosecute any legal action against the Borrower, any other Loan Party or other Subsidiary to enforce or collect net amounts owing to such Specified Derivatives Provider pursuant to any Specified Derivatives Contract.

Section 10.3. Remedies Upon Default.

Upon the occurrence of a Default specified in Section 10.1(f), the Commitments, the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit shall immediately and automatically terminate.

Section 10.4. Marshaling; Payments Set Aside.

None of the Administrative Agent, any Issuing Bank, any Lender or any Specified Derivatives Provider shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Obligations or the Specified Derivatives Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent, any Issuing Bank, any Lender or any Specified Derivatives Provider, or the Administrative Agent, any Issuing Bank, any Lender or any Specified Derivatives Provider enforce their security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or Specified Derivatives Obligations, or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 10.5. Allocation of Proceeds.

Subject in all respects to the provisions of the Intercreditor Agreement, if an Event of Default exists, all payments received by (x) the Administrative Agent (or any Lender as a result of its exercise of remedies pursuant to Section 12.4.) under any of the Loan Documents, (y) the Term Loan Administrative Agent (or any Term Lender as a result of its exercise of remedies pursuant to Section 12.3. of the Existing Term Loan Agreement) under any of the Term Loan Documents, or (z) the Collateral Agent, in each case, in respect of any principal of or interest on any Pari Passu Obligations, any Pari Passu Guaranteed Obligations or any other amounts payable by the Borrower or any other Loan Party hereunder or under any other Loan Document or Term Loan Document, shall be remitted to the Administrative Agent, the Term Loan Administrative Agent, and the Collateral Agent (each as applicable based on which party is entitled to such amounts in accordance with this Section 10.5) and applied in the following order and priority (provided, however, that neither the Administrative Agent nor any Lender shall have any obligation or responsibility hereunder in connection with the application of any amounts received by the Term Loan Administrative Agent or any Term Lender pursuant to Section 10.5 of the Existing Term Loan Agreement or by the Collateral Agent):

(a) (i) amounts due to the Administrative Agent, the Term Loan Administrative Agent, the Collateral Agent, the Issuing Banks, the Lenders and the Term Lenders in respect of expenses due under Section 12.2 hereof or of the Existing Term Loan Agreement, or the Intercreditor Agreement, as applicable, until paid in full, and then (ii) Fees (as defined hereunder and under the Existing Term Loan Agreement) and other amounts due to the Administrative Agent, the Term Loan Administrative Agent, the Collateral Agent, the Lenders and the Term Lenders pursuant to Sections 11.6. and 12.10. hereof or Sections 11.6. and 12.9. of the Existing Term Loan Agreement, as applicable, in each case under the foregoing clauses (i) and (ii), in proportion to the respective amounts described in clause (i) or (ii), as applicable, payable to them;

(b) amounts due to the Collateral Agent, the Administrative Agent, the Term Loan Administrative Agent, the Lenders and the Term Lenders in respect of Protective Advances in proportion to the respective amounts described in this clause (b) payable to them;

(c) payments of interest on Swingline Loans, ratably among the Swingline Lenders in proportion to the respective amounts described in this clause (c) payable to them;

(d) payments of interest on all other Loans, Term Loans and Reimbursement Obligations to be applied for the ratable benefit of (i) in the case of payments in respect of Loans and Reimbursement Obligations, the Lenders and the Issuing Banks and (ii) in the case of

payments in respect of Term Loans, the Term Lenders, in each case under the foregoing clauses (i) and (ii), in proportion to the respective amounts described in this clause (d) payable to them;

(e) payments of principal of Swingline Loans, ratably among the Swingline Lenders in proportion to the respective amounts described in this clause (e) payable to them;

(f) payments of principal of all other Loans, Term Loans, Reimbursement Obligations and other Letter of Credit Liabilities, to be applied for the ratable benefit of (i) in the case of payments in respect of Loans, Reimbursement Obligations, and other Letter of Credit Liabilities, the Lenders and the Issuing Banks, in such order and priority as the Lenders and the Issuing Banks may determine in their sole discretion, and (ii) in the case of payments in respect of Term Loans, the Term Lenders, in such order and priority as the Term Lenders may determine in their sole discretion, in each case under the foregoing clauses (i) and (ii), in proportion to the respective amounts described in this clause (f) payable to them; provided, however, that to the extent that any amounts available for distribution pursuant to this subsection are attributable to the issued but undrawn amount of an outstanding Letter of Credit, such amounts shall be paid to the Administrative Agent for deposit into the Letter of Credit Collateral Account;

(g) payments of all other Pari Passu Obligations and other amounts due under any of the Loan Documents or Term Loan Documents, to be applied for the ratable benefit of (i) in the case of payments of Obligations or any other amount due under any of the Loan Documents, the Lenders and the Issuing Banks, and (ii) in the case of payments of "Obligations" or any other amount due under any of the Term Loan Documents, the Term Lenders, in each case under the foregoing clauses (i) and (ii), in proportion to the respective amounts described in this clause (g) payable to them; and

(h) any amount remaining after application as provided above and after all Pari Passu Obligations and other amounts due under any of the Loan Documents or Term Loan Documents have been paid in full, shall be paid to the Borrower or whomever else may be legally entitled thereto.

Section 10.6. Letter of Credit Collateral Account.

(a) As collateral security for the prompt payment in full when due of all Letter of Credit Liabilities and the other Obligations, the Borrower hereby pledges and grants to the Administrative Agent, for the ratable benefit of the Administrative Agent, the Issuing Banks and the Lenders as provided herein, a security interest in all of its right, title and interest in and to the Letter of Credit Collateral Account and the balances from time to time in the Letter of Credit Collateral Account (including the investments and reinvestments therein provided for below). The balances from time to time in the Letter of Credit Collateral Account shall not constitute payment of any Letter of Credit Liabilities until applied by the applicable Issuing Bank as provided herein. Anything in this Agreement to the contrary notwithstanding, funds held in the Letter of Credit Collateral Account shall be subject to withdrawal only as provided in this Section.

(b) Amounts on deposit in the Letter of Credit Collateral Account shall be invested and reinvested by the Administrative Agent in such Cash Equivalents as the Administrative Agent shall determine in its sole discretion. All such investments and reinvestments shall be held in the name of and be under the sole dominion and control of the Administrative Agent for the ratable benefit of the Administrative Agent, the Issuing Banks and the Lenders; provided, that all earnings on such investments will be credited to and retained in the Letter of Credit Collateral Account. The Administrative Agent shall exercise reasonable care in the custody and preservation of any funds held in the Letter of Credit

Collateral Account and shall be deemed to have exercised such care if such funds are accorded treatment substantially equivalent to that which the Administrative Agent accords other funds deposited with the Administrative Agent, it being understood that the Administrative Agent shall not have any responsibility for taking any necessary steps to preserve rights against any parties with respect to any funds held in the Letter of Credit Collateral Account.

(c) If a drawing pursuant to any Letter of Credit occurs on or prior to the expiration date of such Letter of Credit, the Borrower and the Lenders authorize the Administrative Agent to use the monies deposited in the Letter of Credit Collateral Account to reimburse the applicable Issuing Bank for the payment made by such Issuing Bank to the beneficiary with respect to such drawing or the payee with respect to such presentment.

(d) Notwithstanding anything to the contrary in Section 10.5, if an Event of Default exists, the Administrative Agent may (and, if instructed by the Requisite Lenders, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such investments and reinvestments and apply the proceeds thereof to the Obligations due and owing to the Issuing Banks and, to the extent of their respective funded participations in Letters of Credit, the Lenders, in each case, in proportion to the respective amounts of Letter of Credit Liabilities payable to them. Notwithstanding the foregoing, the Administrative Agent shall not be required to liquidate and release any such amounts if such liquidation or release would result in the amount available in the Letter of Credit Collateral Account to be less than the Stated Amount of all Extended Letters of Credit that remain outstanding.

(e) So long as no Default or Event of Default exists, and to the extent amounts on deposit in or credited to the Letter of Credit Collateral Account exceed the aggregate amount of the Letter of Credit Liabilities then due and owing, the Administrative Agent shall, from time to time, at the request of the Borrower, deliver to the Borrower within 5 Business Days after the Administrative Agent's receipt of such request from the Borrower, against receipt but without any recourse, warranty or representation whatsoever, such of amount of the credit balances in the Letter of Credit Collateral Account as exceeds the aggregate amount of Letter of Credit Liabilities at such time. Upon the expiration, termination or cancellation of an Extended Letter of Credit for which the Lenders reimbursed (or funded participations in) a drawing deemed to have occurred under the third sentence of Section 2.2.(b) for deposit into the Letter of Credit Collateral Account but in respect of which the Lenders have not otherwise received payment for the amount so reimbursed or funded, the Administrative Agent shall promptly remit to the Lenders the amount so reimbursed or funded for such Extended Letter of Credit that remains in the Letter of Credit Collateral Account, pro rata in accordance with the respective unpaid reimbursements or funded participations of the Lenders in respect of such Extended Letter of Credit, against receipt but without any recourse, warranty or representation whatsoever. When all of the Obligations shall have been indefeasibly paid in full and no Letters of Credit remain outstanding, the Administrative Agent shall deliver to the Borrower, against receipt but without any recourse, warranty or representation whatsoever, the balances remaining in the Letter of Credit Collateral Account.

(f) The Borrower shall pay to the Administrative Agent from time to time such fees as the Administrative Agent normally charges for similar services in connection with the Administrative Agent's administration of the Letter of Credit Collateral Account and investments and reinvestments of funds therein.

Section 10.7. Performance by Administrative Agent.

If the Borrower or any other Loan Party shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, the Administrative Agent may, after notice to the Borrower, perform or attempt to perform such covenant, duty or agreement on behalf of the Borrower or such other

Loan Party after the expiration of any cure or grace periods set forth herein. In such event, the Borrower shall, at the request of the Administrative Agent, promptly pay any amount reasonably expended by the Administrative Agent in such performance or attempted performance to the Administrative Agent, together with interest thereon at the applicable Post-Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall have any liability or responsibility whatsoever for the performance of any obligation of the Borrower under this Agreement or any other Loan Document.

Section 10.8. Rights Cumulative.

(a) The rights and remedies of the Administrative Agent, the Issuing Banks, the Lenders and the Specified Derivatives Providers under this Agreement, each of the other Loan Documents, the Fee Letter and Specified Derivatives Contracts shall be cumulative and not exclusive of any rights or remedies which any of them may otherwise have under Applicable Law. In exercising their respective rights and remedies the Administrative Agent, the Issuing Banks, the Lenders and the Specified Derivatives Providers may be selective and no failure or delay by the Administrative Agent, any of the Issuing Banks, any of the Lenders or any of the Specified Derivatives Providers in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Article X. for the benefit of all the Lenders and the Issuing Banks; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Issuing Bank or Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank or as a Swingline Lender, as the case may be) hereunder or under the other Loan Documents, (iii) any Lender from exercising setoff rights in accordance with Section 12.4. (subject to the terms of Sections 3.3. and 11.13. and the Intercreditor Agreement), or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article X. and (y) in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 3.3., any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

ARTICLE XI. THE ADMINISTRATIVE AGENT

Section 11.1. Appointment and Authorization.

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this

Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms “Agent”, “Administrative Agent”, “agent” and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article VIII. that the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by the Borrower, any other Loan Party or any other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. 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 under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.

Section 11.2. Wells Fargo as Lender.

Wells Fargo, as a Lender shall have the same rights and powers under this Agreement and any other Loan Document as any other Lender and may exercise the same as though it were not the Administrative Agent; and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include Wells Fargo in each case in its individual capacity. Wells Fargo and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the Issuing Banks or the other Lenders. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Issuing Banks or the other Lenders. The Issuing Banks and the Lenders acknowledge that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding the Borrower, other Loan Parties, other Subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

Section 11.3. Approvals of Lenders.

All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent, approval or disapproval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, approval, consent or disapproval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved, and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided to the Administrative Agent by the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent, approval or disapproval within fifteen (15) Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively provided such requested determination, consent, approval or disapproval; provided, however, that this sentence shall not apply to amendments, waivers or consents that require the written consent of each Lender directly and adversely affected thereby pursuant to Section 12.7.(c).

Section 11.4. Notice of Events of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing with reasonable specificity such Default or Event of Default and stating that such notice is a "notice of default." If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Default or Event of Default, it shall promptly send to the Administrative Agent such a "notice of default"; provided, a Lender's failure to provide such a "notice of default" to the Administrative Agent shall not result in any liability of such Lender to any other party under any of the Loan Documents. Further, if the Administrative Agent receives such a "notice of default," the Administrative Agent shall give prompt notice thereof to the Lenders.

Section 11.5. Administrative Agent's Reliance.

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its directors, officers, agents, employees or counsel shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent may consult with legal counsel (including its own counsel or counsel for the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its directors, officers, agents, employees or counsel: (a) makes any warranty or representation to any Lender, any Issuing Bank or any other Person, or shall be responsible to any Lender, any Issuing Bank or any other Person for any statement, warranty or representation made or deemed made by the Borrower, any other Loan Party or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Borrower or other Persons, or to inspect

the property, books or records of the Borrower or any other Person; (c) shall be responsible to any Lender or any Issuing Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders, the Issuing Banks and the Specified Derivatives Providers in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment.

Section 11.6. Indemnification of Administrative Agent and Collateral Agent.

(a) Each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) pro rata in accordance with such Lender's respective Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable out-of-pocket costs and expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a Lender) in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, "**Indemnifiable Amounts**"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that no action taken in accordance with the directions of the Requisite Lenders (or all of the Lenders, if expressly required hereunder) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for its ratable share of any out-of-pocket expenses (including the reasonable fees and expenses of the counsel to the Administrative Agent) incurred by the Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and/or collect any Obligations, any "lender liability" suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the Administrative Agent and/or the Lenders arising under any Environmental Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to indemnification. The agreements in this Section 11.6(a) shall survive the payment of the Loans and all other amounts payable hereunder or under the other Loan

Documents and the termination of this Agreement. If the Borrower shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section 11.6(a), the Administrative Agent shall share such reimbursement on a ratable basis with each Lender making any such payment.

(b) Each Lender agrees to indemnify the Collateral Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) in accordance with its Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable out-of-pocket costs and expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Collateral Agent (in its capacity as Collateral Agent but not as a Lender) in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Collateral Agent under the Loan Documents (collectively, “**Collateral Agent Indemnifiable Amounts**”); provided, however, that no Lender shall be liable for any portion of such Collateral Agent Indemnifiable Amounts to the extent resulting from the Collateral Agent’s gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that no action taken in accordance with the directions of the Requisite Lenders (or all of the Lenders and/or Term Lenders, if expressly required hereunder or under the Existing Term Loan Agreement) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Collateral Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for its Pro Rata Share of any out-of-pocket expenses (including the reasonable fees and expenses of the counsel to the Collateral Agent) incurred by the Collateral Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Collateral Agent to enforce the terms of the Loan Documents and/or collect any Pari Passu Guaranteed Obligations, any “lender liability” suit or claim brought against the Collateral Agent, the Lenders and/or the Term Lenders, and any claim or suit brought against the Collateral Agent, the Lenders and/or the Term Lenders arising under any Environmental Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Collateral Agent notwithstanding any claim or assertion that the Collateral Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Collateral Agent that the Collateral Agent will reimburse the Lenders and Term Lenders if it is actually and finally determined by a court of competent jurisdiction that the Collateral Agent is not so entitled to indemnification. The agreements in this Section 11.6(b) shall survive the payment of the Pari Passu Obligations and all other amounts payable hereunder or under the other Loan Documents and the termination of this Agreement. If the Borrower shall reimburse the Collateral Agent for any Collateral Agent Indemnifiable Amount following payment by any Lender or Term Lender to the Collateral Agent in respect of such Collateral Agent Indemnifiable Amount pursuant to this Section 11.6(b), the Collateral Agent shall share such reimbursement on a ratable basis with each Lender or Term Lender making any such payment.

Section 11.7. Lender Credit Decision, Etc.

Each of the Lenders and the Issuing Banks expressly acknowledges and agrees that neither the Administrative Agent nor any of its officers, directors, employees, agents, counsel, attorneys-in-fact or other Affiliates has made any representations or warranties to such Issuing Bank or such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, any other Loan Party or any other Subsidiary or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Issuing Bank or any Lender. Each of the

Lenders and the Issuing Banks acknowledges that it has made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective officers, directors, employees, agents or counsel, and based on the financial statements of the Borrower, the other Loan Parties, the other Subsidiaries and other Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Borrower, the other Loan Parties, the other Subsidiaries and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders and the Issuing Banks also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective officers, directors, employees and agents, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Issuing Banks by the Administrative Agent under this Agreement or any of the other Loan Documents or furnished to the Administrative Agent for distribution to the Lenders and/or the Issuing Banks, the Administrative Agent shall have no duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or other Affiliates. Each of the Lenders and the Issuing Banks acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender or any Issuing Bank.

Section 11.8. Successor Administrative Agent.

The Administrative Agent may (a) resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower or (b) be removed as Administrative Agent by all of the Lenders (excluding the Lender then acting as Administrative Agent) and the Borrower upon 30 days' prior written notice if the Administrative Agent is found by a court of competent jurisdiction in a final, non-appealable judgment to have committed gross negligence or willful misconduct in the course of performing its duties hereunder. Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed (except that the Borrower shall, in all events, be deemed to have approved each Lender and any of its Affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within 30 days after the current Administrative Agent's giving of notice of resignation or giving of notice of removal of the Administrative Agent, then the current Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be an Eligible Assignee; provided that if the Administrative Agent shall notify the Borrower and the Lenders and the Issuing Banks that no Lender has accepted such appointment, then such resignation or removal shall nonetheless become effective in accordance with such notice and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and

determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender and each Issuing Bank directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Lenders and such Issuing Banks so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender or such Issuing Bank were itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. Any resignation by, or removal of, an Administrative Agent shall also constitute the resignation or removal, as applicable, as an Issuing Bank and as a Swingline Lender by the Lender then acting as Administrative Agent (the “Resigning Lender”). Upon the acceptance of a successor’s appointment as Administrative Agent hereunder (i) the Resigning Lender shall be discharged from all duties and obligations of an Issuing Bank and a Swingline Lender hereunder and under the other Loan Documents and (ii) any successor Issuing Bank shall issue letters of credit in substitution for all Letters of Credit issued by the Resigning Lender as an Issuing Bank outstanding at the time of such succession (which letters of credit issued in substitutions shall be deemed to be Letters of Credit issued hereunder) or make other arrangements satisfactory to the Resigning Lender to effectively assume the obligations of the Resigning Lender with respect to such Letters of Credit. After any Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Article XI. shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving the Borrower and each Lender prior written notice.

Section 11.9. Titled Agents.

Each of the Lead Arrangers, the Syndication Agent and the Documentation Agents (each a “**Titled Agent**”) in each such respective capacity, assumes no responsibility or obligation hereunder, including, without limitation, for servicing, enforcement or collection of any of the Loans, nor any duties as an agent hereunder for the Lenders. The titles given to the Titled Agents are solely honorific and imply no fiduciary responsibility on the part of the Titled Agents to the Administrative Agent, any Lender, any Issuing Bank, the Borrower or any other Loan Party and the use of such titles does not impose on the Titled Agents any duties or obligations greater than those of any other Lender or entitle the Titled Agents to any rights other than those to which any other Lender is entitled.

Section 11.10. Collateral Matters; Protective Advances.

(a) Each of the Lenders hereby authorizes the Administrative Agent and the Collateral Agent, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take (or, in the case of the Administrative Agent, to direct the Collateral Agent to take) any action with respect to any Collateral or any Loan Document which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to any of the Loan Documents.

(b) The Lenders hereby authorize the Administrative Agent and the Collateral Agent, in each case at its option and in its discretion, to release (or, in the case of the Administrative Agent, to direct the Collateral Agent to release) any Lien granted to or held by the Collateral Agent upon any Collateral (i) upon termination of the Commitments and indefeasible payment and satisfaction in full of all of the Pari Passu Guaranteed Obligations, (ii) as expressly permitted by, but only in accordance with, the terms of the applicable Loan Documents, and (iii) if approved, authorized or ratified in writing by the Requisite

Lenders (or such greater number of Lenders and/or Term Lenders as this Agreement or any other Loan Document may expressly provide). Upon request by the Administrative Agent or the Collateral Agent at any time, the Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority to release (or, in the case of the Administrative Agent, to direct the Collateral Agent to release) particular types or items of Collateral pursuant to this Section.

(c) Upon any sale and transfer of Collateral which is expressly permitted pursuant to the terms of this Agreement, and upon at least five (5) Business Days' prior written request by the Borrower, the Administrative Agent and the Collateral Agent shall (and each is hereby irrevocably authorized by the Lenders to) execute, and cause the execution of, such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent pursuant to the Loan Documents upon the Collateral that was sold or transferred; provided, however, that (i) neither the Administrative Agent nor the Collateral Agent shall be required to execute (or cause the execution of) any such document on terms which, in the Administrative Agent's or the Collateral Agent's opinion, would expose the Administrative Agent or the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Pari Passu Guaranteed Obligations or any Liens upon (or obligations of the Borrower or any other Loan Party in respect of) all interests retained by the Borrower or any other Loan Party, including, without limitation, the proceeds of such sale or transfer, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Administrative Agent and the Collateral Agent shall be authorized to deduct all of the expenses reasonably incurred by the Administrative Agent and the Collateral Agent from the proceeds of any such sale, transfer or foreclosure.

(d) Neither the Collateral Agent nor the Administrative Agent shall have any obligation whatsoever to any Lender or to any other Person to assure that the Collateral exists or is owned by the Borrower, any other Loan Party or any other Subsidiary or is cared for, protected or insured or that the Liens granted to the Collateral Agent pursuant to any Loan Document have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent or the Administrative Agent in this Section or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, each of the Collateral Agent and the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, and that neither the Collateral Agent nor the Administrative Agent shall have any duty or liability whatsoever to the Lenders, except to the extent determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from its gross negligence or willful misconduct.

(e) The Collateral Agent may make (and the Administrative Agent may direct the Collateral Agent to make), and shall be reimbursed by the Lenders (in accordance with their Pro Rata Shares) to the extent not reimbursed by the Borrower for, Protective Advances during any one (1) calendar year with respect to each Pledged Interest or Collateral Property up to the sum of (i) amounts expended to pay taxes, assessments and governmental charges or levies imposed upon such Collateral; (ii) amounts expended to pay insurance premiums for policies of insurance related to such Collateral; and (iii) \$5,000,000. Protective Advances in excess of said sum during any calendar year for any Pledged Interest or Collateral Property shall require the consent of the Requisite Lenders. The Borrower agrees to pay on demand all Protective Advances.

(f) By their acceptance of the benefits of the Security Documents, each Lender that is at any time itself a Specified Derivatives Provider, or having an Affiliate that is a Specified Derivatives Provider, hereby, for itself, and on behalf of any such Affiliate, in its capacity as a Specified Derivatives

Provider, acknowledges that obligations arising under any Specified Derivatives Contract are not secured by the Collateral.

(g) Each Lender agrees that it will not take any action, nor institute any actions or proceedings, against the Borrower or any other Loan Party under the Loan Documents with respect to exercising claims against or rights in the Collateral without the written consent of the Requisite Lenders. For purposes of this Section, the term “Lender” includes any Person that is or at any time has been a Lender and the terms and conditions of this provision shall be binding upon such Person at all times and expressly survive any assignment of the Commitment or Loans of such Person in whole or in part.

(h) Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the provisions of this Section 11.10 shall be subject in all respects to the provisions of the Intercreditor Agreement.

(i) Notwithstanding anything to the contrary in this Agreement or in any Security Instrument, before the Collateral Property located at 1201 Northland Drive (also known as 2540 Executive Drive), Mendota Heights, MN is acquired by the Administrative Agent (or Collateral Agent as defined in the applicable Security Instrument) as a result of a foreclosure of the Security Instrument thereon, the acceptance of a deed in lieu thereof or any other exercise of remedies pursuant thereto, the Administrative Agent shall have obtained an updated “Phase I” environmental assessment of such Collateral Property and any “Phase II” environmental assessment recommended by the environmental engineering firm preparing such assessments for such Collateral Property. Without limiting the provisions of this Section 11.10 above, the requirements of this Section 11.10(i) may only be amended or waived with the consent of all Lenders notwithstanding anything in this Agreement to the contrary.

Section 11.11. Post-Foreclosure Plans.

(a) If all or any portion of the Collateral is acquired by the Collateral Agent as a result of a foreclosure or the acceptance of an assignment in lieu of foreclosure, or is retained in satisfaction of all or any part of the Pari Passu Guaranteed Obligations, the title to any such Collateral, or any portion thereof, shall be held in the name of the Collateral Agent or a nominee or Subsidiary of the Collateral Agent, as “Collateral Agent”, for the ratable benefit of the holders of Pari Passu Guaranteed Obligations. The Collateral Agent shall prepare a recommended course of action for such Collateral (a “**Post-Foreclosure Plan**”), which shall be subject to the approval of the Requisite Lenders. In accordance with the approved Post-Foreclosure Plan, the Collateral Agent shall manage, operate, repair, administer, complete, construct, restore or otherwise deal with the Collateral acquired, and shall administer all transactions relating thereto, including agents for the sale of such Collateral, and the collecting of rents and other sums from such Collateral and paying the expenses of such Collateral. Actions taken by the Collateral Agent with respect to the Collateral, which are not specifically provided for in the approved Post-Foreclosure Plan or reasonably incidental thereto, shall require the written consent of the Requisite Lenders by way of supplement to such Post-Foreclosure Plan. Upon demand therefor from time to time, each Lender will contribute its share (based on its Pro Rata Share) of all reasonable costs and expenses incurred by the Collateral Agent pursuant to the approved Post-Foreclosure Plan in connection with the construction, operation, management, maintenance, leasing and sale of such Collateral. In addition, the Collateral Agent shall render or cause to be rendered to each Lender, on a monthly basis, an income and expense statement for such Collateral, and each Lender shall promptly contribute its Pro Rata Share of any operating loss for such Collateral, and such other expenses and operating reserves as the Collateral Agent shall deem reasonably necessary pursuant to and in accordance with the approved Post-Foreclosure Plan. To the extent there is net operating income from such Collateral, the Collateral Agent shall, in accordance with the approved Post-Foreclosure Plan, determine the amount and timing of distributions to the Lenders. All such distributions shall be made to the Lenders in accordance with their respective Pro Rata

Shares. The Lenders acknowledge and agree that if title to any Collateral is obtained by the Collateral Agent or its nominee, such Collateral will not be held as a permanent investment but will, consistent with and subject to the requirements of Section 11.10 and this Section 11.11, be liquidated and the proceeds of such liquidation will be distributed in accordance with Section 10.5 as soon as practicable. The Collateral Agent shall undertake to sell such Collateral, at such price and upon such terms and conditions as the Requisite Lenders reasonably shall determine to be most advantageous to the holders of Pari Passu Guaranteed Obligations. Any purchase money Mortgage taken in connection with the disposition of such Collateral in accordance with the immediately preceding sentence shall name the Collateral Agent, as collateral agent for the holders of Pari Passu Guaranteed Obligations, as the beneficiary or mortgagee. In such case, the Collateral Agent and the holders of Pari Passu Guaranteed Obligations shall enter into an agreement with respect to such purchase money Mortgage defining the rights of the holders of Pari Passu Guaranteed Obligations in the same Pro Rata Shares as provided hereunder, which agreement shall be in all material respects similar to this Article XI insofar as the same is appropriate or applicable.

(b) Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, the provisions of this Section 11.11 shall be subject in all respects to the provisions of the Intercreditor Agreement.

Section 11.12. Flood Laws

Wells Fargo has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the “**Flood Laws**”). Wells Fargo, as Administrative Agent, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, Wells Fargo reminds each Lender and Participant that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant) is responsible for assuring its own compliance with the flood insurance requirements.

Section 11.13. No Set Off.

Each Lender hereby acknowledges that the exercise by any Lender of any offset, set-off, banker’s lien or similar rights against any deposit account or other property or asset of any Loan Party, whether or not located in California, could result under certain laws in significant impairment of the ability of all Lenders to recover any further amounts in respect of the Pari Passu Guaranteed Obligations. Therefore, each Lender agrees not to charge or offset any amount owed to it by any Loan Party against any of the accounts, property or assets of any Loan Party or any of its affiliates held by such Lender without the prior written approval of the Administrative Agent and the Requisite Lenders.

Section 11.14. Erroneous Payments.

(a) Each Lender, each Issuing Bank and each other Secured Party (as defined in the intercreditor Agreement) hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Bank or any other Secured Party (or the Lender Affiliate of a Secured Party) or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender, Issuing Bank or other Secured Party (each such recipient, a “Payment Recipient”) that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent

(or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 11.14(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an “Erroneous Payment”), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in Same Day Funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent (or to the extent payable to an Issuing Bank or a Swingline Lender, such Issuing Bank or Swingline Lender, as applicable, in each case, with notice to the Administrative Agent) to be customary in the place of disbursement or payment for the settlement of international banking transactions.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an “**Erroneous Payment Return Deficiency**”), then at the sole discretion of the Administrative Agent and upon the Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent’s applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, the Administrative Agent may cancel any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such revocation all of the Loans assigned

pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 12.6 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 11.14 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower or any other Loan Party, and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received, except, in each case of clauses (y) and (z), to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making for a payment on the Obligations.

(f) Each party's obligations under this Section 11.14 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 11.14 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

Section 11.15. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, 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, each Lead Arranger 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 Internal Revenue Code) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments or this Agreement;

(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 Internal Revenue 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) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, 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, each Lead Arranger 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, any Lead Arranger and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of 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 hereto or thereto).

ARTICLE XII. MISCELLANEOUS

Section 12.1. Notices.

Unless otherwise provided herein (including without limitation as provided in Section 8.5.), communications provided for hereunder shall be in writing and shall be mailed, telecopied, or delivered as follows:

If to the Borrower:

Diversified Healthcare Trust
Two Newton Place
255 Washington Street, Suite 300
Newton, Massachusetts 02458-1634
Attention: Chief Financial Officer
Telecopy Number: (617) 219-8349

Telephone Number: (617) 796-8350

If to the Administrative Agent:

Wells Fargo Bank, National Association
10 South Wacker Drive, 32nd Floor
Chicago, IL 60606
Attn: Douglas Frazer
Telecopier: (704)-410-0329
Telephone: (704) 715-5747

and

Wells Fargo Bank, National Association
550 South Tryon Street
Charlotte, North Carolina 28202
Attn: Kristen Ray
Telecopier: 704-410-0329
Telephone: 704-410-1772

If to the Administrative Agent under Article II.:

Wells Fargo Bank, National Association
Minneapolis Loan Center
600 South 4th Street, 9th Floor
Minneapolis, Minnesota 55415
Attn: Anthony Gangelhoff
Telecopier: (877) 410-5023
Telephone: (612) 316-0109

If to Wells Fargo Bank, as an Issuing Bank:

Wells Fargo Bank, National Association
550 South Tryon Street
Charlotte, North Carolina 28202
Attn: Kristen Ray
Telecopier: 704-410-0329
Telephone: 704-410-1772

If to Royal Bank of Canada, as an Issuing Bank:

Royal Bank of Canada
30 Hudson Street
28th Floor
Jersey City, NJ 07302-4699
Attention: Credit Administration
Fax: 212-428-3015
Tel: 212-428-6298

If to Citibank, N.A., as an Issuing Bank:

Wei Ke
388 Greenwich Street, 19th Fl.
New York, NY 10013
Phone: (212) 816-7306
Fax: (646) 291-5499
Wei.Ke@citi.com

with a copy to:

Miguel A. Saez
500 Warren Corporate Center Drive – C-116A
Warren, NJ 07059
Phone: (212) 816-7312
Fax: (347) 321-4597
Miguel.A.Saez@Citi.com

If to PNC Bank, National Association, as an Issuing Bank:

PNC Bank, National Association
500 First Avenue
Pittsburgh, PA 15219
loccentralizedunit@pnc.com

If to any other Lender:

To such Lender's address or telecopy number as set forth in the applicable Administrative Questionnaire

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties delivered in compliance with this Section; provided, a Lender or an Issuing Bank shall only be required to give notice of any such other address to the Administrative Agent and the Borrower. All such notices and other communications shall be effective (i) if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of the Borrower or the Administrative Agent, the Issuing Banks and the Lenders at the addresses specified; (ii) if telecopied, when transmitted; (iii) if hand delivered or sent by overnight courier, when delivered; or (iv) if delivered in accordance with Section 8.5. to the extent applicable; provided, however, that, in the case of the immediately preceding clauses (i), (ii) and (iii), non-receipt of any communication as of the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Notwithstanding the immediately preceding sentence, all notices or communications to the Administrative Agent, any Issuing Bank or any Lender under Article II. shall be effective only when actually received. None of the Administrative Agent, any Issuing Bank or any Lender shall incur any liability to any Loan Party (nor shall the Administrative Agent incur any liability to the Issuing Banks or the Lenders) for acting upon any telephonic notice referred to in this Agreement which the Administrative Agent, such Issuing Bank or such Lender, as the case may be, believes in good faith to have been given by a Person authorized to deliver such notice or for otherwise acting in good faith hereunder. Failure of a Person designated to get a copy of a notice to receive such copy shall not affect the validity of notice properly given to another Person.

Section 12.2. Expenses.

The Borrower agrees (a) to pay or reimburse the Administrative Agent and the Collateral Agent for all of its reasonable costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expense and reasonable travel expenses related to closing), and the consummation of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to the Administrative Agent and the Collateral Agent and all costs and expenses of the Administrative Agent and the Collateral Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents and in connection with the review of Properties for inclusion as Collateral Properties and the other activities of the Administrative Agent and the Collateral Agent under Section 7.15 and the fees and disbursements of counsel to the Administrative Agent and the Collateral Agent (including, without limitation, local counsel to the Administrative Agent and the Collateral Agent in each applicable jurisdiction) relating to all such activities (it being understood and agreed that, to the extent any of such services or activities are provided internally by the Administrative Agent or the Collateral Agent, the Borrower shall reimburse the Administrative Agent and the Collateral Agent, as applicable, for such costs and expenses at market rates), (b) to pay or reimburse the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders for all their reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under the Loan Documents and the Fee Letter, including the reasonable fees and disbursements of their respective counsel (including the allocated fees and expenses of in-house counsel) and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent and the Collateral Agent pursuant to the Loan Documents, (c) to pay, and indemnify and hold harmless the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any failure to pay or delay in paying, documentary, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of any of the Loan Documents, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and (d) to the extent not already covered by any of the preceding subsections, to pay or reimburse the fees and disbursements of counsel to the Administrative Agent, the Collateral Agent, any Issuing Bank and any Lender incurred in connection with the representation of the Administrative Agent, the Collateral Agent, such Issuing Bank or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 10.1.(e) or 10.1.(f), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor-in-possession financing or any plan of reorganization of the Borrower or any other Loan Party, whether proposed by the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent, the Collateral Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder.

Section 12.3. [Intentionally Omitted].

Section 12.4. Setoff.

Subject to Sections 3.3. and 11.13. and the provisions of the Intercreditor Agreement, and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Borrower hereby authorizes the Administrative Agent, each Issuing Bank, each Lender, each Affiliate of the Administrative Agent, any Issuing Bank or any Lender, and each Participant, at any time or from time to time while an Event of Default exists, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, but in the case of an Issuing Bank, a Lender, an

Affiliate of an Issuing Bank or a Lender, or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Administrative Agent, such Issuing Bank, such Lender, any Affiliate of the Administrative Agent, such Issuing Bank or such Lender, or such Participant, to or for the credit or the account of the Borrower against and on account of any of the Obligations, irrespective of whether or not any or all of the Loans and all other Obligations have been declared to be, or have otherwise become, due and payable as permitted by Section 10.2., and although such Obligations shall be contingent or unmatured. Notwithstanding anything to the contrary in this Section, if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.9. and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders and (y) such Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

Section 12.5. Litigation; Jurisdiction; Other Matters; Waivers.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE BORROWER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, EACH ISSUING BANK AND THE BORROWER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE FEE LETTER OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE BORROWER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

(b) THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY LENDER, ANY ISSUING BANK OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION 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 IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE COLLATERAL 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 ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY ISSUING BANK OR ANY LENDER OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY ISSUING BANK OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS, THE TERMINATION OR EXPIRATION OF ALL LETTERS OF CREDIT AND THE TERMINATION OF THIS AGREEMENT.

Section 12.6. Successors and Assigns.

(a) Successors and Assigns Generally. 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 neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document 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 Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (f) (and, subject to the last sentence of the immediately following subsection (b), 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 the immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans 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 an assigning Lender's Commitment and the Loans 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 the immediately preceding subsection (A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (in each case, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Default or Event of Default shall exist, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that if, after giving effect to such assignment, the amount of the Commitment held by such assigning Lender or the outstanding principal balance of the Loans of such assigning Lender, as applicable, would be less than \$5,000,000, then such assigning Lender shall assign the entire amount of its Commitment and the Loans at the time owing to it.

(ii) Proportionate Amounts. 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 Loan or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (i)(B) of this subsection (b) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default shall exist at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Commitment if such assignment is to a Person that is not already a Lender with a Commitment, an Affiliate of such a Lender or an Approved Fund with respect to such a Lender; and

(C) the consent of the Swingline Lenders and the Issuing Banks (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of a Commitment.

(iv) Assignment and Acceptance; Notes. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$4,500 for each assignment (which fee the Administrative Agent may, in its sole discretion, elect to waive), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. If requested by the transferor Lender or the assignee, upon the consummation of any assignment, the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that new Notes are issued to the assignee and such transferor Lender, as appropriate.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or to any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to such assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable amount of the Loan previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each Issuing Bank, each Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, 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 Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption 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 3.10., 4.1., 4.4., 12.2. and 12.10. and the other provisions of this Agreement and the other Loan Documents as provided in Section 12.11. 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 that Lender 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 paragraph 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 the immediately following subsection (d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Principal Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated rates) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose

name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, any Swingline Lender, any Issuing Bank, any other Lender or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries or a Defaulting Lender) (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, the Issuing Banks and the 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 of any provision of any Loan Document that (w) increases such Lender's Commitment or reduces the principal of any such Lender's Loan, in each case, in which such Participant has a participation, (x) extends the date fixed for the payment of principal on the Loans or portions thereof owing to such Lender, (y) reduces the rate at which interest is payable thereon or (z) releases any Guarantor from its Obligations under the Guaranty except as contemplated by Section 7.13.(b), in each case, as applicable to that portion of such Lender's rights and/or obligations that are subject to the participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.10., 4.1., 4.4. (subject to the requirements and limitations therein, including the requirements under Section 3.10.(g) (it being understood that the documentation required under Section 3.10.(g) shall be delivered to the participating Lender)) 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 (A) agrees to be subject to the provisions of Section 4.6. as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 4.1. or 3.10., with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Regulatory Change that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 4.6. with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.4. as though it were a Lender; provided that such Participant agrees to be subject to Section 3.3. 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 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 (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person 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) of the United States Treasury Regulations. 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. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) [Intentionally Omitted.]

(f) Certain Pledges. 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 any pledge or assignment to secure obligations to a Federal Reserve Bank; provided 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) No Registration. Each Lender agrees that, without the prior written consent of the Borrower and the Administrative Agent, it will not make any assignment hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Loan or Note under the Securities Act or any other securities laws of the United States of America or of any other jurisdiction.

(h) USA Patriot Act Notice; Compliance. In order for the Administrative Agent to comply with “know your customer” and anti-money laundering rules and regulations, including without limitation, the Patriot Act, prior to any Lender or any Issuing Bank that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender or such Issuing Bank shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

Section 12.7. Amendments and Waivers.

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or any other Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Borrower, any other Loan Party or any other Subsidiary of any terms of this Agreement or such other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto.

(b) [Intentionally Omitted.]

(c) Consent of Lenders Directly Affected. In addition to the foregoing requirements, no amendment, waiver or consent shall, unless in writing, and signed by each of the Lenders directly and adversely affected thereby (or the Administrative Agent at the written direction of such Lenders), do any of the following:

(i) increase the Commitments of such Lenders (excluding any increase as a result of an assignment of Commitments permitted under Section 12.6. and any increases contemplated under Section 2.15.) or subject such Lenders to any additional obligations;

(ii) reduce the principal of, or interest that has accrued or the rates of interest that will be charged on the outstanding principal amount of, any Loans or other Obligations;

(iii) reduce the amount of any Fees payable to such Lenders hereunder;

(iv) modify the definition of “Termination Date” (except in accordance with Section 2.12.), or otherwise postpone any date fixed for any payment of principal of, or interest on, any Loans or for the payment of Fees or any other Obligations, or extend the expiration date of any Letter of Credit beyond the Termination Date (except as permitted under Section 2.2.(b)) or, with respect to any Letter of Credit having an expiration date beyond the Termination Date as permitted by Section 2.2.(b), extend the expiration date of such Letter of Credit;

(v) modify the definition of “Commitment Percentage” or amend or otherwise modify the provisions of Section 3.2.;

(vi) amend this Section or amend any of the other definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section;

(vii) modify the definition of the term “Requisite Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof;

(viii) release any Guarantor from its obligations under the Guaranty except as contemplated by Section 7.13.(b);

(ix) waive a Default or Event of Default under Section 10.1.(a); or

(x) amend, or waive the Borrower’s compliance with, Section 2.14.

(d) Amendment of Administrative Agent’s Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. Any amendment, waiver or consent relating to Section 2.3. or the obligations of a Swingline Lender under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of such Swingline Lender. Any amendment, waiver or consent relating to Section 2.2. or the obligations of an Issuing Bank under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of such Issuing Bank. Any amendment, waiver or consent with respect to any Loan Document that (i) diminishes the rights of a Specified Derivatives Provider in a manner or to an extent dissimilar to that affecting the Lenders or (ii) increases the liabilities or obligations of a Specified Derivatives Provider shall, in addition to the Lenders required hereinabove to take such action, require the consent of the Lender that is (or having an Affiliate that is) such Specified Derivatives Provider. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment or Loans of a Defaulting Lender may not be increased, reinstated or extended without the written consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the written consent of such Defaulting Lender. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as

such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

Section 12.8. Nonliability of Administrative Agent and Lenders.

The relationship between the Borrower, on the one hand, and the Lenders, the Issuing Banks, the Administrative Agent, and the Collateral Agent, on the other hand, shall be solely that of borrower and lender. None of the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender shall have any fiduciary responsibilities to the Borrower and no provision in this Agreement or in any of the other Loan Documents, and no course of dealing between or among any of the parties hereto, shall be deemed to create any fiduciary duty owing by the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender to any Lender, the Borrower, any Subsidiary or any other Loan Party. None of the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

Section 12.9. Confidentiality.

Except as otherwise provided by Applicable Law, the Administrative Agent, each Issuing Bank and each Lender shall maintain the confidentiality of all Information (as defined below) in accordance with its customary procedure for handling confidential information of this nature and in accordance with safe and sound banking practices but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed Assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law; (d) to the Administrative Agent's, such Issuing Bank's or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information); (e) in connection with the exercise of any remedies under any Loan Document (or any Specified Derivatives Contract) or any action or proceeding relating to any Loan Document (or any such Specified Derivatives Contract) or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent, such Issuing Bank or such Lender to be a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Affiliate of the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to bank trade publications, such information to consist of deal terms and other information customarily found in such publications; (i) to any other party hereto; (j) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loan Documents; (k) for purposes of establishing a "due diligence" defense; and (l) with the consent of the Borrower. Notwithstanding the foregoing, the

Administrative Agent, each Issuing Bank and each Lender may disclose any such confidential information, without notice to the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent, such Issuing Bank or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent, such Issuing Bank or such Lender. As used in this Section, the term “Information” means all information received from the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Borrower, any other Loan Party, any other Subsidiary or any Affiliate, provided that, in the case of any such information received from the Borrower, any other Loan Party, any other Subsidiary or any Affiliate after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided 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 to its own confidential information. No Indemnified Party (as defined in Section 12.10.) shall be liable to the Borrower or any other Loan Party for any damages arising from the use by others of Information or other materials obtained by electronic transmission, except to the extent resulting from the gross negligence or willful misconduct of such Person, as determined by a court of competent jurisdiction in a final, non-appealable judgment.

Section 12.10. Indemnification.

(a) The Borrower shall and hereby agrees to indemnify, defend and hold harmless the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks, the Lenders, all of the Affiliates of each of the Administrative Agent, the Collateral Agent, any of the Lead Arrangers, any of the Issuing Banks or any of the Lenders, and their respective directors, officers, shareholders, agents, employees and counsel (each referred to herein as an “**Indemnified Party**”) from and against any and all of the following (collectively, the “**Indemnified Costs**”): losses, costs, claims, penalties, damages, liabilities, deficiencies, judgments or expenses of every kind and nature (including, without limitation, amounts paid in settlement, court costs and the fees and disbursements of counsel incurred in connection with any litigation, investigation, claim or proceeding or any advice rendered in connection therewith, but excluding Indemnified Costs indemnification in respect of which is specifically covered by Section 3.10. or 4.1. or expressly excluded from the coverage of such Sections) incurred by an Indemnified Party in connection with, arising out of, or by reason of, any suit, cause of action, claim, arbitration, investigation or settlement, consent decree or other proceeding (the foregoing referred to herein as an “**Indemnity Proceeding**”) which is in any way related directly or indirectly to: (i) this Agreement or any other Loan Document or the transactions contemplated thereby or the Collateral; (ii) the making of any Loans or issuance of Letters of Credit hereunder; (iii) any actual or proposed use by the Borrower of the proceeds of the Loans or Letters of Credit; (iv) the Administrative Agent’s, any Issuing Bank’s or any Lender’s entering into this Agreement; (v) the fact that the Administrative Agent, the Issuing Banks and the Lenders have established the credit facility evidenced hereby in favor of the Borrower; (vi) the fact that the Administrative Agent, the Issuing Banks and the Lenders are creditors of the Borrower and have or are alleged to have information regarding the financial condition, strategic plans or business operations of the Borrower and the Subsidiaries; (vii) the fact that the Administrative Agent, the Issuing Banks and the Lenders are material creditors of the Borrower and are alleged to influence directly or indirectly the business decisions or affairs of the Borrower and the Subsidiaries or their financial condition; (viii) the exercise of any right or remedy the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks or the Lenders may have under this Agreement or the other Loan Documents; provided, however, that the Borrower shall not be obligated to indemnify any Indemnified Party for any acts or omissions of such Indemnified Party in connection with matters described in this clause (viii) to the extent arising from the gross negligence or willful misconduct of such Indemnified Party, as determined

by a court of competent jurisdiction in a final, non-appealable judgment; (ix) any civil penalty or fine assessed by the OFAC against, and all costs and expenses (including counsel fees and disbursements) incurred in connection with defense thereof by, the Administrative Agent, the Collateral Agent, any Lead Arranger, any Issuing Bank or any Lender as a result of conduct of the Borrower, any other Loan Party or any other Subsidiary that violates a sanction administered or enforced by the OFAC; or (x) any violation or non-compliance by the Borrower or any Subsidiary of any Applicable Law (including any Environmental Law) including, but not limited to, any Indemnity Proceeding commenced by (A) the Internal Revenue Service or state taxing authority or (B) any Governmental Authority or other Person under any Environmental Law, including any Indemnity Proceeding commenced by a Governmental Authority or other Person seeking remedial or other action to cause the Borrower or its Subsidiaries (or its respective properties) (or the Administrative Agent and/or the Collateral Agent and/or the Lead Arrangers and/or the Lenders and/or the Issuing Banks as successors to the Borrower) to be in compliance with such Environmental Laws.

(b) The Borrower's indemnification obligations under this Section shall apply to all Indemnity Proceedings arising out of, or related to, the foregoing whether or not an Indemnified Party is a named party in such Indemnity Proceeding. In this connection, this indemnification shall cover all Indemnified Costs of any Indemnified Party in connection with any deposition of any Indemnified Party or compliance with any subpoena (including any subpoena requesting the production of documents). This indemnification shall, among other things, apply to any Indemnity Proceeding commenced by other creditors of the Borrower or any Subsidiary, any shareholder of the Borrower or any Subsidiary (whether such shareholder(s) are prosecuting such Indemnity Proceeding in their individual capacity or derivatively on behalf of the Borrower), any account debtor of the Borrower or any Subsidiary or by any Governmental Authority.

(c) This indemnification shall apply to any Indemnity Proceeding arising during the pendency of any bankruptcy proceeding filed by or against the Borrower and/or any Subsidiary.

(d) All out-of-pocket fees and expenses of, and all amounts paid to third-persons by, an Indemnified Party shall be advanced by the Borrower at the request of such Indemnified Party notwithstanding any claim or assertion by the Borrower that such Indemnified Party is not entitled to indemnification hereunder upon receipt of an undertaking by such Indemnified Party that such Indemnified Party will reimburse the Borrower if it is actually and finally determined by a court of competent jurisdiction that such Indemnified Party is not so entitled to indemnification hereunder.

(e) An Indemnified Party may conduct its own investigation and defense of, and may formulate its own strategy with respect to, any Indemnity Proceeding covered by this Section and, as provided above, all Indemnified Costs incurred by such Indemnified Party shall be reimbursed by the Borrower. No action taken by legal counsel chosen by an Indemnified Party in investigating or defending against any such Indemnity Proceeding shall vitiate or in any way impair the obligations and duties of the Borrower hereunder to indemnify and hold harmless each such Indemnified Party; provided, however, that if (i) the Borrower is required to indemnify an Indemnified Party pursuant hereto and (ii) the Borrower has provided evidence reasonably satisfactory to such Indemnified Party that the Borrower has the financial wherewithal to reimburse such Indemnified Party for any amount paid by such Indemnified Party with respect to such Indemnity Proceeding, such Indemnified Party shall not settle or compromise any such Indemnity Proceeding without the prior written consent of the Borrower (which consent shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, an Indemnified Party may settle or compromise any such Indemnity Proceeding without the prior written consent of the Borrower where (x) no monetary relief is sought against such Indemnified Party in such Indemnity Proceeding or (y) there is an allegation of a violation of law by such Indemnified Party.

(f) If and to the extent that the obligations of the Borrower under this Section are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under Applicable Law.

(g) The Borrower's obligations under this Section shall survive any termination of this Agreement and the other Loan Documents and the payment in full in cash of the Pari Passu Obligations, and are in addition to, and not in substitution of, any of the other obligations set forth in this Agreement or any other Loan Document to which it is a party.

References in this Section 12.10. to "Lender" or "Lenders" shall be deemed to include such Persons (and their Affiliates) in their capacity as Specified Derivatives Providers.

Section 12.11. Termination; Survival.

This Agreement shall terminate at such time as (a) all of the Commitments have been terminated, (b) all Letters of Credit have terminated or expired or been cancelled (other than Letters of Credit the expiration dates of which extend beyond the Termination Date as permitted under Section 2.2.(b) and in respect of which the Borrower has satisfied the requirements of such Section), (c) none of the Lenders is obligated any longer under this Agreement to make any Loans and the Issuing Banks are no longer obligated under this Agreement to issue Letters of Credit and (d) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full; provided, however, if on the Termination Date or any other date the Commitments are terminated or reduced to zero (whether voluntarily, by reason of the occurrence of an Event of Default or otherwise) any Letters of Credit remain outstanding, then the provisions of this Agreement applicable to Letters of Credit, including without limitation, the terms of Section 2.13 and the Borrower's reimbursement obligations under Section 2.2.(d), shall remain in effect until all such Letters of Credit have expired, have been cancelled or have otherwise terminated. The indemnities to which the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders are entitled under the provisions of Sections 3.10., 4.1., 4.4., 11.6., 12.2. and 12.10. and any other provision of this Agreement and the other Loan Documents, and the provisions of Sections 12.5. and 12.13, shall continue in full force and effect and shall protect the Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) in the case of the Administrative Agent, any Issuing Bank and any Lender, at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement.

Section 12.12. Severability of Provisions.

If any provision of this Agreement or the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed from the Loan Documents, and the validity, legality and enforceability of the remaining provisions shall remain in full force as though the invalid, illegal, or unenforceable provision had never been part of the Loan Documents.

Section 12.13. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 12.14. Counterparts.

To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format (“PDF”) or other similar electronic means). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

Section 12.15. Obligations with Respect to Loan Parties.

The obligations of the Borrower to direct or prohibit the taking of certain actions by the other Loan Parties as specified herein shall be absolute and not subject to any defense the Borrower may have that the Borrower does not control such Loan Parties.

Section 12.16. Independence of Covenants.

All covenants hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 12.17. Limitation of Liability.

None of the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender, or any Affiliate, officer, director, employee, attorney, or agent of the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender shall have any liability with respect to, and the Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by the Borrower in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents or the Fee Letter, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. The Borrower hereby waives, releases, and agrees not to sue the Administrative Agent, the Collateral Agent, any Issuing Bank or any Lender or any of the Administrative Agent’s, the Collateral Agent’s, any Issuing Bank’s or any Lender’s Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents, the Fee Letter, or any of the transactions contemplated by this Agreement or financed hereby.

Section 12.18. Entire Agreement.

This Agreement, the Notes, the Intercreditor Agreement, the other Loan Documents and the Fee Letter embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency; provided, however, that in the case of any inconsistency between any term of the Intercreditor Agreement, on the one hand, and any term of this Agreement or any other Loan Document, on the other hand, the

term of the Intercreditor Agreement shall control to the extent of such inconsistency. There are no oral agreements among the parties hereto.

Section 12.19. Construction.

The Administrative Agent, each Issuing Bank, the Borrower and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by the Administrative Agent, each Issuing Bank, the Borrower and each Lender.

Section 12.20. Headings.

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

Section 12.21. LIABILITY OF TRUSTEES, ETC.

THE PARTIES HERETO ACKNOWLEDGE AND AGREE AS FOLLOWS:

THE AMENDED AND RESTATED DECLARATION OF TRUST ESTABLISHING THE BORROWER, DATED SEPTEMBER 20, 1999, A COPY OF WHICH, TOGETHER WITH ALL AMENDMENTS THERETO (THE "DECLARATION"), IS DULY FILED IN THE OFFICE OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND, PROVIDES THAT THE NAME "SENIOR HOUSING PROPERTIES TRUST" REFERS TO THE TRUSTEES UNDER THE DECLARATION COLLECTIVELY AS TRUSTEES, BUT NOT INDIVIDUALLY OR PERSONALLY, AND THAT NO TRUSTEE, OFFICER, SHAREHOLDER, EMPLOYEE OR AGENT OF THE BORROWER SHALL BE HELD TO ANY PERSONAL LIABILITY, JOINTLY OR SEVERALLY, FOR ANY OBLIGATION OF, OR CLAIM AGAINST, THE BORROWER. ALL PERSONS DEALING WITH THE BORROWER, IN ANY WAY, SHALL LOOK ONLY TO THE ASSETS OF THE BORROWER FOR THE PAYMENT OF ANY SUM OR THE PERFORMANCE OF ANY OBLIGATION. THE PROVISIONS OF THIS SECTION SHALL NOT LIMIT ANY OBLIGATIONS OF ANY LOAN PARTY OTHER THAN THE BORROWER.

Section 12.22. Acknowledgement and Consent to Bail-In of Affected 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 Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected 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 Affected 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 the applicable Resolution Authority.

Section 12.23. Effect on Existing Credit Agreement.

(a) Existing Credit Agreement. Upon satisfaction of the conditions precedent set forth in Article V., this Agreement shall exclusively control and govern the mutual rights and obligations of the parties hereto with respect to the Existing Credit Agreement, and the Existing Credit Agreement shall be superseded by this Agreement in all respects, in each case, on a prospective basis only.

(b) NO NOVATION. THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT SOLELY TO AMEND AND RESTATE THE TERMS OF, AND THE OBLIGATIONS OWING UNDER AND IN CONNECTION WITH, THE EXISTING CREDIT AGREEMENT PURSUANT TO THE TERMS AND PROVISIONS OF THIS AGREEMENT. THE PARTIES DO NOT INTEND THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY TO BE, AND THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT BE CONSTRUED TO BE, A NOVATION OF ANY OF THE OBLIGATIONS OWING BY THE BORROWER UNDER OR IN CONNECTION WITH THE EXISTING CREDIT AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE EXISTING CREDIT AGREEMENT).

Section 12.24. Acknowledgement Regarding Any Supported QFCs.

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivatives Contracts 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 FDIC 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):

(b) 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 QFC 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.

(c) As used in this Section 12.24, the following terms have the following meanings:

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Covered Entity**” means 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).

“**Default Right**” has 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.

“**QFC**” has 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).

Section 12.25. Stamp, Intangible and Recording Taxes.

The Borrower will pay or cause to be paid any and all stamp, excise, intangible, registration, recordation and similar taxes, fees or charges and shall indemnify the Administrative Agent and each Lender against any and all liabilities with respect to or resulting from any delay in the payment or omission to pay any such taxes, fees or charges, which may be payable or determined to be payable in connection with the execution, delivery, recording, performance or enforcement of this Agreement, the Notes and any of the other Loan Documents, the amendment, supplement, modification or waiver of or consent under this Agreement, the Notes or any of the other Loan Documents or the perfection of any rights or Liens under this Agreement, the Notes or any of the other Loan Documents.

Section 12.26. Technical Amendments.

Notwithstanding anything to the contrary herein, if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders and the Issuing Banks. Any such amendment shall become effective without any further action or consent of any of other party to this Agreement and the Administrative Agent will provide a copy of such amendment to the Lenders.

Section 12.27. Intercreditor Agreement.

(a) REFERENCE IS MADE TO THE INTERCREDITOR AGREEMENT. EACH LENDER AND EACH ISSUING BANK HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO THE INTERCREDITOR AGREEMENT ON BEHALF OF SUCH LENDER OR ISSUING BANK. THE PROVISIONS OF THIS SECTION 12.27 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER AND EACH ISSUING BANK IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER OR ISSUING BANK AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE INTERCREDITOR AGREEMENT. IN THE CASE OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE INTERCREDITOR AGREEMENT AND ANY LOAN DOCUMENT, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

(b) Automatically upon final repayment in full of the outstanding principal amount of Term Loans and the discharge of all other outstanding “Obligations” under and as defined in the Existing Term Loan Agreement, all references herein to the “Existing Term Loan Agreement”, “Term Lenders”, “Term Loans”, “Term Loan Administrative Agent” and “Term Loan Documents” shall be of no further force or effect, and shall be disregarded for all purposes under this Agreement and the other Loan Documents, following such date.

[Signatures on Following Pages]

SCHEDULE I

Commitments

Lender	Commitment Amount
Wells Fargo Bank, National Association	\$72,000,000.00
Citibank, N.A.	\$72,000,000.00
PNC Bank, National Association	\$72,000,000.00
Royal Bank of Canada	\$72,000,000.00
Bank of America, N.A.	\$68,000,000.00
BBVA USA f/k/a Compass Bank	\$68,000,000.00
Mizuho Bank, Ltd.	\$60,000,000.00
Sumitomo Mitsui Banking Corporation	\$60,000,000.00
BMO Harris Bank, N.A.	\$52,000,000.00
Regions Bank	\$52,000,000.00
Associated Bank, National Association	\$20,000,000.00
U.S. Bank National Association	\$20,000,000.00
The Bank of East Asia, Limited (LA Branch)	\$18,659,379.30
First Hawaiian Bank	\$16,000,000.00
First Horizon Bank	\$12,000,000.00
Morgan Stanley Bank, N.A.	\$11,740,620.70
UBS AG, Stamford Branch	\$10,400,000.00
Bank of Taiwan, Los Angeles Branch	\$8,000,000.00
First Commercial Bank, Ltd. New York Branch	\$8,000,000.00
Land Bank of Taiwan, Los Angeles Branch	\$8,000,000.00
Taiwan Cooperative Bank Seattle Branch	\$8,000,000.00
Mega International Commercial Bank Co., Ltd. Los Angeles Branch	\$7,200,000.00
CTBC Bank Co., Ltd. New York Branch, previously known as Chinatrust Commercial Bank New York Branch	\$4,000,000.00
TOTAL	\$800,000,000

ANNEX I

COLLATERAL PROPERTY DILIGENCE

1. An executive summary of the Property including the following information relating to such Property: (a) a description of such Property, and (b) the current projected capital plans and, if applicable, current renovation plans for such Property;
 2. An operating statement for such Property audited or certified by a representative of the Borrower as being true and correct in all material respects and prepared in accordance with GAAP for the previous three (3) fiscal years; provided that, with respect to any period during which such Property was owned by a Subsidiary of the Borrower for less than three (3) years, such information shall only be required to be delivered to the extent reasonably available to the Borrower and such certification may be based upon the best of the Borrower's knowledge; provided, further, that if such Property has been operating for less than three (3) years, the Borrower shall provide such projections and other information concerning the anticipated operation of such Property as the Administrative Agent may reasonably request;
 3. All Security Documents for such Property;
 4. Copies of all documents of record reflected in Schedule A and Schedule B of the commitment or preliminary report for the applicable Title Policy and a copy of the most recent real estate tax bill and notice of assessment;
 5. A Title Policy for such Property insuring the Lien of the applicable Security Instrument;
 6. An opinion of counsel in the jurisdiction in which such Property is located;
 7. A survey of such Property certified by a surveyor licensed in the applicable jurisdiction to have been prepared in accordance with the then effective Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys;
 8. Receipt of a completed standard flood hazard determination for such Property and if such Property is located in a FEMA-designated special flood hazard area, evidence of the Borrower's receipt of required notices and adequate flood insurance;
 9. An Appraisal of such Property addressed to the Collateral Agent or on which the Collateral Agent and the Lenders are expressly permitted to rely pursuant to a reliance letter addressed to the Collateral Agent and the Lenders;
 10. A "Phase I" environmental assessment of such Property, which report (a) has been prepared by an environmental engineering firm acceptable to the Administrative Agent and (b) complies with the requirements contained in the Administrative Agent's guidelines adopted from time to time by the Administrative Agent to be used in its lending practice generally and any other environmental assessments or other reports relating to such Property, including, without limitation, any "Phase II" environmental assessment prepared or recommended by such environmental engineering firm to be prepared for such Property;
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11. A property condition report for such Property prepared by a firm or firms acceptable to the Administrative Agent;
 12. To the extent requested by the Administrative Agent in its reasonable discretion, seismic reports and such other reports as are usual and customary for secured real estate loans or similar properties in the jurisdiction in which the Property is located, in each case, commissioned by the Collateral Agent in the name of the Collateral Agent, its successors and assigns;
 13. If available, final certificates of occupancy and any other Governmental Approvals relating to such Property;
 14. A property zoning report indicating that such Property complies with applicable zoning and land use laws;
 15. Copies of (a) all Material Contracts relating to the use, occupancy, operation, maintenance, enjoyment or ownership of such Property, if any, (b) all Leases with respect to such Property as requested by the Administrative Agent, and (c) any other franchises, leases or material operating agreements with respect to such Property;
 16. UCC, tax, judgment, litigation, bankruptcy and lien search reports with respect to such Property and the Guarantor owning such Property in all necessary or appropriate jurisdictions indicating that there are no Liens of record on such Property other than Permitted Liens described in clauses (c), (g), (i) and (j) of the definition of that term;
 17. Copies of any applicable ground leases and estoppels from ground lessors for such Property as requested by Administrative Agent;
 18. Inspection of such Property by the Administrative Agent and any Lender and their respective engineers and consultants as the Administrative Agent or any such Lender may require;
 19. Execution and delivery of any state specific documents or waivers required and/or customary in connection with the execution of any Security Instrument, including, but not limited to, anti-coercion statements, disclosure of confession of judgments, tax affidavits, recording tax orders or other similar documents;
 20. Copies of all policies of insurance required by Section 7.5, including, without limitation, such evidence of flood insurance coverage (including contents coverage, as applicable) as the Administrative Agent shall require;
 21. Evidence satisfactory to the Administrative Agent that the Borrower has taken all actions required under the Flood Laws and/or requested by the Administrative Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to such Collateral Property; and
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22. Such other documents, instruments, comfort letters, estoppels, subordination, nondisturbance and attornment agreements, consents, and other agreements and information reasonably deemed necessary by the Administrative Agent (including any supplements to the Schedules hereto with respect to such Property reasonably acceptable to the Administrative Agent).

CERTIFICATION PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)

I, Jennifer F. (Francis) Mintzer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Diversified Healthcare Trust;
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 control 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 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: November 3, 2021

/s/ Jennifer F. (Francis) Mintzer

Jennifer F. (Francis) Mintzer

President and Chief Executive Officer

CERTIFICATION PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)

I, Richard W. Siedel, Jr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Diversified Healthcare Trust;
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 control 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 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: November 3, 2021

/s/ Richard W. Siedel, Jr.

Richard W. Siedel, Jr.

Chief Financial Officer and Treasurer

CERTIFICATION PURSUANT TO 18 U.S.C. SEC. 1350

In connection with the filing by Diversified Healthcare Trust (the “Company”) of the Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the “Report”), each of the undersigned hereby certifies, to the best of his or her 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/ Jennifer F. (Francis) Mintzer

Jennifer F. (Francis) Mintzer

President and Chief Executive Officer

/s/ Richard W. Siedel, Jr.

Richard W. Siedel, Jr.

Chief Financial Officer and Treasurer

Date: November 3, 2021