

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2018

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 1-8923

**WELLTOWER INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of Incorporation)

**34-1096634**

(IRS Employer  
Identification No.)

**4500 Dorr Street, Toledo, Ohio**

(Address of principal executive offices)

**43615**

(Zip Code)

**(419) 247-2800**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name, former address and former fiscal year, if changed since last report)

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, if any, 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 and post 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

(Do not check if a smaller reporting 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

As of October 25, 2018, the registrant had 375,644,415 shares of common stock outstanding.

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**CONSOLIDATED BALANCE SHEETS  
WELLTOWER INC. AND SUBSIDIARIES**

(In thousands)

	September 30, 2018 (Unaudited)	December 31, 2017 (Note)
Assets:		
Real estate investments:		
Real property owned:		
Land and land improvements	\$ 3,193,555	\$ 2,734,467
Buildings and improvements	27,980,830	25,373,117
Acquired lease intangibles	1,562,650	1,502,471
Real property held for sale, net of accumulated depreciation	619,141	734,147
Construction in progress	135,343	237,746
Gross real property owned	<u>33,491,519</u>	<u>30,581,948</u>
Less accumulated depreciation and amortization	<u>(5,394,274)</u>	<u>(4,838,370)</u>
Net real property owned	28,097,245	25,743,578
Real estate loans receivable	409,196	495,871
Less allowance for losses on loans receivable	<u>(68,372)</u>	<u>(68,372)</u>
Net real estate loans receivable	<u>340,824</u>	<u>427,499</u>
Net real estate investments	28,438,069	26,171,077
Other assets:		
Investments in unconsolidated entities	423,192	445,585
Goodwill	68,321	68,321
Cash and cash equivalents	191,199	243,777
Restricted cash	90,086	65,526
Straight-line rent receivable	388,045	389,168
Receivables and other assets	650,207	560,991
Total other assets	<u>1,811,050</u>	<u>1,773,368</u>
Total assets	<u>\$ 30,249,119</u>	<u>\$ 27,944,445</u>
Liabilities and equity		
Liabilities:		
Borrowings under primary unsecured credit facility	\$ 1,312,000	\$ 719,000
Senior unsecured notes	9,655,022	8,331,722
Secured debt	2,465,661	2,608,976
Capital lease obligations	71,377	72,238
Accrued expenses and other liabilities	1,074,994	911,863
Total liabilities	<u>14,579,054</u>	<u>12,643,799</u>
Redeemable noncontrolling interests	400,864	375,194
Equity:		
Preferred stock	718,498	718,503
Common stock	376,353	372,449
Capital in excess of par value	17,889,514	17,662,681
Treasury stock	(68,753)	(64,559)
Cumulative net income	6,008,095	5,316,580
Cumulative dividends	(10,478,020)	(9,471,712)
Accumulated other comprehensive income (loss)	(138,491)	(111,465)
Other equity	489	670
Total Welltower Inc. stockholders' equity	<u>14,307,685</u>	<u>14,423,147</u>
Noncontrolling interests	961,516	502,305
Total equity	<u>15,269,201</u>	<u>14,925,452</u>
Total liabilities and equity	<u>\$ 30,249,119</u>	<u>\$ 27,944,445</u>

NOTE: The consolidated balance sheet at December 31, 2017 has been derived from the audited financial statements at that date but does not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements.

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)**
**WELLTOWER INC. AND SUBSIDIARIES**

(In thousands, except per share data)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
<b>Revenues:</b>				
Rental income	\$ 342,887	\$ 362,880	\$ 1,019,857	\$ 1,085,621
Resident fees and services	875,171	702,380	2,374,450	2,049,757
Interest income	14,622	20,187	42,732	61,836
Other income	3,699	6,036	22,217	15,169
Total revenues	1,236,379	1,091,483	3,459,256	3,212,383
<b>Expenses:</b>				
Interest expense	138,032	122,578	382,223	357,405
Property operating expenses	657,157	523,997	1,782,373	1,536,021
Depreciation and amortization	243,149	230,138	707,625	683,262
General and administrative	28,746	29,913	95,282	93,643
Loss (gain) on derivatives and financial instruments, net	8,991	324	(5,642)	2,284
Loss (gain) on extinguishment of debt, net	4,038	—	16,044	36,870
Impairment of assets	6,740	—	39,557	24,662
Other expenses	88,626	99,595	102,396	117,608
Total expenses	1,175,479	1,006,545	3,119,858	2,851,755
Income (loss) from continuing operations before income taxes and income from unconsolidated entities	60,900	84,938	339,398	360,628
Income tax (expense) benefit	(1,741)	(669)	(7,170)	5,535
Income (loss) from unconsolidated entities	344	3,408	(836)	(23,676)
Income (loss) from continuing operations	59,503	87,677	331,392	342,487
Gain (loss) on real estate dispositions, net	24,723	1,622	373,662	287,869
Net income	84,226	89,299	705,054	630,356
Less: Preferred stock dividends	11,676	11,676	35,028	37,734
Less: Preferred stock redemption charge	—	—	—	9,769
Less: Net income (loss) attributable to noncontrolling interests <sup>(1)</sup>	8,166	3,580	13,539	7,735
Net income (loss) attributable to common stockholders	\$ 64,384	\$ 74,043	\$ 656,487	\$ 575,118
<b>Average number of common shares outstanding:</b>				
Basic	373,023	369,089	372,052	366,096
Diluted	374,487	370,740	373,638	367,894
<b>Earnings per share:</b>				
<b>Basic:</b>				
Income (loss) from continuing operations	\$ 0.16	\$ 0.24	\$ 0.89	\$ 0.94
Net income (loss) attributable to common stockholders	\$ 0.17	\$ 0.20	\$ 1.76	\$ 1.57
<b>Diluted:</b>				
Income (loss) from continuing operations	\$ 0.16	\$ 0.24	\$ 0.89	\$ 0.93
Net income (loss) attributable to common stockholders	\$ 0.17	\$ 0.20	\$ 1.76	\$ 1.56
Dividends declared and paid per common share	\$ 0.87	\$ 0.87	\$ 2.61	\$ 2.61

(1) Includes amounts attributable to redeemable noncontrolling interests.

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)****WELLTOWER INC. AND SUBSIDIARIES**

(In thousands)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
Net income	\$ 84,226	\$ 89,299	\$ 705,054	\$ 630,356
Other comprehensive income (loss):				
Unrecognized gain (loss) on available-for-sale securities	—	(3,808)	—	(20,285)
Unrealized gains (losses) on cash flow hedges	—	2	—	2
Foreign currency translation gain (loss)	(3,093)	37,343	(36,890)	70,769
Total other comprehensive income (loss)	(3,093)	33,537	(36,890)	50,486
Total comprehensive income (loss)	81,133	122,836	668,164	680,842
Less: Total comprehensive income (loss) attributable to noncontrolling interests <sup>(1)</sup>	10,933	14,732	3,675	29,930
Total comprehensive income (loss) attributable to common stockholders	\$ 70,200	\$ 108,104	\$ 664,489	\$ 650,912

(1) Includes amounts attributable to redeemable noncontrolling interests.

**CONSOLIDATED STATEMENTS OF EQUITY (UNAUDITED)**  
**WELLTOWER INC. AND SUBSIDIARIES**  
(In thousands)

Nine Months Ended September 30, 2018										
	Preferred Stock	Common Stock	Capital in Excess of Par Value	Treasury Stock	Cumulative Net Income	Cumulative Dividends	Accumulated Other Comprehensive Income (Loss)	Other Equity	Noncontrolling Interests	Total
Balances at beginning of period	\$ 718,503	\$ 372,449	\$ 17,662,681	\$ (64,559)	\$ 5,316,580	\$ (9,471,712)	\$ (111,465)	\$ 670	\$ 502,305	\$ 14,925,452
Comprehensive income:										
Net income (loss)					691,515				15,393	706,908
Other comprehensive income							(27,026)		(9,864)	(36,890)
Total comprehensive income										670,018
Net change in noncontrolling interests			(34,139)						453,682	419,543
Amounts related to stock incentive plans, net of forfeitures		172	23,127	(4,194)				(181)		18,924
Proceeds from issuance of common stock		3,732	237,840							241,572
Conversion of preferred stock	(5)		5							—
Dividends paid:										
Common stock dividends						(971,280)				(971,280)
Preferred stock dividends						(35,028)				(35,028)
Balances at end of period	\$ 718,498	\$ 376,353	\$ 17,889,514	\$ (68,753)	\$ 6,008,095	\$ (10,478,020)	\$ (138,491)	\$ 489	\$ 961,516	\$ 15,269,201

  

Nine Months Ended September 30, 2017										
	Preferred Stock	Common Stock	Capital in Excess of Par Value	Treasury Stock	Cumulative Net Income	Cumulative Dividends	Accumulated Other Comprehensive Income (Loss)	Other Equity	Noncontrolling Interests	Total
Balances at beginning of period	\$ 1,006,250	\$ 363,071	\$ 16,999,691	\$ (54,741)	\$ 4,803,575	\$ (8,144,981)	\$ (169,531)	\$ 3,059	\$ 475,079	\$ 15,281,472
Comprehensive income:										
Net income (loss)					622,621				9,907	632,528
Other comprehensive income							28,291		22,195	50,486
Total comprehensive income										683,014
Net change in noncontrolling interests			9,784						7,558	17,342
Amounts related to stock incentive plans, net of forfeitures		337	17,151	(7,611)				(1,942)		7,935
Proceeds from issuance of common stock		7,513	522,954							530,467
Redemption of preferred stock	(287,500)		9,760		(9,769)					(287,509)
Redemption of equity membership units		91	5,465	(11)						5,545
Conversion of preferred stock	(247)									(247)
Option compensation expense								10		10
Dividends paid:										
Common stock dividends						(955,631)				(955,631)
Preferred stock dividends						(37,734)				(37,734)
Balances at end of period	\$ 718,503	\$ 371,012	\$ 17,564,805	\$ (62,363)	\$ 5,416,427	\$ (9,138,346)	\$ (141,240)	\$ 1,127	\$ 514,739	\$ 15,244,664

**CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**  
**WELLTOWER INC. AND SUBSIDIARIES**  
(In thousands)

	Nine Months Ended	
	September 30,	
	2018	2017
Operating activities:		
Net income	\$ 705,054	\$ 630,356
Adjustments to reconcile net income to net cash provided from (used in) operating activities:		
Depreciation and amortization	707,625	683,262
Other amortization expenses	12,110	12,095
Impairment of assets	39,557	24,662
Stock-based compensation expense	22,800	16,459
Loss (gain) on derivatives and financial instruments, net	(5,642)	2,284
Loss (gain) on extinguishment of debt, net	16,044	36,870
Loss (income) from unconsolidated entities	836	23,676
Rental income less than (in excess of) cash received	(7,830)	(64,865)
Amortization related to above (below) market leases, net	1,984	180
Loss (gain) on real estate dispositions, net	(373,662)	(287,869)
Distributions by unconsolidated entities	21	116
Increase (decrease) in accrued expenses and other liabilities	103,474	171,713
Decrease (increase) in receivables and other assets	(11,223)	(86,475)
Net cash provided from (used in) operating activities	1,211,148	1,162,464
Investing activities:		
Cash disbursed for acquisitions	(3,190,534)	(574,002)
Cash disbursed for capital improvements to existing properties	(173,635)	(159,142)
Cash disbursed for construction in progress	(88,146)	(198,068)
Capitalized interest	(6,357)	(10,033)
Investment in real estate loans receivable	(67,136)	(70,051)
Principal collected on real estate loans receivable	149,592	82,263
Other investments, net of payments	(49,572)	50,877
Contributions to unconsolidated entities	(42,697)	(73,802)
Distributions by unconsolidated entities	61,253	58,754
Proceeds from (payments on) derivatives	65,438	55,771
Proceeds from sales of real property	1,208,501	1,237,851
Net cash provided from (used in) investing activities	(2,133,293)	400,418
Financing activities:		
Net increase (decrease) under unsecured credit facilities	593,000	(225,000)
Proceeds from issuance of senior unsecured notes	2,825,898	7,500
Payments to extinguish senior unsecured notes	(1,450,000)	(5,000)
Net proceeds from the issuance of secured debt	44,606	190,459
Payments on secured debt	(238,867)	(1,050,879)
Net proceeds from the issuance of common stock	242,411	530,992
Redemption of preferred stock	—	(287,500)
Payments for deferred financing costs and prepayment penalties	(29,701)	(54,027)
Contributions by noncontrolling interests <sup>(1)</sup>	11,238	47,209
Distributions to noncontrolling interests <sup>(1)</sup>	(86,462)	(51,824)
Cash distributions to stockholders	(1,006,274)	(992,621)
Other financing activities	(6,290)	(8,416)
Net cash provided from (used in) financing activities	899,559	(1,899,107)
Effect of foreign currency translation on cash, cash equivalents and restricted cash	(5,432)	24,316
Increase (decrease) in cash, cash equivalents and restricted cash	(28,018)	(311,909)
Cash, cash equivalents and restricted cash at beginning of period	309,303	607,220
Cash, cash equivalents and restricted cash at end of period	\$ 281,285	\$ 295,311
Supplemental cash flow information:		
Interest paid	\$ 312,452	\$ 312,896
Income taxes paid (received), net	3,195	5,606

(1) Includes amounts attributable to redeemable noncontrolling interests.





## **1. Business**

Welltower Inc., an S&P 500 company headquartered in Toledo, Ohio, is driving the transformation of health care infrastructure. The company invests with leading seniors housing operators, post-acute providers and health systems to fund the real estate and infrastructure needed to scale innovative care delivery models and improve people's wellness and overall health care experience. Welltower™, a real estate investment trust ("REIT"), owns interests in properties concentrated in major, high-growth markets in the United States, Canada and the United Kingdom, consisting of seniors housing and post-acute communities and outpatient medical properties.

## **2. Accounting Policies and Related Matters**

### *Basis of Presentation*

The accompanying unaudited consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") for interim financial information and with instructions to Quarterly Report on Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments (such as normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the nine months ended September 30, 2018 are not necessarily an indication of the results that may be expected for the year ending December 31, 2018. For further information, refer to the financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2017.

### *New Accounting Standards*

We adopted the following accounting standards, each of which did not have a material impact on our consolidated financial statements:

- In 2014, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers (ASC 606)," which is a comprehensive new revenue recognition model that requires revenue to be recognized in a manner to depict the transfer of goods or services to a customer at an amount that reflects the consideration expected to be received in exchange for those goods or services. We adopted ASC 606 on January 1, 2018 using the modified retrospective method of adoption. This guidance did not have a significant impact on our consolidated financial statements.

We have evaluated our various revenue streams to identify whether they would be subject to the provisions of ASC 606 and any differences in timing, measurement or presentation of revenue recognition. A significant source of our revenue is generated through leasing arrangements, which are specifically excluded from ASC 606. Management contracts are present in our seniors housing operating and outpatient medical segments and represent agreements to provide asset and property management, leasing, marketing and other services. Under ASC 606, the pattern and timing of recognition of income from these contracts is consistent with the prior accounting model.

- In 2017, the FASB issued ASU No. 2017-05, "Other Income – Gains and Losses from the Derecognition of Nonfinancial Assets (Subtopic 610-20): Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets." The standard clarifies that a financial asset is within the scope of Subtopic 610-20 if it meets the definition of an in substance nonfinancial asset. The standard also defines the term "in substance nonfinancial asset" and clarifies that an entity should identify each distinct nonfinancial asset or in substance nonfinancial asset promised to a counterparty and derecognize each asset when a counterparty obtains control over it. We adopted Subtopic 610-20 using a modified retrospective approach on January 1, 2018 and it did not have a material impact on our consolidated financial statements.
- In 2016, the FASB issued ASU No. 2016-01, "Financial Instruments – Overall: Recognition and Measurement of Financial Assets and Financial Liabilities," which requires entities to measure their investments at fair value and recognize any changes in fair value in net income unless the investments qualify for the new practicability exception. The practicability exception is available for equity investments that do not have readily determinable fair values. This standard requires us to recognize gains and losses from changes in the fair value of our available-for-sale equity securities through the consolidated statement of comprehensive income rather than through accumulated other comprehensive income. During the nine months ended September 30, 2018, we recognized a gain of \$5,642,000 in loss (gain) on derivatives and financial instruments, net on the Consolidated Statement of Comprehensive Income. There was no adjustment to accumulated other comprehensive income upon adoption at January 1, 2018 as accumulated losses were recognized as other-than-temporary impairment during the year ended December 31, 2017.

**WELLTOWER INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

- As of December 31, 2017, we adopted ASU No. 2016-18, “Restricted Cash,” and ASU No. 2016-15, “Classification of Certain Cash Receipts and Cash Payments.” ASU No. 2016-18 requires an entity to reconcile and explain the period over period change in total cash, cash equivalents and restricted cash within its consolidated statement of cash flows and ASU 2016-15 provides guidance clarifying how certain cash receipts and cash payments should be classified. We adopted these accounting standards retrospectively and, accordingly, certain line items in the consolidated statement of cash flows have been reclassified to conform to the current presentation. The following table summarizes the change in cash flows as reported and as previously reported prior to the adoption of these standards for the nine months ended September 30, 2017 (in thousands):

	As Reported	As Previously Reported
Cash disbursed for acquisitions	\$ (574,002)	\$ (575,694)
Decrease (increase) in restricted cash	—	130,470
Net cash provided from (used in) investing activities	400,418	529,196
Increase (decrease) in balance <sup>(1)</sup>	(311,909)	(183,131)
Balance at beginning of period <sup>(1)</sup>	607,220	419,378
Balance at end of period <sup>(1)</sup>	295,311	236,247

(1) Amounts in As Reported column include cash and cash equivalents and restricted cash as required. Amounts in the As Previously Reported column reflect only cash and cash equivalents.

- In August 2017, the FASB issued ASU 2017-12, “Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities,” which expands and refines hedge accounting for both nonfinancial and financial risk components and aligns the recognition and presentation of the effects of the hedging instrument and the hedged item in the financial statements. It also includes certain targeted improvements to simplify the application of current guidance related to hedge accounting. The early adoption of this standard on April 1, 2018, did not result in a cumulative effect adjustment and all applicable changes for the company were prospectively made. Please refer to Note 11 of the consolidated financial statements for additional detail on this adoption.

The following ASUs have been issued but not yet adopted:

- In 2016, the FASB issued ASU No. 2016-02, “Leases (Topic 842),” which requires lessees to recognize assets and liabilities on their consolidated balance sheet related to the rights and obligations created by most leases, while continuing to recognize expenses on their consolidated statements of comprehensive income over the lease term. It will also require disclosures designed to give financial statement users information regarding amount, timing, and uncertainty of cash flows arising from leases. The FASB issued ASU 2018-11, “Leases (Topic 842) Targeted Improvements” in July 2018, which provides lessors with a practical expedient, by class of underlying assets, to not separate non-lease components from the related lease components, and, instead, to account for those components as a single lease component, if certain criteria are met. ASU 2016-02 is effective for us beginning January 1, 2019, with early adoption permitted. Entities are required to use a modified retrospective approach for leases that exist or are entered into after the beginning of the earliest comparative period in the consolidated financial statements. ASU 2018-11 also provides a practical expedient that allows companies to use an optional transition method. Under the optional transition method, a cumulative adjustment to retained earnings during the period of adoption is recorded and prior periods would not require restatement. We are currently evaluating the impact of this guidance on our consolidated financial statements from both the lessee and lessor perspective. We believe that adoption will likely have a material impact to our consolidated financial statements for the recognition of certain operating leases as right-of-use assets and lease liabilities and related amortization. We expect to utilize the practical expedients in ASU 2018-11 as part of our adoption of this guidance.
- In 2016, the FASB issued ASU No. 2016-13, “Measurement of Credit Losses on Financial Instruments.” This standard requires a new forward-looking “expected loss” model to be used for receivables, held-to-maturity debt, loans, and other instruments. ASU 2016-13 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2019, and early adoption is permitted for fiscal years beginning after December 15, 2018. We are currently evaluating the impact that the standard will have on our consolidated financial statements.

### 3. Real Property Acquisitions and Development

The total purchase price for all properties acquired has been allocated to the tangible and identifiable intangible assets, liabilities and noncontrolling interests based upon their relative fair values in accordance with our accounting policies. The results of operations for these acquisitions have been included in our consolidated results of operations since the date of acquisition and are

**WELLTOWER INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

a component of the appropriate segments. Transaction costs primarily represent costs incurred with acquisitions, including due diligence costs, fees for legal and valuation services and termination of pre-existing relationships computed based on the fair value of the assets acquired, lease termination fees and other acquisition-related costs. Transaction costs related to asset acquisitions are capitalized as a component of purchase price and all other non-capitalizable costs are reflected in "Other expenses" on our Consolidated Statements of Comprehensive Income. Certain of our subsidiaries' functional currencies are the local currencies of their respective countries.

*Acquisition of Quality Care Properties*

On July 26, 2018, we completed the acquisition of Quality Care Properties Inc. ("QCP"), with QCP shareholders receiving \$20.75 of cash for each share of QCP common stock and all existing QCP debt was repaid upon closing. Prior to the acquisition, ProMedica Health System ("ProMedica") completed the acquisition of HCR ManorCare. Immediately following the acquisition of QCP, we formed an 80/20 joint venture with ProMedica to own the real estate associated with the 218 seniors housing properties leased to ProMedica under a lease agreement with the following key terms: (i) 15-year absolute triple-net master lease with three five-year renewal options; (ii) initial annual cash rent of \$179 million with a year one escalator of 1.375% and 2.75% annual escalators thereafter; and (iii) full corporate guarantee of ProMedica. Additionally, we acquired 59 seniors housing properties classified as held for sale and leased to ProMedica under a non-yielding lease, 12 seniors housing properties and one surgery center classified as held for sale and leased to operators under existing triple-net leases, 14 seniors housing properties leased to operators under existing triple-net leases and one multi-tenant medical office building leased to various tenants.

We drew on a \$1.0 billion term loan facility to fund a portion of the acquisition cash consideration and other related expenses. The term loan facility matures two years from the closing. In addition to the term loan facility draw, we drew on our unsecured credit facility described in Note 9, in order to fund the acquisition. The aggregate consideration to acquire the QCP shares and repay outstanding QCP debt was approximately \$3.5 billion.

We concluded that the QCP acquisition met the definition of an asset acquisition under ASU No. 2017-01, "Clarifying the Definition of a Business". The following table presents the purchase price calculation and the allocation to assets acquired and liabilities assumed based upon their relative fair value:

(In thousands)		
Land and land improvements	\$	417,983
Buildings and improvements		2,249,803
Acquired lease intangibles		15,512
Real property held for sale		418,297
Cash and cash equivalents		381,913
Restricted cash		4,981
Receivables and other assets		1,322
Total assets acquired		3,489,811
Accrued expenses and other liabilities		(13,199)
Total liabilities assumed		(13,199)
Noncontrolling interests		(512,741)
Net assets acquired	\$	2,963,871

Net assets acquired in the QCP acquisition detailed above are included in the respective segment tables below.

**WELLTOWER INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

*Triple-net Activity*

(In thousands)	Nine Months Ended	
	September 30, 2018	September 30, 2017
Land and land improvements	\$ 413,588	\$ 31,948
Buildings and improvements	2,239,422	206,910
Acquired lease intangibles	12,383	—
Real property held for sale	396,265	—
Receivables and other assets	1,322	—
Total assets acquired <sup>(1)</sup>	3,062,980	238,858
Accrued expenses and other liabilities	(13,199)	(21,236)
Total liabilities assumed	(13,199)	(21,236)
Noncontrolling interests	(512,741)	(7,275)
Non-cash acquisition related activity <sup>(2)</sup>	—	(54,901)
Cash disbursed for acquisitions	2,537,040	155,446
Construction in progress additions	49,619	106,186
Less: Capitalized interest	(1,932)	(3,886)
Foreign currency translation	180	(656)
Cash disbursed for construction in progress	47,867	101,644
Capital improvements to existing properties	6,766	17,873
Total cash invested in real property, net of cash acquired	\$ 2,591,673	\$ 274,963

<sup>(1)</sup> Excludes \$386,894,000 of unrestricted and restricted cash acquired during the nine months ended September 30, 2018.

<sup>(2)</sup> For the nine months ended September 30, 2017, \$54,901,000 is related to the acquisition of assets previously financed as a real estate loan receivable.

*Seniors Housing Operating Activity*

(In thousands)	Nine Months Ended	
	September 30, 2018	September 30, 2017
Land and land improvements	\$ 47,865	\$ 31,006
Building and improvements	535,436	384,522
Acquired lease intangibles	68,084	48,197
Receivables and other assets	1,255	3,164
Total assets acquired <sup>(1)</sup>	652,640	466,889
Secured debt	(89,973)	—
Accrued expenses and other liabilities	(14,686)	(43,364)
Total liabilities assumed	(104,659)	(43,364)
Noncontrolling interests	(9,818)	(4,701)
Non-cash acquisition related activity <sup>(2)</sup>	—	(59,065)
Cash disbursed for acquisitions	538,163	359,759
Construction in progress additions	28,222	65,282
Less: Capitalized interest	(2,608)	(5,996)
Foreign currency translation	2,151	(6,218)
Cash disbursed for construction in progress	27,765	53,068
Capital improvements to existing properties	127,274	110,372
Total cash invested in real property, net of cash acquired	\$ 693,202	\$ 523,199

<sup>(1)</sup> Excludes \$2,442,000 and \$6,273,000 of unrestricted and restricted cash acquired during the nine months ended September 30, 2018 and 2017, respectively.

<sup>(2)</sup> Includes \$6,349,000 related to the acquisition of assets previously financed as real estate loans receivable and \$51,097,000 previously financed as an investment in an unconsolidated entity during the nine months ended September 30, 2017.

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*Outpatient Medical Activity*

(In thousands)	Nine Months Ended	
	September 30, 2018	September 30, 2017
Land and land improvements	\$ 18,496	\$ 25,060
Buildings and improvements	79,205	62,336
Acquired lease intangibles	11,271	8,397
Real property held for sale	22,032	—
Receivables and other assets	6	3
Total assets acquired <sup>(1)</sup>	131,010	95,796
Secured debt	(14,769)	(25,709)
Accrued expenses and other liabilities	(910)	(2,210)
Total liabilities assumed	(15,679)	(27,919)
Noncontrolling interests	—	(9,080)
Cash disbursed for acquisitions	115,331	58,797
Construction in progress additions	16,733	33,495
Less: Capitalized interest	(1,817)	(1,847)
Accruals <sup>(2)</sup>	(2,402)	11,708
Cash disbursed for construction in progress	12,514	43,356
Capital improvements to existing properties	39,595	30,897
Total cash invested in real property	\$ 167,440	\$ 133,050

<sup>(1)</sup> Excludes \$2,244,000 and \$0 of unrestricted and restricted cash acquired during the nine months ended September 30, 2018 and 2017, respectively.

<sup>(2)</sup> Represents non-cash accruals for amounts to be paid in future periods for properties that converted, off-set by amounts paid in the current period.

*Construction Activity*

The following is a summary of the construction projects that were placed into service and began generating revenues during the periods presented (in thousands):

	Nine Months Ended	
	September 30, 2018	September 30, 2017
Development projects:		
Triple-net	\$ 90,055	\$ 283,472
Seniors housing operating	86,931	3,634
Outpatient medical	11,358	63,036
Total development projects	188,344	350,142
Expansion projects	8,879	10,336
Total construction in progress conversions	\$ 197,223	\$ 360,478

**4. Real Estate Intangibles**

The following is a summary of our real estate intangibles, excluding those classified as held for sale, as of the dates indicated (dollars in thousands):

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	September 30, 2018	December 31, 2017
<b>Assets:</b>		
In place lease intangibles	\$ 1,398,850	\$ 1,352,139
Above market tenant leases	59,011	58,443
Below market ground leases	65,022	58,784
Lease commissions	39,767	33,105
Gross historical cost	1,562,650	1,502,471
Accumulated amortization	(1,190,035)	(1,125,437)
Net book value	<u>\$ 372,615</u>	<u>\$ 377,034</u>
Weighted-average amortization period in years	16.0	15.1
<b>Liabilities:</b>		
Below market tenant leases	\$ 71,566	\$ 60,430
Above market ground leases	8,540	8,540
Gross historical cost	80,106	68,970
Accumulated amortization	(42,834)	(39,629)
Net book value	<u>\$ 37,272</u>	<u>\$ 29,341</u>
Weighted-average amortization period in years	16.1	20.1

The following is a summary of real estate intangible amortization for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Rental income related to above/below market tenant leases, net	\$ (294)	\$ 173	\$ (978)	\$ 745
Property operating expenses related to above/below market ground leases, net	(327)	(306)	(1,006)	(925)
Depreciation and amortization related to in place lease intangibles and lease commissions	(31,455)	(34,270)	(97,479)	(109,011)

The future estimated aggregate amortization of intangible assets and liabilities is as follows for the periods presented (in thousands):

	Assets	Liabilities
2018	\$ 32,456	\$ 1,433
2019	87,011	5,437
2020	57,221	4,938
2021	24,300	4,444
2022	19,325	3,971
Thereafter	152,302	17,049
Total	<u>\$ 372,615</u>	<u>\$ 37,272</u>

## 5. Dispositions and Assets Held for Sale

We periodically sell properties for various reasons, including favorable market conditions, the exercise of tenant purchase options or reduction of concentrations (e.g., property type, relationship or geography). At September 30, 2018, 60 triple-net, 16 seniors housing operating and three outpatient medical properties with an aggregate real estate balance of \$619,141,000 were classified as held for sale. During the nine months ended September 30, 2018, we recorded impairment charges of \$39,557,000 on certain held for sale properties for which the carrying values exceeded the fair values, less estimated costs to sell if applicable. The following is a summary of our real property disposition activity for the periods presented (in thousands):

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	Nine Months Ended	
	September 30, 2018	September 30, 2017
Real estate dispositions:		
Triple-net	\$ 604,480	\$ 899,104
Seniors housing operating	2,200	16,206
Outpatient medical	223,069	12,202
Total dispositions	829,749	927,512
Gain (loss) on real estate dispositions, net	373,662	287,869
Net other assets/liabilities disposed	5,090	22,470
Proceeds from real estate dispositions	<u>\$ 1,208,501</u>	<u>\$ 1,237,851</u>

*Dispositions and Assets Held for Sale*

Pursuant to our adoption of ASU No. 2014-08, "Presentation of Financial Statements (Topic 205) and Property, Plant and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity", operating results attributable to properties sold subsequent to or classified as held for sale after January 1, 2014 and which do not meet the definition of discontinued operations are no longer reclassified on our Consolidated Statements of Comprehensive Income. The following represents the activity related to these properties for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Revenues:				
Total revenues	\$ 29,035	\$ 52,584	\$ 92,447	\$ 175,934
Expenses:				
Interest expense	18	1,243	261	5,514
Property operating expenses	21,312	19,147	59,640	58,525
Provision for depreciation	801	10,999	6,605	33,806
Total expenses	22,131	31,389	66,506	97,845
Income (loss) from real estate dispositions, net	<u>\$ 6,904</u>	<u>\$ 21,195</u>	<u>\$ 25,941</u>	<u>\$ 78,089</u>

**6. Real Estate Loans Receivable**

Please see Note 2 to the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2017 for discussion of our accounting policies for real estate loans receivable and related interest income.

The following is a summary of our real estate loan activity for the periods presented (in thousands):

	Nine Months Ended						
	September 30, 2018			September 30, 2017			
	Triple-net	Seniors Housing Operating	Outpatient Medical	Totals	Triple-net	Outpatient Medical	Totals
Advances on real estate loans receivable:							
Investments in new loans	\$ 10,628	\$ 11,806	\$ 14,993	\$ 37,427	\$ 11,315	\$ —	\$ 11,315
Draws on existing loans	29,709	—	—	29,709	58,736	—	58,736
Net cash advances on real estate loans	40,337	11,806	14,993	67,136	70,051	—	70,051
Receipts on real estate loans receivable:							
Loan payoffs	116,161	—	—	116,161	142,392	60,500	202,892
Principal payments on loans	33,431	—	—	33,431	1,121	—	1,121
Sub-total	149,592	—	—	149,592	143,513	60,500	204,013
Less: Non-cash activity <sup>(1)</sup>	—	—	—	—	(61,250)	(60,500)	(121,750)
Net cash receipts on real estate loans	149,592	—	—	149,592	82,263	—	82,263
Net cash advances (receipts) on real estate loans	<u>\$ (109,255)</u>	<u>\$ 11,806</u>	<u>\$ 14,993</u>	<u>\$ (82,456)</u>	<u>\$ (12,212)</u>	<u>\$ —</u>	<u>\$ (12,212)</u>

<sup>(1)</sup> Triple-net represents acquisitions of assets previously financed as real estate loans. Please see Note 3 for additional information. Outpatient medical represents a deed in lieu of foreclosure on a previously financed first mortgage property.

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In 2016, we restructured real estate loans with Genesis HealthCare and recorded a loan loss charge in the amount of \$6,935,000 on one of the loans as the present value of expected future cash flows was less than the carrying value of the loan. In 2017, we recorded an additional loan loss charge of \$62,966,000 relating to real estate loans with Genesis HealthCare based on an estimation of expected future cash flows discounted at the effective interest rate of the loans. At September 30, 2018, the allowance for loan losses totals \$68,372,000 and is deemed to be sufficient to absorb expected losses related to these loans. At September 30, 2018, we had one real estate loan with an outstanding balance of \$2,598,000 on non-accrual status and recorded no provision for loan losses during the nine months ended September 30, 2018.

The following is a summary of our impaired loans (in thousands):

	Nine Months Ended	
	September 30, 2018	September 30, 2017
Balance of impaired loans at end of period	\$ 201,971	\$ 282,929
Allowance for loan losses	68,372	5,406
Balance of impaired loans not reserved	\$ 133,599	\$ 277,523
Average impaired loans for the period	\$ 230,645	\$ 324,255
Interest recognized on impaired loans <sup>(1)</sup>	13,361	23,957

<sup>(1)</sup> Represents cash interest recognized in the period since loans were identified as impaired.

### 7. Investments in Unconsolidated Entities

We participate in a number of joint ventures, which generally invest in seniors housing and health care real estate. The results of operations for these entities have been included in our consolidated results of operations from the date of acquisition by the joint ventures and are reflected in our Consolidated Statements of Comprehensive Income as income or loss from unconsolidated entities. The following is a summary of our investments in unconsolidated entities (dollars in thousands):

	Percentage Ownership <sup>(1)</sup>	September 30, 2018	December 31, 2017
Triple-net	10% to 49%	\$ 21,004	\$ 22,856
Seniors housing operating	10% to 50%	310,175	352,430
Outpatient medical	43%	92,013	70,299
Total		\$ 423,192	\$ 445,585

<sup>(1)</sup> Excludes in-substance real estate investments.

At September 30, 2018, the aggregate unamortized basis difference of our joint venture investments of \$106,625,000 is primarily attributable to the difference between the amount for which we purchase our interest in the entity, including transaction costs, and the historical carrying value of the net assets of the joint venture. This difference is being amortized over the remaining useful life of the related properties and included in the reported amount of income from unconsolidated entities.

### 8. Credit Concentration

We use consolidated net operating income ("NOI") as our credit concentration metric. See Note 17 for additional information and reconciliation. The following table summarizes certain information about our credit concentration for the nine months ended September 30, 2018, excluding our share of NOI in unconsolidated entities (dollars in thousands):

Concentration by relationship: <sup>(1)</sup>	Number of Properties	Total NOI	Percent of NOI <sup>(2)</sup>
Sunrise Senior Living <sup>(3)</sup>	161	\$ 252,111	15%
Brookdale Senior Living	137	117,367	7%
Revera <sup>(3)</sup>	98	116,158	7%
Genesis HealthCare	88	102,015	6%
Benchmark Senior Living	48	75,435	4%
Remaining portfolio	997	1,013,797	61%
Totals	1,529	\$ 1,676,883	100%

<sup>(1)</sup> Genesis Healthcare is in our triple-net segment. Sunrise Senior Living and Revera are in our seniors housing operating segment. Benchmark Senior Living and Brookdale Senior Living are in both our triple-net and seniors housing operating segments.

<sup>(2)</sup> NOI with our top five relationships comprised 41% of total NOI for the year ended December 31, 2017.

<sup>(3)</sup> Revera owns a controlling interest in Sunrise Senior Living.



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**9. Borrowings Under Credit Facilities and Related Items**

At September 30, 2018, we had a primary unsecured credit facility with a consortium of 31 banks that includes a \$3,000,000,000 unsecured revolving credit facility, a \$500,000,000 unsecured term credit facility and a \$250,000,000 Canadian-denominated unsecured term credit facility. We have an option, through an accordion feature, to upsize the unsecured revolving credit facility and the \$500,000,000 unsecured term credit facility by up to an additional \$1,000,000,000, in the aggregate, and the \$250,000,000 Canadian-denominated unsecured term credit facility by up to an additional \$250,000,000. The primary unsecured credit facility also allows us to borrow up to \$1,000,000,000 in alternate currencies (none outstanding at September 30, 2018). Borrowings under the unsecured revolving credit facility are subject to interest payable at the applicable margin over LIBOR interest rate (3.09% at September 30, 2018). The applicable margin is based on our debt ratings and was 0.825% at September 30, 2018. In addition, we pay a facility fee quarterly to each bank based on the bank's commitment amount. The facility fee depends on our debt ratings and was 0.15% at September 30, 2018. The term credit facilities mature on July 19, 2023. The revolving credit facility is scheduled to mature on July 19, 2022 and can be extended for two successive terms of six months each at our option.

The following information relates to aggregate borrowings under the primary unsecured revolving credit facility for the periods presented (dollars in thousands):

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
Balance outstanding at quarter end	\$ 1,312,000	\$ 420,000	\$ 1,312,000	\$ 420,000
Maximum amount outstanding at any month end	\$ 2,148,000	\$ 645,000	\$ 2,148,000	\$ 1,010,000
Average amount outstanding (total of daily principal balances divided by days in period)	\$ 1,519,000	\$ 450,130	\$ 819,516	\$ 601,346
Weighted average interest rate (actual interest expense divided by average borrowings outstanding)	3.00%	2.19%	2.95%	1.95%

**10. Senior Unsecured Notes and Secured Debt**

We may repurchase, redeem or refinance senior unsecured notes from time to time, taking advantage of favorable market conditions when available. We may purchase senior notes for cash through open market purchases, privately negotiated transactions, a tender offer or, in some cases, through the early redemption of such securities pursuant to their terms. The senior unsecured notes are redeemable at our option, at any time in whole or from time to time in part, at a redemption price equal to the sum of (1) the principal amount of the notes (or portion of such notes) being redeemed plus accrued and unpaid interest thereon up to the redemption date and (2) any "make-whole" amount due under the terms of the notes in connection with early redemptions. Redemptions and repurchases of debt, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. At September 30, 2018, the annual principal payments due on these debt obligations were as follows (in thousands):

	Senior Unsecured Notes <sup>(1,2)</sup>	Secured Debt <sup>(1,3)</sup>	Totals
2018	\$ —	\$ 170,742	\$ 170,742
2019	600,000	489,166	1,089,166
2020 <sup>(4)</sup>	689,662	138,938	828,600
2021	450,000	347,280	797,280
2022	600,000	225,832	825,832
Thereafter <sup>(5,6,7,8)</sup>	7,414,034	1,107,797	8,521,831
Totals	\$ 9,753,696	\$ 2,479,755	\$ 12,233,451

(1) Amounts represent principal amounts due and do not include unamortized premiums/discounts, debt issuance costs, or other fair value adjustments as reflected on the balance sheet.

(2) Annual interest rates range from 2.73% to 6.50%.

(3) Annual interest rates range from 1.69% to 7.93%. Carrying value of the properties securing the debt totaled \$5,303,414,000 at September 30, 2018.

(4) Includes a \$300,000,000 Canadian-denominated 3.35% senior unsecured notes due 2020 (approximately \$232,162,000 based on the Canadian/U.S. Dollar exchange rate on September 30, 2018).

(5) Includes a \$250,000,000 Canadian-denominated unsecured term credit facility (approximately \$193,469,000 based on the Canadian/U.S. Dollar exchange rate on September 30, 2018). The loan matures on July 19, 2023 and bears interest at the Canadian Dealer Offered Rate plus 0.9% (2.73% at September 30, 2018).

(6) Includes a \$500,000,000 unsecured term credit facility. The loan matures on July 19, 2023 and bears interest at LIBOR plus 0.9% (3.07% at September 30, 2018).

(7) Includes a £550,000,000 4.80% senior unsecured notes due 2028 (approximately \$717,915,000 based on the Sterling/U.S. Dollar exchange rate in effect on September 30, 2018).

(8) Includes a £500,000,000 4.50% senior unsecured notes due 2034 (approximately \$652,650,000 based on the Sterling/U.S. Dollar exchange rate in effect on September 30, 2018).

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The following is a summary of our senior unsecured notes principal activity during the periods presented (dollars in thousands):

	Nine Months Ended			
	September 30, 2018		September 30, 2017	
	Amount	Weighted Avg. Interest Rate	Amount	Weighted Avg. Interest Rate
Beginning balance	\$ 8,417,447	4.31%	\$ 8,260,038	4.25%
Debt issued	2,850,000	4.57%	7,500	1.94%
Debt extinguished	(1,450,000)	3.46%	(5,000)	1.83%
Foreign currency	(63,751)	4.30%	141,855	4.24%
Ending balance	<u>\$ 9,753,696</u>	<u>4.45%</u>	<u>\$ 8,404,393</u>	<u>4.29%</u>

The following is a summary of our secured debt principal activity for the periods presented (dollars in thousands):

	Nine Months Ended			
	September 30, 2018		September 30, 2017	
	Amount	Weighted Avg. Interest Rate	Amount	Weighted Avg. Interest Rate
Beginning balance	\$ 2,618,408	3.76%	\$ 3,465,066	4.09%
Debt issued	44,606	3.38%	190,459	2.73%
Debt assumed	99,552	4.30%	23,094	6.67%
Debt extinguished	(196,573)	5.66%	(1,003,372)	5.32%
Principal payments	(42,294)	3.91%	(47,507)	4.34%
Foreign currency	(43,944)	3.29%	92,262	3.20%
Ending balance	<u>\$ 2,479,755</u>	<u>3.79%</u>	<u>\$ 2,720,002</u>	<u>3.74%</u>

Our debt agreements contain various covenants, restrictions and events of default. Certain agreements require us to maintain certain financial ratios and minimum net worth and impose certain limits on our ability to incur indebtedness, create liens and make investments or acquisitions. As of September 30, 2018, we were in compliance with all of the covenants under our debt agreements.

#### **11. Derivative Instruments**

We are exposed to, among other risks, the impact of changes in foreign currency exchange rates as a result of our non-U.S. investments. Our risk management program is designed to manage the exposure and volatility arising from these risks, and utilizes derivative financial instruments and debt issued in foreign currencies to offset a portion of these risks.

##### *Foreign Currency Forward Contracts Designated as Cash Flow Hedges*

For instruments that are designated and qualify as a cash flow hedge, the effective portion of the gain or loss on the derivative is deferred as a component of other comprehensive income ("OCI"), and reclassified into earnings in the same period or periods, during which the hedged transaction affects earnings. Gains and losses on the derivative representing either hedge ineffectiveness or hedge components excluded from the assessment of effectiveness are recognized in earnings.

##### *Foreign Currency Forward Contracts and Cross Currency Swap Contracts Designated as Net Investment Hedges*

We use foreign currency forward and cross currency forward swap contracts to hedge a portion of the net investment in foreign subsidiaries against fluctuations in foreign exchange rates. For instruments that are designated and qualify as net investment hedges, the variability in the foreign currency to U.S. Dollar of the instrument is recorded as a cumulative translation adjustment component of OCI.

In the second quarter of 2018, we redesignated these derivative financial instruments that qualify as hedges of net investments in foreign operations using the spot method in order to more closely align the underlying economics of the hedged transactions. The changes in fair values and the excluded components of derivative instruments designated as net investment hedges are recognized as a cumulative translation adjustment component of OCI. The cross currency basis spread is recognized in interest expense on the Consolidated Statement of Comprehensive Income using the swap accrual process. Prior to the adoption of ASU

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2017-12, all settlements and changes in fair values of these derivative instruments were recognized as a cumulative transaction adjustment component of OCI and there had been no ineffectiveness on these hedging relationships.

During the nine months ended September 30, 2018 and 2017, we settled certain net investment hedges generating cash proceeds of \$70,937,000 and \$55,771,000, respectively. The balance of the cumulative translation adjustment will be reclassified to earnings if the hedged investment is sold or substantially liquidated.

*Derivative Contracts Undesignated*

We use foreign currency exchange contracts to manage existing exposures to foreign currency exchange risk. Gains and losses resulting from the changes in fair value of these instruments are recorded in interest expense on the consolidated statement of comprehensive income, and are substantially offset by net revaluation impacts on foreign currency denominated balance sheet exposures.

In addition, we have several interest rate cap contracts related to variable rate secured debt agreements. Gains and losses resulting from the changes in fair values of these instruments are also recorded in interest expense.

The following presents the notional amount of derivatives and other financial instruments as of the dates indicated (in thousands):

	September 30, 2018		December 31, 2017	
Derivatives designated as net investment hedges:				
Denominated in Canadian Dollars	\$	575,000	\$	575,000
Denominated in Pounds Sterling	£	890,708	£	550,000
Financial instruments designated as net investment hedges:				
Denominated in Canadian Dollars	\$	250,000	\$	250,000
Denominated in Pounds Sterling	£	1,050,000	£	1,050,000
Derivatives designated as cash flow hedges:				
Denominated in Canadian Dollars	\$	—	\$	36,000
Derivative instruments not designated:				
Denominated in U.S. Dollars	\$	405,819	\$	408,007
Forward purchase contracts denominated in Canadian Dollars	\$	(500,000)	\$	—
Forward sales contracts denominated in Canadian Dollars	\$	580,000	\$	80,000
Forward purchase contracts denominated in Pounds Sterling	£	(350,000)	£	—
Forward sales contracts denominated in Pounds Sterling	£	350,000	£	—

The following presents the impact of derivative instruments on the Consolidated Statements of Comprehensive Income for the periods presented (in thousands):

	Location	Three Months Ended September 30,		Nine Months Ended September 30,	
		2018	2017	2018	2017
Gain (loss) on derivative instruments designated as hedges recognized in income	Interest expense	\$ 4,185	\$ (576)	\$ 8,008	\$ 3,613
Gain (loss) on derivative instruments not designated as hedges recognized in income	Interest expense	\$ (203)	\$ (294)	\$ 2,250	\$ (1,228)
Gain (loss) on foreign exchange contracts and term loans designated as net investment hedge recognized in OCI	OCI	\$ 12,200	\$ (98,003)	\$ 100,205	\$ (239,884)

**12. Commitments and Contingencies**

At September 30, 2018, we had 13 outstanding letter of credit obligations totaling \$51,684,000 and expiring between 2018 and 2024. At September 30, 2018, we had outstanding construction in progress of \$135,343,000 and were committed to providing additional funds of approximately \$332,834,000 to complete construction. At September 30, 2018, we had contingent purchase

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obligations totaling \$10,245,000. These contingent purchase obligations relate to unfunded capital improvement obligations and contingent obligations on acquisitions. Rents due from the tenant are increased to reflect the additional investment in the property.

We evaluate our leases for operating versus capital lease treatment in accordance with ASC Topic 840 "Leases." A lease is classified as a capital lease if it provides for transfer of ownership of the leased asset at the end of the lease term, contains a bargain purchase option, has a lease term greater than 75% of the economic life of the leased asset, or if the net present value of the future minimum lease payments are in excess of 90% of the fair value of the leased asset. Certain leases contain bargain purchase options and have been classified as capital leases. At September 30, 2018, we had operating lease obligations of \$1,107,336,000 relating to certain ground leases and company office space and capital lease obligations of \$85,308,000 relating primarily to certain investment properties. Regarding ground leases, we have sublease agreements with certain of our operators that require the operators to reimburse us for our monthly operating lease obligations. At September 30, 2018, aggregate future minimum rentals to be received under these noncancelable subleases totaled \$73,771,000.

**13. Stockholders' Equity**

The following is a summary of our stockholders' equity capital accounts as of the dates indicated:

	September 30, 2018	December 31, 2017
<b>Preferred Stock:</b>		
Authorized shares	50,000,000	50,000,000
Issued shares	14,375,000	14,375,000
Outstanding shares	14,369,965	14,370,060
<b>Common Stock, \$1.00 par value:</b>		
Authorized shares	700,000,000	700,000,000
Issued shares	376,759,924	372,852,311
Outstanding shares	375,576,579	371,731,551

*Preferred Stock.* The following is a summary of our preferred stock activity during the periods indicated:

	Nine Months Ended			
	September 30, 2018		September 30, 2017	
	Shares	Weighted Avg. Dividend Rate	Shares	Weighted Avg. Dividend Rate
Beginning balance	14,370,060	6.50%	25,875,000	6.50%
Shares redeemed	—	0.00%	(11,500,000)	6.50%
Shares converted	(95)	6.50%	(4,935)	6.50%
Ending balance	14,369,965	6.50%	14,370,065	6.50%

During the nine months ended September 30, 2017, we recognized a charge of \$9,769,000 in connection with the redemption of the Series J preferred stock.

*Common Stock.* The following is a summary of our common stock issuances during the nine months ended September 30, 2018 and 2017 (dollars in thousands, except average price amounts):

	Shares Issued	Average Price	Gross Proceeds	Net Proceeds
2017 Dividend reinvestment plan issuances	4,312,447	\$71.14	\$ 306,785	\$ 305,996
2017 Option exercises	209,192	50.62	10,590	10,590
2017 Equity shelf program issuances	2,986,574	72.30	215,917	214,406
2017 Preferred stock conversions	4,296		—	—
2017 Redemption of equity membership units	91,180		—	—
2017 Stock incentive plans, net of forfeitures	135,773		—	—
2017 Totals	7,739,462		\$ 533,292	\$ 530,992
2018 Dividend reinvestment plan issuances	1,755,446	\$64.24	\$ 112,770	\$ 112,294
2018 Option exercises	32,120	39.94	1,283	1,283
2018 Equity shelf program issuances	1,944,511	66.72	129,744	128,834
2018 Preferred stock conversions	83		—	—
2018 Stock incentive plans, net of forfeitures	112,868		—	—
2018 Totals	3,845,028		\$ 243,797	\$ 242,411

*Dividends.* The increase in dividends is primarily attributable to increases in our common shares outstanding as described above. The following is a summary of our dividend payments (in thousands, except per share amounts):

	Nine Months Ended			
	September 30, 2018		September 30, 2017	
	Per Share	Amount	Per Share	Amount
Common Stock	\$ 2.6100	\$ 971,280	\$ 2.6100	\$ 955,631
Series I Preferred Stock	2.4375	35,028	2.4375	35,035
Series J Preferred Stock	—	—	0.2347	2,699
Totals		<u>\$ 1,006,308</u>		<u>\$ 993,365</u>

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*Accumulated Other Comprehensive Income.* The following is a summary of accumulated other comprehensive income (loss) for the periods presented (in thousands):

	Unrecognized gains (losses) related to:				Total
	Foreign Currency Translation	Available for Sale Securities	Actuarial Losses	Cash Flow Hedges	
Balance at December 31, 2017	\$ (110,581)	\$ —	\$ (884)	\$ —	\$ (111,465)
Other comprehensive income before reclassification adjustments	(27,026)	—	—	—	(27,026)
Net current-period other comprehensive income	(27,026)	—	—	—	(27,026)
Balance at September 30, 2018	<u>\$ (137,607)</u>	<u>\$ —</u>	<u>\$ (884)</u>	<u>\$ —</u>	<u>\$ (138,491)</u>
Balance at December 31, 2016	\$ (173,496)	\$ 5,120	\$ (1,153)	\$ (2)	\$ (169,531)
Other comprehensive income before reclassification adjustments	48,574	(20,285)	—	2	28,291
Net current-period other comprehensive income	48,574	(20,285)	—	2	28,291
Balance at September 30, 2017	<u>\$ (124,922)</u>	<u>\$ (15,165)</u>	<u>\$ (1,153)</u>	<u>\$ —</u>	<u>\$ (141,240)</u>

**14. Stock Incentive Plans**

Our 2016 Long-Term Incentive Plan (“2016 Plan”) authorizes up to 10,000,000 shares of common stock to be issued at the discretion of the Compensation Committee of the Board of Directors. Our non-employee directors, officers and key employees are eligible to participate in the 2016 Plan. The 2016 Plan allows for the issuance of, among other things, stock options, stock appreciation rights, restricted stock, deferred stock units, performance units and dividend equivalent rights. Vesting periods for options, deferred stock units and restricted shares generally range from three to five years. Options expire ten years from the date of grant. Stock-based compensation expense totaled \$6,075,000 and \$22,800,000 for the three and nine months ended September 30, 2018, respectively, and \$6,790,000 and \$16,459,000 for the same periods in 2017.

**15. Earnings Per Share**

The following table sets forth the computation of basic and diluted earnings per share (in thousands, except per share data):

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
Numerator for basic and diluted earnings				
per share - net income (loss) attributable				
to common stockholders	\$ 64,384	\$ 74,043	\$ 656,487	\$ 575,118
Denominator for basic earnings per				
share - weighted average shares	373,023	369,089	372,052	366,096
Effect of dilutive securities:				
Employee stock options	6	40	12	53
Non-vested restricted shares	348	515	464	464
Redeemable shares	1,096	1,096	1,096	1,281
Employee stock purchase program	14	—	14	—
Dilutive potential common shares	1,464	1,651	1,586	1,798
Denominator for diluted earnings per				
share - adjusted weighted average shares	374,487	370,740	373,638	367,894
Basic earnings per share	\$ 0.17	\$ 0.20	\$ 1.76	\$ 1.57
Diluted earnings per share	\$ 0.17	\$ 0.20	\$ 1.76	\$ 1.56

The Series I Cumulative Convertible Perpetual Preferred Stock was not included in the calculations as the effect of conversions into common stock was anti-dilutive.

**16. Disclosure about Fair Value of Financial Instruments**

U.S. GAAP provides authoritative guidance for measuring and disclosing fair value measurements of assets and liabilities. The guidance defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The guidance also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Please see Note 2 to the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2017 for additional information. The guidance describes three levels of inputs that may be used to measure fair value:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The following methods and assumptions were used to estimate the fair value of each class of financial instruments for which it is practicable to estimate that value.

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*Mortgage Loans and Other Real Estate Loans Receivable* — The fair value of mortgage loans and other real estate loans receivable is generally estimated by using Level 2 and Level 3 inputs such as discounting the estimated future cash flows using the current rates at which similar loans would be made to borrowers with similar credit ratings and for the same remaining maturities.

*Cash and Cash Equivalents and Restricted Cash* — The carrying amount approximates fair value.

*Equity Securities* — Equity securities are recorded at their fair value based on Level 1 publicly available trading prices.

*Borrowings Under Primary Unsecured Credit Facility* — The carrying amount of the primary unsecured credit facility approximates fair value because the borrowings are interest rate adjustable.

*Senior Unsecured Notes* — The fair value of the senior unsecured notes payable was estimated based on Level 1 publicly available trading prices. The carrying amount of the variable rate senior unsecured notes approximates fair value because they are interest rate adjustable.

*Secured Debt* — The fair value of fixed rate secured debt is estimated using Level 2 inputs by discounting the estimated future cash flows using the current rates at which similar loans would be made with similar credit ratings and for the same remaining maturities. The carrying amount of variable rate secured debt approximates fair value because the borrowings are interest rate adjustable.

*Foreign Currency Forward Contracts and Cross Currency Swaps* — Foreign currency forward contracts and cross currency swaps are recorded in other assets or other liabilities on the balance sheet at fair market value. Fair market value is determined using Level 2 inputs by estimating the future value of the currency pair based on existing exchange rates, comprised of current spot and traded forward points, and calculating a present value of the net amount using a discount factor based on observable traded interest rates.

*Redeemable OP Unitholder Interests* — Our redeemable unitholder interests are recorded on the balance sheet at fair value using Level 2 inputs. The fair value is measured using the closing price of our common stock, as units may be redeemed at the election of the holder for cash or, at our option, one share of our common stock per unit, subject to adjustment in certain circumstances.

The carrying amounts and estimated fair values of our financial instruments are as follows (in thousands):

	September 30, 2018		December 31, 2017	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
<b>Financial assets:</b>				
Mortgage loans receivable	\$ 266,286	\$ 273,620	\$ 306,120	\$ 332,508
Other real estate loans receivable	74,538	75,091	121,379	125,480
Equity securities	12,912	12,912	7,269	7,269
Cash and cash equivalents	191,199	191,199	243,777	243,777
Restricted cash	90,086	90,086	65,526	65,526
Foreign currency forward contracts and cross currency swaps	34,902	34,902	15,604	15,604
<b>Financial liabilities:</b>				
Borrowings under unsecured credit facilities	\$ 1,312,000	\$ 1,312,000	\$ 719,000	\$ 719,000
Senior unsecured notes	9,655,022	10,169,806	8,331,722	9,168,432
Secured debt	2,465,661	2,464,635	2,608,976	2,641,997
Foreign currency forward contracts and cross currency swaps	78,566	78,566	38,654	38,654
Redeemable OP unitholder interests	\$ 97,476	\$ 97,476	\$ 97,476	\$ 97,476

*Items Measured at Fair Value on a Recurring Basis*

The market approach is utilized to measure fair value for our financial assets and liabilities reported at fair value on a recurring basis. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities. The following summarizes items measured at fair value on a recurring basis (in thousands):



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Fair Value Measurements as of September 30, 2018

	Total	Level 1	Level 2	Level 3
Equity securities	\$ 12,912	\$ 12,912	\$ —	\$ —
Foreign currency forward contracts and cross currency swaps, net asset (liability) <sup>(1)</sup>	(43,664)	—	(43,664)	—
Redeemable OP unitholder interests	97,476	—	97,476	—
<b>Totals</b>	<b>\$ 66,724</b>	<b>\$ 12,912</b>	<b>\$ 53,812</b>	<b>\$ —</b>

<sup>(1)</sup>Please see Note 11 for additional information.

*Items Measured at Fair Value on a Nonrecurring Basis*

In addition to items that are measured at fair value on a recurring basis, we also have assets and liabilities in our balance sheet that are measured at fair value on a nonrecurring basis. As these assets and liabilities are not measured at fair value on a recurring basis, they are not included in the tables above. Assets, liabilities and noncontrolling interests that are measured at fair value on a nonrecurring basis include those acquired/assumed. Asset impairments (if applicable, see Note 5 for impairments of real property and Note 6 for impairments of loans receivable) are also measured at fair value on a nonrecurring basis. We have determined that the fair value measurements included in each of these assets and liabilities rely primarily on company-specific inputs and our assumptions about the use of the assets and settlement of liabilities, as observable inputs are not available. As such, we have determined that each of these fair value measurements generally resides within Level 3 of the fair value hierarchy. We estimate the fair value of real estate and related intangibles using the income approach and unobservable data such as net operating income and estimated capitalization and discount rates. We also consider local and national industry market data including comparable sales, and commonly engage an external real estate appraiser to assist us in our estimation of fair value. We estimate the fair value of assets held for sale based on current sales price expectations or, in the absence of such price expectations, Level 3 inputs described above. We estimate the fair value of loans receivable using projected payoff valuations based on the expected future cash flows and/or the estimated fair value of collateral, net of sales costs, if the repayment of the loan is expected to be provided solely by the collateral. We estimate the fair value of secured debt assumed in business combinations and asset acquisitions using current interest rates at which similar borrowings could be obtained on the transaction date.

**17. Segment Reporting**

We invest in seniors housing and health care real estate. We evaluate our business and make resource allocations on our three operating segments: triple-net, seniors housing operating and outpatient medical. Our triple-net properties include long-term/post-acute care facilities, assisted living facilities, independent living/continuing care retirement communities, care homes (United Kingdom), independent supportive living facilities (Canada), care homes with nursing (United Kingdom) and combinations thereof. Under the triple-net segment, we invest in seniors housing and health care real estate through acquisition and financing of primarily single tenant properties. Properties acquired are primarily leased under triple-net leases and we are not involved in the management of the property. Our seniors housing operating properties include the seniors housing communities referenced above that are owned and/or operated through RIDEA structures (see Note 18). Our outpatient medical properties are typically leased to multiple tenants and generally require a certain level of property management.

We evaluate performance based upon consolidated net operating income (“NOI”) of each segment. We define NOI as total revenues, including tenant reimbursements, less property operating expenses. We believe NOI provides investors relevant and useful information as it measures the operating performance of our properties at the property level on an unleveraged basis. We use NOI to make decisions about resource allocations and to assess the property level performance of our properties.

Non-segment revenue consists mainly of interest income on certain non-real estate investments and other income. Non-segment assets consist of corporate assets including cash, deferred loan expenses and corporate offices and equipment among others. Non-property specific revenues and expenses are not allocated to individual segments in determining NOI. The accounting policies of the segments are the same as those described in the summary of significant accounting policies (see Note 2 to the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2017). The results of operations for all acquisitions described in Note 3 are included in our consolidated results of operations from the acquisition dates and are components of the appropriate segments. There are no intersegment sales or transfers.

Summary information for the reportable segments (which excludes unconsolidated entities) is as follows (in thousands):

<u>Three Months Ended September 30, 2018:</u>	Triple-net	Seniors Housing Operating	Outpatient Medical	Non-segment / Corporate	Total
Rental income	\$ 203,039	\$ —	\$ 139,848	\$ —	\$ 342,887
Resident fees and services	—	875,171	—	—	875,171
Interest income	14,378	159	85	—	14,622
Other income	1,693	1,175	136	695	3,699
<b>Total revenues</b>	<b>219,110</b>	<b>876,505</b>	<b>140,069</b>	<b>695</b>	<b>1,236,379</b>
Property operating expenses	426	610,659	46,072	—	657,157
<b>Consolidated net operating income</b>	<b>218,684</b>	<b>265,846</b>	<b>93,997</b>	<b>695</b>	<b>579,222</b>
Interest expense	3,500	17,319	1,643	115,570	138,032
Loss (gain) on derivatives and financial instruments, net	8,991	—	—	—	8,991
Depreciation and amortization	60,383	136,532	46,234	—	243,149
General and administrative	—	—	—	28,746	28,746
Loss (gain) on extinguishment of debt, net	—	—	—	4,038	4,038
Impairment of assets	6,178	562	—	—	6,740
Other expenses	87,076 <sup>(1)</sup>	(811)	1,055	1,306	88,626
<b>Income (loss) from continuing operations before income taxes and income from unconsolidated entities</b>	<b>52,556</b>	<b>112,244</b>	<b>45,065</b>	<b>(148,965)</b>	<b>60,900</b>

Income tax (expense) benefit	1,116	211	239	(3,307)	(1,741)
Income (loss) from unconsolidated entities	5,377	(6,705)	1,672	—	344
Income (loss) from continuing operations	59,049	105,750	46,976	(152,272)	59,503
Gain (loss) on real estate dispositions, net	24,782	(1)	(58)	—	24,723
Net income (loss)	<u>\$ 83,831</u>	<u>\$ 105,749</u>	<u>\$ 46,918</u>	<u>\$ (152,272)</u>	<u>\$ 84,226</u>
Total assets	\$ 10,163,867	\$ 14,989,442	\$ 4,953,277	\$ 142,533	\$ 30,249,119

<u>Three Months Ended September 30, 2017:</u>	<u>Triple-net</u>	<u>Seniors Housing Operating</u>	<u>Outpatient Medical</u>	<u>Non-segment / Corporate</u>	<u>Total</u>
Rental income	\$ 221,555	\$ —	\$ 141,325	\$ —	\$ 362,880
Resident fees and services	—	702,380	—	—	702,380
Interest income	20,187	—	—	—	20,187
Other income	3,174	1,497	667	698	6,036
Total revenues	<u>244,916</u>	<u>703,877</u>	<u>141,992</u>	<u>698</u>	<u>1,091,483</u>
Property operating expenses	<u>—</u>	<u>478,777</u>	<u>45,220</u>	<u>—</u>	<u>523,997</u>
Consolidated net operating income	<u>244,916</u>	<u>225,100</u>	<u>96,772</u>	<u>698</u>	<u>567,486</u>
Interest expense	3,622	16,369	2,929	99,658	122,578
Loss (gain) on derivatives and financial instruments, net	324	—	—	—	324
Depreciation and amortization	62,891	119,089	48,158	—	230,138
General and administrative	—	—	—	29,913	29,913
Other expenses	89,236 <sup>(1)</sup>	5,157	530	4,672	99,595
Income (loss) from continuing operations before income taxes and income from unconsolidated entities	<u>88,843</u>	<u>84,485</u>	<u>45,155</u>	<u>(133,545)</u>	<u>84,938</u>
Income tax (expense) benefit	(816)	(1,519)	(366)	2,032	(669)
Income (loss) from unconsolidated entities	5,478	(2,886)	816	—	3,408
Income (loss) from continuing operations	<u>93,505</u>	<u>80,080</u>	<u>45,605</u>	<u>(131,513)</u>	<u>87,677</u>
Gain (loss) on real estate dispositions, net	<u>(185)</u>	<u>(197)</u>	<u>2,004</u>	<u>—</u>	<u>1,622</u>
Net income (loss)	<u>\$ 93,320</u>	<u>\$ 79,883</u>	<u>\$ 47,609</u>	<u>\$ (131,513)</u>	<u>\$ 89,299</u>

(1) Represents non-capitalizable transaction costs primarily related to a joint venture transaction with an existing seniors housing operator including the conversion of properties from triple-net to seniors housing operating, an exchange of PropCo/OpCo interests, and termination/restructuring of pre-existing relationships.

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<u>Nine Months Ended September 30, 2018</u>	Triple-net	Seniors Housing Operating	Outpatient Medical	Non-segment / Corporate	Total
Rental income	\$ 607,831	\$ —	\$ 412,026	\$ —	\$ 1,019,857
Resident fees and services	—	2,374,450	—	—	2,374,450
Interest income	42,176	416	140	—	42,732
Other income	16,282	3,973	401	1,561	22,217
<b>Total revenues</b>	<b>666,289</b>	<b>2,378,839</b>	<b>412,567</b>	<b>1,561</b>	<b>3,459,256</b>
Property operating expenses	583	1,648,262	133,528	—	1,782,373
<b>Consolidated net operating income</b>	<b>665,706</b>	<b>730,577</b>	<b>279,039</b>	<b>1,561</b>	<b>1,676,883</b>
Interest expense	10,742	51,225	4,975	315,281	382,223
Loss (gain) on derivatives and financial instruments, net	(5,642)	—	—	—	(5,642)
Depreciation and amortization	171,724	397,080	138,821	—	707,625
General and administrative	—	—	—	95,282	95,282
Loss (gain) on extinguishment of debt, net	(32)	110	11,928	4,038	16,044
Impairment of assets	34,482	5,075	—	—	39,557
Other expenses	89,153	5,168	3,748	4,327	102,396
Income (loss) from continuing operations before income taxes and income from unconsolidated entities	365,279	271,919	119,567	(417,367)	339,398
Income tax (expense) benefit	(708)	(2,244)	(567)	(3,651)	(7,170)
Income (loss) from unconsolidated entities	16,260	(21,389)	4,293	—	(836)
Income (loss) from continuing operations	380,831	248,286	123,293	(421,018)	331,392
Gain (loss) on real estate dispositions, net	158,938	3	214,721	—	373,662
<b>Net income (loss)</b>	<b>\$ 539,769</b>	<b>\$ 248,289</b>	<b>\$ 338,014</b>	<b>\$ (421,018)</b>	<b>\$ 705,054</b>
<u>Nine Months Ended September 30, 2017</u>	Triple-net	Seniors Housing Operating	Outpatient Medical	Non-segment / Corporate	Total
Rental income	\$ 666,735	\$ —	\$ 418,886	\$ —	\$ 1,085,621
Resident fees and services	—	2,049,757	—	—	2,049,757
Interest income	61,767	69	—	—	61,836
Other income	7,496	4,005	2,497	1,171	15,169
<b>Total revenues</b>	<b>735,998</b>	<b>2,053,831</b>	<b>421,383</b>	<b>1,171</b>	<b>3,212,383</b>
Property operating expenses	—	1,400,313	135,708	—	1,536,021
<b>Consolidated net operating income</b>	<b>735,998</b>	<b>653,518</b>	<b>285,675</b>	<b>1,171</b>	<b>1,676,362</b>
Interest expense	11,647	47,587	7,342	290,829	357,405
Loss (gain) on derivatives and financial instruments, net	2,284	—	—	—	2,284
Depreciation and amortization	182,672	356,023	144,567	—	683,262
General and administrative	—	—	—	93,643	93,643
Loss (gain) on extinguishment of debt, net	29,083	3,414	4,373	—	36,870
Impairment of assets	4,846	14,191	5,625	—	24,662
Other expenses	96,425	8,100	2,201	10,882	117,608
Income (loss) from continuing operations before income taxes and income from unconsolidated entities	409,041	224,203	121,567	(394,183)	360,628
Income tax (expense) benefit	(2,070)	9,133	(655)	(873)	5,535
Income (loss) from unconsolidated entities	14,983	(40,527)	1,868	—	(23,676)
Income (loss) from continuing operations	421,954	192,809	122,780	(395,056)	342,487
Gain (loss) on real estate dispositions, net	273,051	12,814	2,004	—	287,869
<b>Net income (loss)</b>	<b>\$ 695,005</b>	<b>\$ 205,623</b>	<b>\$ 124,784</b>	<b>\$ (395,056)</b>	<b>\$ 630,356</b>

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Our portfolio of properties and other investments are located in the United States, the United Kingdom and Canada. Revenues and assets are attributed to the country in which the property is physically located. The following is a summary of geographic information for the periods presented (dollars in thousands):

	Three Months Ended				Nine Months Ended			
	September 30, 2018		September 30, 2017		September 30, 2018		September 30, 2017	
	Amount	%	Amount	%	Amount	%	Amount	%
Revenues:								
United States	\$ 1,007,203	81.5%	\$ 871,431	79.9%	\$ 2,766,726	80.0%	\$ 2,582,042	80.4%
United Kingdom	111,503	9.0%	105,028	9.6%	340,059	9.8%	298,618	9.3%
Canada	117,673	9.5%	115,024	10.5%	352,471	10.2%	331,723	10.3%
Total	\$ 1,236,379	100.0%	\$ 1,091,483	100.0%	\$ 3,459,256	100.0%	\$ 3,212,383	100.0%

	As of			
	September 30, 2018		December 31, 2017	
	Amount	%	Amount	%
Assets:				
United States	\$ 24,616,066	81.4%	\$ 22,274,443	79.7%
United Kingdom	3,150,305	10.4%	3,239,039	11.6%
Canada	2,482,748	8.2%	2,430,963	8.7%
Total	\$ 30,249,119	100.0%	\$ 27,944,445	100.0%

### 18. Income Taxes and Distributions

We elected to be taxed as a REIT commencing with our first taxable year. To qualify as a REIT for federal income tax purposes, at least 90% of taxable income (excluding 100% of net capital gains) must be distributed to stockholders. REITs that do not distribute a certain amount of current year taxable income in the current year are also subject to a 4% federal excise tax. The main differences between undistributed net income for federal income tax purposes and financial statement purposes are the recognition of straight-line rent for reporting purposes, basis differences in acquisitions, recording of impairments, differing useful lives and depreciation and amortization methods for real property and the provision for loan losses for reporting purposes versus bad debt expense for tax purposes.

Under the provisions of the REIT Investment Diversification and Empowerment Act of 2007 (“RIDEA”), for taxable years beginning after July 30, 2008, a REIT may lease “qualified health care properties” on an arm’s-length basis to a taxable REIT subsidiary (“TRS”) if the property is operated on behalf of such TRS by a person who qualifies as an “eligible independent contractor.” Generally, the rent received from the TRS will meet the related party rent exception and will be treated as “rents from real property.” A “qualified health care property” includes real property and any personal property that is, or is necessary or incidental to the use of, a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility, or other licensed facility which extends medical or nursing or ancillary services to patients. We have entered into various joint ventures that were structured under RIDEA. Resident level rents and related operating expenses for these facilities are reported in the unaudited consolidated financial statements and are subject to federal and state income taxes as the operations of such facilities are included in TRS entities. Certain net operating loss carryforwards could be utilized to offset taxable income in future years.

Income taxes reflected in the financial statements primarily represents U.S. federal, state and local income taxes as well as non-U.S. income based or withholding taxes on certain investments located in jurisdictions outside the U.S. The provision for income taxes for the nine months ended September 30, 2018 and 2017, was primarily due to operating income or losses, offset by certain discrete items at our TRS entities. In 2014, we established certain wholly-owned direct and indirect subsidiaries in Luxembourg and Jersey and transferred interests in certain foreign investments into this holding company structure. The structure includes a property holding company that is tax resident in the United Kingdom. No material adverse current tax consequences in Luxembourg, Jersey or the United Kingdom resulted from the creation of this holding company structure and most of the subsidiary entities in the structure are treated as disregarded entities of the company for U.S. federal income tax purposes. The company reflects current and deferred tax liabilities for any such withholding taxes incurred as a result of this holding company structure in its consolidated financial statements. Generally, given current statutes of limitations, we are subject to audit by the Internal Revenue Service (“IRS”) for the year ended December 31, 2014 and subsequent years and by state taxing authorities for the year ended December 31, 2013 and subsequent years. The company and its subsidiaries are also subject to audit by the Canada Revenue Agency and provincial authorities generally for periods subsequent to our initial investments in Canada in May 2012, by HM Revenue & Customs for periods subsequent to our initial investments in the United Kingdom in August 2012 and by Luxembourg taxing authorities generally for periods subsequent to our establishment of certain Luxembourg-based subsidiaries during 2014.

**WELLTOWER INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**19. Variable Interest Entities**

We have entered into joint ventures to own certain seniors housing and outpatient medical assets which are deemed to be variable interest entities (“VIE”). We have concluded that we are the primary beneficiary of these VIEs based on a combination of operational control of the joint venture and the rights to receive residual returns or the obligation to absorb losses arising from the joint ventures. Except for capital contributions associated with the initial joint venture formations, the joint ventures have been and are expected to be funded from the ongoing operations of the underlying properties. Accordingly, such joint ventures have been consolidated, and the table below summarizes the balance sheets of consolidated VIEs in the aggregate (in thousands):

	September 30, 2018	December 31, 2017
<b>Assets</b>		
Net real property owned	\$ 977,252	\$ 1,002,137
Cash and cash equivalents	15,059	12,308
Receivables and other assets	17,922	16,330
Total assets <sup>(1)</sup>	<u>\$ 1,010,233</u>	<u>\$ 1,030,775</u>
<b>Liabilities and equity</b>		
Secured debt	\$ 466,772	\$ 471,103
Accrued expenses and other liabilities	18,144	14,832
Total equity	<u>525,317</u>	<u>544,840</u>
Total liabilities and equity	<u>\$ 1,010,233</u>	<u>\$ 1,030,775</u>

(1) Note that assets of the consolidated VIEs can only be used to settle obligations relating to such VIEs. Liabilities of the consolidated VIEs represent claims against the specific assets of the VIEs.

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

The following discussion and analysis is based primarily on the unaudited consolidated financial statements of Welltower Inc. for the periods presented and should be read together with the notes thereto contained in this Quarterly Report on Form 10-Q. Other important factors are identified in our Annual Report on Form 10-K for the year ended December 31, 2017, including factors identified under the headings "Business," "Risk Factors," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." References herein to "we," "us," "our," or the "company" refer to Welltower Inc. and its subsidiaries unless specifically noted otherwise.

### Executive Summary

#### Company Overview

Welltower Inc. (NYSE:WELL), an S&P 500 company headquartered in Toledo, Ohio, is driving the transformation of health care infrastructure. The company invests with leading seniors housing operators, post-acute providers and health systems to fund the real estate and infrastructure needed to scale innovative care delivery models and improve people's wellness and overall health care experience. Welltower™, a real estate investment trust ("REIT"), owns interests in properties concentrated in major, high-growth markets in the United States (U.S.), Canada and the United Kingdom (U.K.), consisting of seniors housing and post-acute communities and outpatient medical properties. Our capital programs, when combined with comprehensive planning, development and property management services, make us a single-source solution for acquiring, planning, developing, managing, repositioning and monetizing real estate assets.

The following table summarizes our consolidated portfolio for the three months ended September 30, 2018 (dollars in thousands):

Type of Property	NOI <sup>(1)</sup>	Percentage of NOI	Number of Properties
Triple-net	\$ 218,684	37.8%	749
Seniors housing operating	265,846	46.0%	521
Outpatient medical	93,997	16.2%	259
Totals	\$ 578,527	100.0%	1,529

(1) Represents consolidated NOI and excludes our share of investments in unconsolidated entities. Entities in which we have a joint venture with a minority partner are shown at 100% of the joint venture amount. See Non-GAAP Financial Measures for additional information and reconciliation.

#### Business Strategy

Our primary objectives are to protect stockholder capital and enhance stockholder value. We seek to pay consistent cash dividends to stockholders and create opportunities to increase dividend payments to stockholders as a result of annual increases in NOI and portfolio growth. To meet these objectives, we invest across the full spectrum of seniors housing and health care real estate and diversify our investment portfolio by property type, relationship and geographic location.

Substantially all of our revenues are derived from operating lease rentals, resident fees and services, and interest earned on outstanding loans receivable. These items represent our primary sources of liquidity to fund distributions and depend upon the continued ability of our obligors to make contractual rent and interest payments to us and the profitability of our operating properties. To the extent that our obligors/partners experience operating difficulties and become unable to generate sufficient cash to make payments or operating distributions to us, there could be a material adverse impact on our consolidated results of operations, liquidity and/or financial condition. To mitigate this risk, we monitor our investments through a variety of methods determined by the type of property. Our asset management process for seniors housing properties generally includes review of monthly financial statements and other operating data for each property, review of obligor/partner creditworthiness, property inspections, and review of covenant compliance relating to licensure, real estate taxes, letters of credit and other collateral. Our internal property management division manages and monitors the outpatient medical portfolio with a comprehensive process including review of tenant relations, lease expirations, the mix of health service providers, hospital/health system relationships, property performance, capital improvement needs, and market conditions among other things. We evaluate the operating environment in each property's market to determine the likely trend in operating performance of the facility. When we identify unacceptable trends, we seek to mitigate, eliminate or transfer the risk. Through these efforts, we are generally able to intervene at an early stage to address any negative trends, and in so doing, support both the collectability of revenue and the value of our investment.

In addition to our asset/property management and research efforts, we also structure our investments to help mitigate payment risk. Operating leases and loans are normally credit enhanced by guaranties and/or letters of credit. In addition, operating leases are typically structured as master leases and loans are generally cross-defaulted and cross-collateralized with other real estate loans, operating leases or agreements between us and the obligor and its affiliates.

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

For the nine months ended September 30, 2018, rental income and resident fees and services represented 29% and 69%, respectively, of total revenues. Substantially all of our operating leases are designed with escalating rent structures. Leases with fixed annual rental escalators are generally recognized on a straight-line basis over the initial lease period, subject to a collectability assessment. Rental income related to leases with contingent rental escalators is generally recorded based on the contractual cash rental payments due for the period. Our yield on loans receivable depends upon a number of factors, including the stated interest rate, the average principal amount outstanding during the term of the loan and any interest rate adjustments.

Our primary sources of cash include rent and interest receipts, resident fees and services, borrowings under our primary unsecured credit facility, public issuances of debt and equity securities, proceeds from investment dispositions and principal payments on loans receivable. Our primary uses of cash include dividend distributions, debt service payments (including principal and interest), real property investments (including acquisitions, capital expenditures, construction advances and transaction costs), loan advances, property operating expenses and general and administrative expenses. Depending upon the availability and cost of external capital, we believe our liquidity is sufficient to fund these uses of cash.

We also continuously evaluate opportunities to finance future investments. New investments are generally funded from temporary borrowings under our primary unsecured credit facility, internally generated cash and the proceeds from investment dispositions. Our investments generate cash from NOI and principal payments on loans receivable. Permanent financing for future investments, which replaces funds drawn under our primary unsecured credit facility, has historically been provided through a combination of the issuance of public debt and equity securities and the incurrence or assumption of secured debt.

Depending upon market conditions, we believe that new investments will be available in the future with spreads over our cost of capital that will generate appropriate returns to our stockholders. It is also likely that investment dispositions may occur in the future. To the extent that investment dispositions exceed new investments, our revenues and cash flows from operations could be adversely affected. We expect to reinvest the proceeds from any investment dispositions in new investments. To the extent that new investment requirements exceed our available cash on-hand, we expect to borrow under our primary unsecured credit facility. At September 30, 2018, we had \$191,199,000 of cash and cash equivalents, \$90,086,000 of restricted cash and \$1,688,000,000 of available borrowing capacity under our primary unsecured credit facility.

### Key Transactions

*Capital.* The following summarizes key capital transaction that occurred during the nine months ended September 30, 2018:

- In April 2018, we issued \$550,000,000 of 4.25% senior unsecured notes due 2028 for net proceeds of approximately \$545,074,000.
- In connection with the QCP acquisition, in July 2018, we drew on a \$1,000,000,000 term loan facility to fund a portion of the cash consideration and other expenses.
- In August 2018, we issued \$200,000,000 of 4.25% senior unsecured notes due 2028, \$600,000,000 of 3.95% senior unsecured notes due 2023 and \$500,000,000 of 4.95% senior unsecured notes due 2048 for aggregate net proceeds of approximately \$1,284,948,000. Proceeds from these issuances were used to repay advances under the \$1,000,000,000 term loan facility drawn on in July 2018 and the primary unsecured credit facility.
- In July 2018, we closed on a new \$3,700,000,000 unsecured credit facility with improved pricing across both our line of credit and term loan facility and terminated the existing unsecured credit facility. The credit facility includes a \$3,000,000,000 revolving credit facility at a borrowing rate of 0.825% over LIBOR, a \$500,000,000 USD unsecured term credit facility at a borrowing rate of 0.90% over LIBOR and a \$250,000,000 CAD unsecured term credit facility at 0.90% over CDOR.
- We extinguished \$196,573,000 of secured debt at a blended average interest rate of 5.66% and we repaid our \$450,000,000 of 2.25% senior unsecured notes at par on maturity on March 15, 2018.
- We raised \$241,128,000 through our dividend reinvestment program and our Equity Shelf Program (as defined below).

*Investments.* The following summarizes our property acquisitions and joint venture investments completed during the nine months ended September 30, 2018 (dollars in thousands):



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

	Properties	Investment Amount <sup>(1)</sup>	Capitalization Rates <sup>(2)</sup>	Book Amount <sup>(3)</sup>
Triple-net	303	\$ 2,438,899	6.9%	\$ 3,062,980
Seniors housing operating	11	599,647	6.7%	652,640
Outpatient medical	7	120,811	7.1%	131,010
Totals	321	\$ 3,159,357	6.9%	\$ 3,846,630

(1) Represents stated pro rata purchase price including cash and any assumed debt but excludes fair value adjustments pursuant to U.S. GAAP.

(2) Represents annualized contractual or projected net operating income to be received in cash divided by investment amounts.

(3) Represents amounts recorded on our books including fair value adjustments pursuant to U.S. GAAP. See Note 3 to our unaudited consolidated financial statements for additional information.

*Dispositions.* The following summarizes property dispositions made during the nine months ended September 30, 2018 (dollars in thousands):

	Properties	Proceeds <sup>(1)</sup>	Capitalization Rates <sup>(2)</sup>	Book Amount <sup>(3)</sup>
Triple-net	64	\$ 771,112	7.0%	\$ 604,480
Seniors housing operating	2	6,908	6.5%	2,200
Outpatient medical	18	428,727	6.0%	223,069
Totals	84	\$ 1,206,747	6.7%	\$ 829,749

(1) Represents pro rata proceeds received upon disposition including any seller financing.

(2) Represents annualized contractual income that was being received in cash at date of disposition divided by disposition proceeds.

(3) Represents carrying value of net real estate assets at time of disposition. See Note 5 to our unaudited consolidated financial statements for additional information.

*Dividends.* Our Board of Directors announced the annual cash dividend of \$3.48 per common share (\$0.87 per share quarterly), consistent with 2017. The dividend declared for the quarter ended September 30, 2018 represents the 190<sup>th</sup> consecutive quarterly dividend payment.

### Key Performance Indicators, Trends and Uncertainties

We utilize several key performance indicators to evaluate the various aspects of our business. These indicators are discussed below and relate to operating performance, concentration risk and credit strength. Management uses these key performance indicators to facilitate internal and external comparisons to our historical operating results, in making operating decisions and for budget planning purposes.

*Operating Performance.* We believe that net income and net income attributable to common stockholders ("NICS") per the Consolidated Statement of Comprehensive Income are the most appropriate earnings measures. Other useful supplemental measures of our operating performance include funds from operations attributable to common stockholders ("FFO"), consolidated net operating income ("NOI") and same store NOI ("SSNOI"); however, these supplemental measures are not defined by U.S. generally accepted accounting principles ("U.S. GAAP"). Please refer to the section entitled "Non-GAAP Financial Measures" for further discussion and reconciliations. These earnings measures (and FFO per share amounts) are widely used by investors and analysts in the valuation, comparison and investment recommendations of companies. The following table reflects the recent historical trends of our operating performance measures for the periods presented (in thousands, except per share amounts):

	Three Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
Net income (loss)	\$ 337,610	\$ 203,441	\$ 89,299	\$ (89,743)	\$ 453,555	\$ 167,273	\$ 84,226
NICS	312,639	188,429	74,043	(111,523)	437,671	154,432	64,384
FFO	306,231	384,390	295,722	179,224	353,220	378,725	285,272
NOI	552,129	556,747	567,486	556,353	540,500	557,161	579,222
SSNOI	421,328	432,578	439,807	434,754	431,400	438,703	433,523
Per share data (fully diluted):							
NICS	\$ 0.86	\$ 0.51	\$ 0.20	\$ (0.30)	\$ 1.17	\$ 0.41	\$ 0.17
FFO	0.84	1.04	0.80	0.48	0.95	1.02	0.76

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

**Credit Strength.** We measure our credit strength both in terms of leverage ratios and coverage ratios. The leverage ratios indicate how much of our balance sheet capitalization is related to long-term debt, net of cash and IRC Section 1031 deposits. The coverage ratios indicate our ability to service interest and fixed charges (interest, secured debt principal amortization and preferred dividends). We expect to maintain capitalization ratios and coverage ratios sufficient to maintain a capital structure consistent with our current profile. The coverage ratios are based on earnings before interest, taxes, depreciation and amortization ("EBITDA"). Please refer to the section entitled "Non-GAAP Financial Measures" for further discussion and reconciliations of these measures. Leverage ratios and coverage ratios are widely used by investors, analysts and rating agencies in the valuation, comparison, investment recommendations and rating of companies. The following table reflects the recent historical trends for our credit strength measures for the periods presented:

	Three Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
Net debt to book capitalization ratio	42%	41%	42%	43%	42%	42%	46%
Net debt to undepreciated book capitalization ratio	36%	35%	36%	36%	35%	36%	39%
Net debt to market capitalization ratio	29%	27%	29%	31%	34%	31%	34%
Interest coverage ratio	5.67x	4.60x	3.63x	2.35x	6.67x	4.34x	3.38x
Fixed charge coverage ratio	4.53x	3.72x	2.97x	1.93x	5.49x	3.58x	2.85x

**Concentration Risk.** We evaluate our concentration risk in terms of NOI by property mix, relationship mix and geographic mix. Concentration risk is a valuable measure in understanding what portion of our NOI could be at risk if certain sectors were to experience downturns. Property mix measures the portion of our NOI that relates to our various property types. Relationship mix measures the portion of our NOI that relates to our top five relationships. Geographic mix measures the portion of our NOI that relates to our top five states (or international equivalents). The following table reflects our recent historical trends of concentration risk by NOI for the periods indicated below:

	Three Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
Property mix: <sup>(1)</sup>							
Triple-net	45%	44%	43%	42%	41%	40%	38%
Seniors housing operating	38%	39%	40%	41%	42%	43%	46%
Outpatient medical	17%	17%	17%	17%	17%	17%	16%
Relationship mix: <sup>(1)</sup>							
Sunrise Senior Living <sup>(2)</sup>	14%	14%	14%	14%	15%	15%	15%
ProMedica Health System	—%	—%	—%	—%	—%	—%	7%
Revera <sup>(2)</sup>	7%	7%	7%	7%	7%	7%	7%
Genesis HealthCare	9%	9%	9%	7%	6%	6%	6%
Brookdale Senior Living	7%	7%	7%	7%	7%	8%	6%
Remaining relationships	63%	63%	63%	65%	65%	64%	59%
Geographic mix: <sup>(1)</sup>							
California	13%	14%	13%	13%	14%	14%	13%
United Kingdom	9%	9%	9%	9%	10%	9%	9%
Canada	8%	8%	8%	8%	9%	8%	8%
New Jersey	7%	8%	8%	8%	8%	7%	7%
Texas	7%	7%	7%	8%	8%	8%	7%
Remaining geographic areas	56%	54%	55%	54%	51%	54%	56%

(1) Excludes our share of investments in unconsolidated entities and non-segment/corporate NOI. Entities in which we have a joint venture with a minority partner are shown at 100% of the joint venture amount.

(2) Revera owns a controlling interest in Sunrise Senior Living.

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

**Lease Expirations.** The following table sets forth information regarding lease expirations for certain portions of our portfolio as of September 30, 2018 (dollars in thousands):

	Expiration Year <sup>(1)</sup>										
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	Thereafter
<b>Triple-net:</b>											
Properties	111	—	—	8	12	7	4	55	55	19	462
Base rent <sup>(2)</sup>	\$ 49,563	\$ —	\$ —	\$ 13,400	\$ 7,843	\$ —	\$ 10,842	\$ 66,697	\$ 94,556	\$ 33,955	\$ 523,166
% of base rent	6.2%	—%	—%	1.7%	1.0%	—%	1.4%	8.3%	11.8%	4.2%	65.4%
Units/beds	10,754	—	—	1,416	1,245	1,115	692	4,140	5,869	2,401	48,799
% of Units/beds	14.1%	—%	—%	1.9%	1.6%	1.5%	0.9%	5.4%	7.7%	3.1%	63.8%
<b>Outpatient medical:</b>											
Square feet	337,189	1,121,808	1,372,820	1,559,664	1,706,549	1,271,602	1,290,443	765,244	1,195,467	403,107	4,868,618
Base rent <sup>(2)</sup>	\$ 9,626	\$ 32,658	\$ 38,720	\$ 43,962	\$ 46,037	\$ 34,306	\$ 37,615	\$ 20,607	\$ 29,059	\$ 10,652	\$ 102,387
% of base rent	2.4%	8.1%	9.5%	10.8%	11.3%	8.5%	9.3%	5.1%	7.2%	2.6%	25.2%
Leases	112	304	329	310	304	283	149	130	138	79	211
% of Leases	4.8%	12.9%	14.0%	13.2%	12.9%	12.0%	6.3%	5.5%	5.9%	3.4%	9.1%

(1) Excludes investments in unconsolidated entities. Investments classified as held for sale are included in the current year.

(2) The most recent monthly cash base rent annualized. Base rent does not include tenant recoveries or amortization of above and below market lease intangibles or other non cash income.

We evaluate our key performance indicators in conjunction with current expectations to determine if historical trends are indicative of future results. Our expected results may not be achieved and actual results may differ materially from our expectations. Factors that may cause actual results to differ from expected results are described in more detail in “Cautionary Statement Regarding Forward-Looking Statements” and other sections of this Quarterly Report on Form 10-Q. Management regularly monitors economic and other factors to develop strategic and tactical plans designed to improve performance and maximize our competitive position. Our ability to achieve our financial objectives is dependent upon our ability to effectively execute these plans and to appropriately respond to emerging economic and company-specific trends. Please refer to our Annual Report on Form 10-K for the year ended December 31, 2017, under the headings “Business,” “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for further discussion of these risk factors.

### Corporate Governance

Maintaining investor confidence and trust is important in today’s business environment. Our Board of Directors and management are strongly committed to policies and procedures that reflect the highest level of ethical business practices. Our corporate governance guidelines provide the framework for our business operations and emphasize our commitment to increase stockholder value while meeting all applicable legal requirements. These guidelines meet the listing standards adopted by the New York Stock Exchange and are available on the Internet at [www.welltower.com/investors/governance](http://www.welltower.com/investors/governance). The information on our website is not incorporated by reference in this Quarterly Report on Form 10-Q, and our web address is included as an inactive textual reference only.

### Liquidity and Capital Resources

As of December 31, 2017, we adopted Accounting Standards Update (“ASU”) No. 2016-18, “Restricted Cash,” and ASU No. 2016-15, “Classification of Certain Cash Receipts and Cash Payments.” See Note 2 to the unaudited consolidated financial statements for further information.

### Sources and Uses of Cash

Our primary sources of cash include rent and interest receipts, resident fees and services, borrowings under our primary unsecured credit facility, public issuances of debt and equity securities, proceeds from investment dispositions and principal payments on loans receivable. Our primary uses of cash include dividend distributions, debt service payments (including principal and interest), real property investments (including acquisitions, capital expenditures, construction advances and transaction costs), loan advances, property operating expenses, and general and administrative expenses. These sources and uses of cash are reflected in our Consolidated Statements of Cash Flows and are discussed in further detail below. The following is a summary of our sources and uses of cash flows (dollars in thousands):

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

	Nine Months Ended		Change	
	September 30,	September 30,	\$	%
	2018	2017		
Cash, cash equivalents and restricted cash at beginning of period	\$ 309,303	\$ 607,220	\$ (297,917)	-49 %
Cash provided from (used in) operating activities	1,211,148	1,162,464	48,684	4 %
Cash provided from (used in) investing activities	(2,133,293)	400,418	(2,533,711)	n/a
Cash provided from (used in) financing activities	899,559	(1,899,107)	2,798,666	n/a
Effect of foreign currency translation	(5,432)	24,316	(29,748)	n/a
Cash, cash equivalents and restricted cash at end of period	\$ 281,285	\$ 295,311	\$ (14,026)	-5 %

*Operating Activities.* The change in net cash provided from operating activities was immaterial. Please see “Results of Operations” for discussion of net income fluctuations. For the nine months ended September 30, 2018 and 2017, cash flow provided from operations exceeded cash distributions to stockholders.

*Investing Activities.* The changes in net cash provided from/used in investing activities are primarily attributable to changes in acquisition and dispositions, which are summarized above in “Key Transactions” and Notes 3 and 5 of our unaudited consolidated financial statements. The following is a summary of cash used in non-acquisition capital improvement activities (dollars in thousands):

	Nine Months Ended		Change	
	September 30,	September 30,	\$	%
	2018	2017		
New development	\$ 88,146	\$ 198,068	\$ (109,922)	-55 %
Recurring capital expenditures, tenant improvements and lease commissions	57,384	45,777	11,607	25 %
Renovations, redevelopments and other capital improvements	116,251	113,365	2,886	3 %
Total	\$ 261,781	\$ 357,210	\$ (95,429)	-27 %

The change in new development is primarily due to the number and size of construction projects on-going during the relevant periods. Renovations, redevelopments and other capital improvements include expenditures to maximize property value, increase net operating income, maintain a market-competitive position and/or achieve property stabilization. Generally, these expenditures have increased as a result of acquisitions, primarily in our seniors housing operating segment.

*Financing Activities.* The changes in net cash provided from/used in financing activities are primarily attributable to changes related to our long-term debt arrangements, the issuance/redemption of common and preferred stock, and dividend payments. Please refer to Notes 9, 10 and 13 of our unaudited consolidated financial statements for additional information.

**Off-Balance Sheet Arrangements**

At September 30, 2018, we had investments in unconsolidated entities with our ownership interests ranging from 10% to 50%. Please see Note 7 to our unaudited consolidated financial statements for additional information. We use financial derivative instruments to hedge interest rate and foreign currency exchange rate exposure. Please see Note 11 to our unaudited consolidated financial statements for additional information. At September 30, 2018, we had 13 outstanding letter of credit obligations. Please see Note 12 to our unaudited consolidated financial statements for additional information.

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### Contractual Obligations

The following table summarizes our payment requirements under contractual obligations as of September 30, 2018 (in thousands):

Contractual Obligations	Payments Due by Period				
	Total	2018	2019-2020	2021-2022	Thereafter
Unsecured revolving credit facility <sup>(1)</sup>	\$ 1,312,000	\$ —	\$ —	\$ —	\$ 1,312,000
Senior unsecured notes and term credit facilities: <sup>(2)</sup>					
U.S. Dollar senior unsecured notes	7,450,000	—	1,050,000	1,050,000	5,350,000
Canadian Dollar senior unsecured notes <sup>(3)</sup>	232,162	—	232,162	—	—
Pounds Sterling senior unsecured notes <sup>(3)</sup>	1,370,565	—	—	—	1,370,565
U.S. Dollar term credit facility	507,500	—	7,500	—	500,000
Canadian Dollar term credit facility <sup>(3)</sup>	193,469	—	—	—	193,469
Secured debt: <sup>(2,3)</sup>					
Consolidated	2,479,755	170,742	628,104	573,112	1,107,797
Unconsolidated	790,673	17,836	109,404	40,844	622,589
Contractual interest obligations: <sup>(4)</sup>					
Unsecured revolving credit facility	193,720	10,196	81,566	81,566	20,392
Senior unsecured notes and term loans <sup>(3)</sup>	4,120,498	152,769	830,571	710,660	2,426,498
Consolidated secured debt <sup>(3)</sup>	476,489	23,252	155,504	111,191	186,542
Unconsolidated secured debt <sup>(3)</sup>	214,808	7,612	56,738	48,299	102,159
Capital lease obligations <sup>(5)</sup>	85,308	1,043	8,346	8,346	67,573
Operating lease obligations <sup>(5)</sup>	1,107,336	4,507	35,588	34,105	1,033,136
Purchase obligations <sup>(5)</sup>	343,079	76,741	266,338	—	—
Other long-term liabilities <sup>(6)</sup>	1,598	369	1,229	—	—
<b>Total contractual obligations</b>	<b>\$ 20,878,960</b>	<b>\$ 465,067</b>	<b>\$ 3,463,050</b>	<b>\$ 2,658,123</b>	<b>\$ 14,292,720</b>

(1) Relates to unsecured revolving credit facility with an aggregate commitment of \$3,000,000,000. See Note 9 to our unaudited consolidated financial statements for additional information.

(2) Amounts represent principal amounts due and do not reflect unamortized premiums/discounts or other fair value adjustments as reflected on the balance sheet.

(3) Based on foreign currency exchange rates in effect as of balance sheet date.

(4) Based on variable interest rates in effect as of balance sheet date.

(5) See Note 12 to our unaudited consolidated financial statements for additional information.

(6) Primarily relates to payments to be made under a supplemental executive retirement plan for one former executive officer.

### Capital Structure

Please refer to “Credit Strength” above for a discussion of our leverage and coverage ratio trends. Our debt agreements contain various covenants, restrictions and events of default. Certain agreements require us to maintain financial ratios and minimum net worth and impose certain limits on our ability to incur indebtedness, create liens and make investments or acquisitions. As of September 30, 2018, we were in compliance with all of the covenants under our debt agreements. None of our debt agreements contain provisions for acceleration which could be triggered by our debt ratings. However, under our primary unsecured credit facility, the ratings on our senior unsecured notes are used to determine the fees and interest charged. We plan to manage the company to maintain compliance with our debt covenants and with a capital structure consistent with our current profile. Any downgrades in terms of ratings or outlook by any or all of the rating agencies could have a material adverse impact on our cost and availability of capital, which could in turn have a material adverse impact on our consolidated results of operations, liquidity and/or financial condition.

On May 17, 2018, we filed with the Securities and Exchange Commission (1) an open-ended automatic or “universal” shelf registration statement covering an indeterminate amount of future offerings of debt securities, common stock, preferred stock, depository shares, warrants and units and (2) a registration statement in connection with our enhanced dividend reinvestment plan (“DRIP”) under which we may issue up to 15,000,000 shares of common stock. As of October 25, 2018, 13,309,086 shares of common stock remained available for issuance under the DRIP registration statement. On August 3, 2018 we entered into separate amended and restated equity distribution agreements with each of Morgan Stanley & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs & Co. LLC, UBS Securities LLC and Wells Fargo Securities, LLC relating to the offer and sale from time to time of up to \$784,083,001 aggregate amount of our common stock (“Equity Shelf Program”). The Equity Shelf Program also allows us to enter into forward sale agreements. We expect that, if entered into, we will physically settle each forward sale agreement on one or more dates on or prior to the maturity date of that particular forward sale agreement, in which case we

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will expect to receive per share cash proceeds at settlement equal to the forward sale price under the relevant forward sale agreement. However, we may also elect to cash settle or net share settle a forward sale agreement. As of October 25, 2018, we had \$654,339,000 of remaining capacity under the Equity Shelf Program and there were no outstanding forward sales agreements. Depending upon market conditions, we anticipate issuing securities under our registration statements to invest in additional properties and to repay borrowings under our primary unsecured credit facility.

### Results of Operations

#### Summary

Our primary sources of revenue include rent, resident fees and services and interest income. Our primary expenses include interest expense, depreciation and amortization, property operating expenses, general and administrative expenses and other expenses. We evaluate our business and make resource allocations on our three business segments: triple-net, seniors housing operating and outpatient medical. The primary performance measures for our properties are NOI and SSNOI, which are discussed below. Please see Non-GAAP Financial Measures for additional information and reconciliations. The following is a summary of our results of operations (dollars in thousands, except per share amounts):

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,	September 30,	Amount	%	September 30,	September 30,	Amount	%
	2018	2017			2018	2017		
Net income	\$ 84,226	\$ 89,299	\$ (5,073)	-6 %	\$ 705,054	\$ 630,356	\$ 74,698	12%
NICS	64,384	74,043	(9,659)	-13 %	656,487	575,118	81,369	14%
FFO	285,272	295,722	(10,450)	-4 %	1,017,217	986,352	30,865	3%
EBITDA	467,148	442,684	24,464	6 %	1,802,072	1,665,488	136,584	8%
NOI	579,222	567,486	11,736	2 %	1,676,883	1,676,362	521	—%
SSNOI	433,523	439,807	(6,284)	-1 %	1,303,626	1,293,712	9,914	1%
Per share data (fully diluted):								
NICS	\$ 0.17	\$ 0.20	\$ (0.03)	-15 %	\$ 1.76	\$ 1.56	\$ 0.20	13%
FFO	\$ 0.76	\$ 0.80	\$ (0.04)	-5 %	\$ 2.72	\$ 2.68	\$ 0.04	1%
Interest coverage ratio	3.38x	3.63x	(0.25)x	-7 %	4.73x	4.63x	0.10x	2%
Fixed charge coverage ratio	2.85x	2.97x	(0.12)x	-4 %	3.93x	3.74x	0.19x	5%

#### Triple-net

The following is a summary of our NOI and SSNOI for the triple-net segment (dollars in thousands):

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,	September 30,	\$	%	September 30,	September 30,	\$	%
	2018	2017			2018	2017		
NOI	\$ 218,684	\$ 244,916	\$ (26,232)	-11 %	\$ 665,706	\$ 735,998	\$ (70,292)	-10 %
Non SSNOI attributable to same store properties	(3,734)	(7,232)	3,498	-48 %	(14,075)	(22,689)	8,614	-38 %
NOI attributable to non same store properties <sup>(1)</sup>	(76,077)	(95,278)	19,201	-20 %	(232,926)	(292,948)	60,022	-20 %
SSNOI <sup>(2)</sup>	\$ 138,873	\$ 142,406	\$ (3,533)	-2 %	\$ 418,705	\$ 420,361	\$ (1,656)	— %

(1) Change is primarily due to the acquisition of 290 properties, the transitioning/restructuring of 27 properties, and the conversion of 13 construction projects into revenue-generating properties subsequent to January 1, 2017 and 20 held for sale properties at September 30, 2018.

(2) Relates to 410 same store properties.

The following is a summary of our results of operations for the triple-net segment (dollars in thousands):

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	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,	September 30,	\$	%	September 30,	September 30,	\$	%
	2018	2017			2018	2017		
<b>Revenues:</b>								
Rental income	\$ 203,039	\$ 221,555	\$ (18,516)	-8 %	\$ 607,831	\$ 666,735	\$ (58,904)	-9 %
Interest income	14,378	20,187	(5,809)	-29 %	42,176	61,767	(19,591)	-32 %
Other income	1,693	3,174	(1,481)	-47 %	16,282	7,496	8,786	117 %
Total revenues	219,110	244,916	(25,806)	-11 %	666,289	735,998	(69,709)	-9 %
Property operating expenses	426	—	426	n/a	583	—	583	n/a
NOI <sup>(1)</sup>	218,684	244,916	(26,232)	-11 %	665,706	735,998	(70,292)	-10 %
<b>Other expenses:</b>								
Interest expense	3,500	3,622	(122)	-3 %	10,742	11,647	(905)	-8 %
Loss (gain) on derivatives and financial instruments, net	8,991	324	8,667	2,675 %	(5,642)	2,284	(7,926)	n/a
Depreciation and amortization	60,383	62,891	(2,508)	-4 %	171,724	182,672	(10,948)	-6 %
Loss (gain) on extinguishment of debt, net	—	—	—	n/a	(32)	29,083	(29,115)	n/a
Impairment of assets	6,178	—	6,178	n/a	34,482	4,846	29,636	612 %
Other expenses	87,076	89,236	(2,160)	-2 %	89,153	96,425	(7,272)	-8 %
Total other expenses	166,128	156,073	10,055	6 %	300,427	326,957	(26,530)	-8 %
Income from continuing operations before income taxes and income (loss) from unconsolidated entities	52,556	88,843	(36,287)	-41 %	365,279	409,041	(43,762)	-11 %
Income tax (expense) benefit	1,116	(816)	1,932	n/a	(708)	(2,070)	1,362	-66 %
Income (loss) from unconsolidated entities	5,377	5,478	(101)	-2 %	16,260	14,983	1,277	9 %
Income from continuing operations	59,049	93,505	(34,456)	-37 %	380,831	421,954	(41,123)	-10 %
Gain (loss) on real estate dispositions, net	24,782	(185)	24,967	n/a	158,938	273,051	(114,113)	-42 %
Net income	83,831	93,320	(9,489)	-10 %	539,769	695,005	(155,236)	-22 %
Less: Net income (loss) attributable to noncontrolling interests	6,913	1,539	5,374	349 %	10,129	3,112	7,017	225 %
Net income attributable to common stockholders	\$ 76,918	\$ 91,781	\$ (14,863)	-16 %	\$ 529,640	\$ 691,893	\$ (162,253)	-23 %

(1) See Non-GAAP Financial Measures.

The decrease in rental income is primarily attributable to the disposition of properties exceeding new acquisitions as well as the reduction in the Genesis annual cash rent obligation due to the restructuring of the master lease as of January 1, 2018. Certain of our leases contain annual rental escalators that are contingent upon changes in the Consumer Price Index and/or changes in the gross operating revenues of the tenant's properties. These escalators are not fixed, so no straight-line rent is recorded; however, rental income is recorded based on the contractual cash rental payments due for the period. If gross operating revenues at our facilities and/or the Consumer Price Index do not increase, a portion of our revenues may not continue to increase. For the three months ended September 30, 2018, we had 20 leases with rental rate increasers ranging from 0.12% to 0.79% in our triple-net portfolio. The decrease in interest income is primarily related to the volume of loan payoffs during 2017 and 2018. The increase in other income is primarily due to \$10,805,000 of net lease termination fees recognized during the three months ended June 30, 2018.

Depreciation and amortization decreased primarily as a result of the disposition of triple-net properties exceeding new acquisitions. To the extent that we acquire or dispose of additional properties in the future, our provision for depreciation and amortization will change accordingly.

During the nine months ended September 30, 2018 and 2017, we recorded impairment charges on certain held for sale triple-net properties as the carrying values exceeded the estimated fair value less costs to sell. Changes in the gain on sales of properties are related to the volume of property sales and the sales prices. Transaction costs related to asset acquisitions are capitalized as a component of purchase price. The decrease in other expenses is primarily due to fewer noncapitalizable transaction costs from acquisitions.

During the nine months ended September 30, 2018, we completed two triple-net construction project totaling \$90,055,000 or \$381,589 per bed/unit. The following is a summary of triple-net construction projects, excluding expansions, pending as of September 30, 2018 (dollars in thousands):

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Location	Units/Beds	Commitment	Balance	Est. Completion
Westerville, OH	90	\$ 22,800	\$ 6,759	3Q19
Union, KY	162	34,600	7,150	1Q20
Droitwich, UK	70	16,532	4,035	4Q20
	322	\$ 73,932	\$ 17,944	

Interest expense for the nine months ended September 30, 2018 and 2017 represents secured debt interest expense and related fees. The change in interest expense is due to the net effect and timing of assumptions, segment transitions, fluctuations in foreign currency rates, extinguishments and principal amortizations. The fluctuation in loss (gain) on derivatives and financial instruments is primarily attributable to the mark-to-market adjustment recorded on the Genesis HealthCare available-for-sale investment in accordance with the adoption of ASU No. 2016-01 described in Note 2 to our unaudited consolidated financial statements. The fluctuation in losses/gains on debt extinguishment is attributable to the large volume of extinguishments in the first quarter of 2017. The following is a summary of our triple-net secured debt principal activity (dollars in thousands):

	Three Months Ended				Nine Months Ended			
	September 30, 2018		September 30, 2017		September 30, 2018		September 30, 2017	
	Amount	Wtd. Avg. Interest Rate	Amount	Wtd. Avg. Interest Rate	Amount	Wtd. Avg. Interest Rate	Amount	Wtd. Avg. Interest Rate
Beginning balance	\$ 334,033	3.53%	\$ 345,866	3.53%	\$ 347,474	3.55%	\$ 594,199	4.58%
Debt issued	—	0.00%	13,000	4.57%	—	0.00%	13,000	4.57%
Debt extinguished	—	0.00%	—	0.00%	(4,107)	4.94%	(255,553)	5.92%
Debt transferred	(35,830)	3.80%	—	0.00%	(35,830)	3.84%	—	0.00%
Principal payments	(962)	5.26%	(1,126)	5.56%	(3,033)	5.42%	(4,724)	5.68%
Foreign currency	(979)	3.51%	7,707	3.13%	(8,242)	3.29%	18,525	2.95%
Ending balance	\$ 296,262	3.63%	\$ 365,447	5.55%	\$ 296,262	3.63%	\$ 365,447	3.55%
Monthly averages	\$ 309,920	3.53%	\$ 358,425	3.56%	\$ 331,239	3.48%	\$ 424,583	4.00%

A portion of our triple-net properties were formed through partnerships. Income or loss from unconsolidated entities represents our share of net income or losses related to unconsolidated investments. Net income attributable to noncontrolling interest represents our partners' share of net income relating to those partnerships where we are the controlling partner.

**Seniors Housing Operating**

The following is a summary of our NOI and SSNOI for the seniors housing operating segment (dollars in thousands):

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30, 2018	September 30, 2017	\$	%	September 30, 2018	September 30, 2017	\$	%
	NOI	\$ 265,846	\$ 225,100	\$ 40,746	18 %	\$ 730,577	\$ 653,518	\$ 77,059
Non SSNOI attributable to same store properties	304	288	16	6 %	927	1,162	(235)	-20 %
NOI attributable to non same store properties <sup>(1)</sup>	(57,534)	(9,311)	(48,223)	518 %	(104,407)	(24,102)	(80,305)	333 %
SSNOI <sup>(2)</sup>	\$ 208,616	\$ 216,077	\$ (7,461)	-3 %	\$ 627,097	\$ 630,578	\$ (3,481)	-1 %

(1) Change is primarily due to the acquisition of 26 properties subsequent to January 1, 2017 and the transition of 78 properties from triple-net to seniors housing operating.

(2) Relates to 399 same store properties.

The following is a summary of our seniors housing operating results of operations (dollars in thousands):



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	Three Months Ended		Change		Nine Months Ended		Change		
	September 30,	September 30,	\$	%	September 30,	September 30,	\$	%	
	2018	2017			2018	2017			
<b>Revenues:</b>									
Resident fees and services	\$ 875,171	\$ 702,380	\$ 172,791	25 %	\$ 2,374,450	\$ 2,049,757	\$ 324,693	16 %	
Interest income	159	—	159	n/a	416	69	347	503 %	
Other income	1,175	1,497	(322)	-22 %	3,973	4,005	(32)	-1 %	
Total revenues	876,505	703,877	172,628	25 %	2,378,839	2,053,831	325,008	16 %	
Property operating expenses	610,659	478,777	131,882	28 %	1,648,262	1,400,313	247,949	18 %	
NOI <sup>(1)</sup>	265,846	225,100	40,746	18 %	730,577	653,518	77,059	12 %	
<b>Other expenses:</b>									
Interest expense	17,319	16,369	950	6 %	51,225	47,587	3,638	8 %	
Depreciation and amortization	136,532	119,089	17,443	15 %	397,080	356,023	41,057	12 %	
Loss (gain) on extinguishment of debt, net	—	—	—	n/a	110	3,414	(3,304)	-97 %	
Impairment of assets	562	—	562	n/a	5,075	14,191	(9,116)	-64 %	
Other expenses	(811)	5,157	(5,968)	n/a	5,168	8,100	(2,932)	-36 %	
Total other expenses	153,602	140,615	12,987	9 %	458,658	429,315	29,343	7 %	
Income (loss) from continuing operations before income taxes and income (loss) from unconsolidated entities	112,244	84,485	27,759	33 %	271,919	224,203	47,716	21 %	
Income tax benefit (expense)	211	(1,519)	1,730	n/a	(2,244)	9,133	(11,377)	n/a	
Income (loss) from unconsolidated entities	(6,705)	(2,886)	(3,819)	132 %	(21,389)	(40,527)	19,138	-47 %	
Income from continuing operations	105,750	80,080	25,670	32 %	248,286	192,809	55,477	29 %	
Gain (loss) on real estate dispositions, net	(1)	(197)	196	-99 %	3	12,814	(12,811)	-100 %	
Net income (loss)	105,749	79,883	25,866	32 %	248,289	205,623	42,666	21 %	
Less: Net income (loss) attributable to noncontrolling interests	405	1,008	(603)	-60 %	(1,259)	1,199	(2,458)	n/a	
Net income (loss) attributable to common stockholders	\$ 105,344	\$ 78,875	\$ 26,469	34 %	\$ 249,548	\$ 204,424	\$ 45,124	22 %	

(1) See Non-GAAP Financial Measures.

Fluctuations in revenues and property operating expenses are primarily a result of acquisitions, segment transitions and the movement of U.S. and foreign currency exchange rates. The fluctuations in depreciation and amortization are due to acquisitions and variations in amortization of short-lived intangible assets. To the extent that we acquire or dispose of additional properties in the future, these amounts will change accordingly.

During the nine months ended September 30, 2018 and 2017, we recorded impairment charges on certain held for sale properties as the carrying value exceeded the estimated fair value less costs to sell. Changes in the gain/loss on sale of properties are related to the volume of property sales and sales prices. Transaction costs related to asset acquisitions are capitalized as a component of purchase price. The decrease in other expenses is primarily due to noncapitalizable transactions costs from acquisitions.

During the nine months ended September 30, 2018, we completed two seniors housing operating construction project representing \$86,931,000 or \$459,952 per unit. The following is a summary of our seniors housing operating construction projects, excluding expansions, pending as of September 30, 2018 (dollars in thousands):

Location	Units	Commitment	Balance	Est. Completion
Wandsworth, UK	98	\$ 76,947	\$ 38,759	1Q20

Interest expense represents secured debt interest expense. The change in secured debt interest expense is primarily due to the net effect and timing of assumptions, extinguishments and principal amortizations. The following is a summary of our seniors housing operating property secured debt principal activity (dollars in thousands):

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	Three Months Ended				Nine Months Ended			
	September 30, 2018		September 30, 2017		September 30, 2018		September 30, 2017	
	Wtd. Avg.		Wtd. Avg.		Wtd. Avg.		Wtd. Avg.	
	Amount	Interest Rate	Amount	Interest Rate	Amount	Interest Rate	Amount	Interest Rate
Beginning balance	\$ 1,909,415	3.73%	\$ 2,040,985	3.56%	\$ 1,988,700	3.66%	\$ 2,463,249	3.94%
Debt transferred	35,830	3.84%	—	0.00%	35,830	3.84%	—	0.00%
Debt issued	—	0.00%	15,659	3.46%	44,606	3.38%	177,459	2.60%
Debt assumed	—	0.00%	—	0.00%	85,192	4.38%	—	0.00%
Debt extinguished	—	0.00%	(15,449)	2.88%	(131,175)	4.85%	(610,403)	4.92%
Principal payments	(11,908)	3.64%	(11,857)	3.57%	(35,910)	3.58%	(35,008)	3.63%
Foreign currency	18,204	3.33%	39,696	3.18%	(35,702)	3.54%	73,737	3.26%
Ending balance	<u>\$ 1,951,541</u>	<u>3.76%</u>	<u>\$ 2,069,034</u>	<u>3.63%</u>	<u>\$ 1,951,541</u>	<u>3.76%</u>	<u>\$ 2,069,034</u>	<u>3.63%</u>
Monthly averages	\$ 1,934,652	3.74%	\$ 2,065,572	3.61%	\$ 1,935,752	3.70%	\$ 2,082,662	3.66%

The majority of our seniors housing operating properties are formed through partnership interests. Net income attributable to noncontrolling interests represents our partners' share of net income (loss) related to joint ventures. The fluctuations in income (loss) from unconsolidated entities is primarily due to the recognition of goodwill and intangible asset impairments as well as income tax expense adjustments during the nine month period ended September 30, 2017. During the nine months ended September 30, 2017, we recognized a \$7,916,000 deferred tax benefit arising from the basis difference generated by the aforementioned unconsolidated entities' adjustments.

*Outpatient Medical*

The following is a summary of our NOI and SSNOI for the outpatient medical segment (dollars in thousands):

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,	September 30,	\$	%	September 30,	September 30,	\$	%
	2018	2017			2018	2017		
NOI	\$ 93,997	\$ 96,772	\$ (2,775)	-3 %	\$ 279,039	\$ 285,675	\$ (6,636)	-2 %
Non SSNOI on same store properties	(1,061)	(1,451)	390	-27 %	(2,841)	(5,594)	2,753	-49 %
NOI attributable to non same store properties <sup>(1)</sup>	(6,902)	(13,997)	7,095	-51 %	(18,374)	(37,308)	18,934	-51 %
SSNOI <sup>(2)</sup>	<u>\$ 86,034</u>	<u>\$ 81,324</u>	<u>\$ 4,710</u>	<u>6 %</u>	<u>\$ 257,824</u>	<u>\$ 242,773</u>	<u>\$ 15,051</u>	<u>6 %</u>

(1) Change is primarily due to acquisitions of 19 properties and the conversion of 11 construction projects into revenue-generating properties subsequent to January 1, 2017.

(2) Relates to 219 same store properties.

The following is a summary of our results of operations for the outpatient medical segment (dollars in thousands):

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	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,	September 30,	\$	%	September 30,	September 30,	\$	%
	2018	2017			2018	2017		
<b>Revenues:</b>								
Rental income	\$ 139,848	\$ 141,325	\$ (1,477)	-1 %	\$ 412,026	\$ 418,886	\$ (6,860)	-2 %
Interest income	85	—	85	n/a	140	—	140	n/a
Other income	136	667	(531)	-80 %	401	2,497	(2,096)	-84 %
Total revenues	140,069	141,992	(1,923)	-1 %	412,567	421,383	(8,816)	-2 %
Property operating expenses	46,072	45,220	852	2 %	133,528	135,708	(2,180)	-2 %
NOI <sup>(1)</sup>	93,997	96,772	(2,775)	-3 %	279,039	285,675	(6,636)	-2 %
<b>Other expenses:</b>								
Interest expense	1,643	2,929	(1,286)	-44 %	4,975	7,342	(2,367)	-32 %
Depreciation and amortization	46,234	48,158	(1,924)	-4 %	138,821	144,567	(5,746)	-4 %
Impairment of assets	—	—	—	n/a	—	5,625	(5,625)	-100 %
Loss (gain) on extinguishment of debt, net	—	—	—	n/a	11,928	4,373	7,555	173 %
Other expenses	1,055	530	525	99 %	3,748	2,201	1,547	70 %
Total other expenses	48,932	51,617	(2,685)	-5 %	159,472	164,108	(4,636)	-3 %
<b>Income (loss) from continuing operations before income taxes and income (loss) from unconsolidated entities</b>								
	45,065	45,155	(90)	— %	119,567	121,567	(2,000)	-2 %
Income tax (expense) benefit	239	(366)	605	n/a	(567)	(655)	88	-13 %
Income from unconsolidated entities	1,672	816	856	105 %	4,293	1,868	2,425	130 %
Income from continuing operations	46,976	45,605	1,371	3 %	123,293	122,780	513	— %
Gain (loss) on real estate dispositions, net	(58)	2,004	(2,062)	n/a	214,721	2,004	212,717	10,615 %
Net income (loss)	46,918	47,609	(691)	-1 %	338,014	124,784	213,230	171 %
Less: Net income (loss) attributable to noncontrolling interests	848	1,032	(184)	-18 %	4,669	3,424	1,245	36 %
Net income (loss) attributable to common stockholders	\$ 46,070	\$ 46,577	\$ (507)	-1 %	\$ 333,345	\$ 121,360	\$ 211,985	175 %

(1) See Non-GAAP Financial Measures.

The decrease in rental income is primarily attributable to dispositions partially offset by the acquisitions of new properties and the conversion of newly constructed outpatient medical properties from which we receive rent. Certain of our leases contain annual rental escalators that are contingent upon changes in the Consumer Price Index. These escalators are not fixed, so no straight-line rent is recorded; however, rental income is recorded based on the contractual cash rental payments due for the period. If the Consumer Price Index does not increase, a portion of our revenues may not continue to increase. Sales of real property would offset revenue increases and, to the extent that they exceed new acquisitions, could result in decreased revenues. Our leases could renew above or below current rental rates, resulting in an increase or decrease in rental income. For the three months ended September 30, 2018, our consolidated outpatient medical portfolio signed 105,716 square feet of new leases and 190,465 square feet of renewals. The weighted-average term of these leases was six years, with a rate of \$36.76 per square foot and tenant improvement and lease commission costs of \$28.38 per square foot. Substantially all of these leases contain an annual fixed or contingent escalation rent structure ranging from 1.9% to 4.0%.

The fluctuation in property operating expenses is primarily attributable to dispositions partially offset by acquisitions and construction conversions of new outpatient medical facilities for which we incur certain property operating expenses. The fluctuations in depreciation and amortization are primarily due to dispositions and variations in amortization of short-lived intangible assets. To the extent that we acquire or dispose of additional properties in the future, these amounts will change accordingly. During the nine months ended September 30, 2017, we recorded impairment charges related to certain held for sale properties as the carrying values exceeded the estimated fair values less costs to sell. Changes in the gain/loss on sale of properties are related to the volume of property sales and sales prices.

During the nine months ended September 30, 2018, we completed one outpatient medical construction project representing \$11,358,000 or \$296 per square foot. The following is a summary of the outpatient medical construction projects, excluding expansions, pending as of September 30, 2018 (dollars in thousands):

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Location	Square Feet	Commitment	Balance	Est. Completion
Brooklyn, NY	140,955	\$ 105,177	\$ 54,454	3Q19
Houston, TX	73,500	23,455	3,399	4Q19
Total	214,455	\$ 128,632	\$ 57,853	

Total interest expense represents secured debt interest expense. The change in secured debt interest expense is primarily due to the net effect and timing of assumptions, extinguishments and principal amortizations. The fluctuation in losses/gains on debt extinguishment is primarily attributable to the prepayment penalties paid on certain extinguishments in the first quarter of 2018. The following is a summary of our outpatient medical secured debt principal activity (dollars in thousands):

	Three Months Ended				Nine Months Ended			
	September 30, 2018		September 30, 2017		September 30, 2018		September 30, 2017	
	Amount	Wtd. Ave Interest Rate	Amount	Wtd. Ave Interest Rate	Amount	Wtd. Ave Interest Rate	Amount	Wtd. Ave Interest Rate
Beginning balance	\$ 217,007	4.35%	\$ 284,918	4.62%	\$ 279,951	4.72%	\$ 404,079	4.85%
Debt assumed	14,360	3.80%	—	0.00%	14,360	3.80%	23,094	6.67%
Debt extinguished	—	0.00%	—	0.00%	(61,291)	7.43%	(137,416)	5.99%
Principal payments	(702)	5.90%	(2,000)	6.63%	(2,355)	6.02%	(6,839)	6.76%
Ending balance	\$ 230,665	4.19%	\$ 282,918	4.69%	\$ 230,665	4.19%	\$ 282,918	4.69%
Monthly averages	\$ 220,246	4.22%	\$ 283,885	4.68%	\$ 224,943	4.26%	\$ 298,933	4.61%

A portion of our outpatient medical properties were formed through partnerships. Income or loss from unconsolidated entities represents our share of net income or losses related to certain unconsolidated property investments. Net income attributable to noncontrolling interests represents our partners' share of net income relating to those partnerships where we are the controlling partner.

**Non-Segment/Corporate**

The following is a summary of our results of operations for the non-segment/corporate activities (dollars in thousands):

	Three Months Ended		Change		Nine Months Ended		Change	
	September 30, 2018	September 30, 2017	\$	%	September 30, 2018	September 30, 2017	\$	%
	Revenues:							
Other income	\$ 695	\$ 698	\$ (3)	—%	\$ 1,561	\$ 1,171	\$ 390	33%
Expenses:								
Interest expense	115,570	99,658	15,912	16%	315,281	290,829	24,452	8%
General and administrative	28,746	29,913	(1,167)	-4%	95,282	93,643	1,639	2%
Loss (gain) on extinguishment of debt, net	4,038	—	4,038	n/a	4,038	—	4,038	n/a
Other expenses	1,306	4,672	(3,366)	-72%	4,327	10,882	(6,555)	-60%
Total expenses	149,660	134,243	15,417	11%	418,928	395,354	23,574	6%
Loss from continuing operations before income taxes	(148,965)	(133,545)	(15,420)	12%	(417,367)	(394,183)	(23,184)	6%
Income tax (expense) benefit	(3,307)	2,032	(5,339)	n/a	(3,651)	(873)	(2,778)	318%
Loss from continuing operations	(152,272)	(131,513)	(20,759)	16%	(421,018)	(395,056)	(25,962)	7%
Less: Preferred stock dividends	11,676	11,676	—	—%	35,028	37,734	(2,706)	-7%
Less: Preferred stock redemption charge	—	—	—	n/a	—	9,769	(9,769)	-100%
Net loss attributable to common stockholders	\$ (163,948)	\$ (143,189)	\$ (20,759)	14%	\$ (456,046)	\$ (442,559)	\$ (13,487)	3%

The following is a summary of our non-segment/corporate interest expense (dollars in thousands):

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	Three Months Ended		Change		Nine Months Ended		Change	
	September 30,	September 30,	\$	%	September 30,	September 30,	\$	%
	2018	2017			2018	2017		
Senior unsecured notes	\$ 99,445	\$ 92,296	\$ 7,149	8 %	\$ 282,847	\$ 267,444	\$ 15,403	6 %
Secured debt	26	49	(23)	-47 %	96	164	(68)	-41 %
Primary unsecured credit facility	12,662	3,906	8,756	224 %	22,442	13,179	9,263	70 %
Loan expense	3,437	3,407	30	1 %	9,896	10,042	(146)	-1 %
Totals	\$ 115,570	\$ 99,658	\$ 15,912	16 %	\$ 315,281	\$ 290,829	\$ 24,452	8 %

The change in interest expense on senior unsecured notes is primarily due to the net effect of issuances and extinguishments, as well as the movement of foreign exchange rates and related hedge activity. Loan expense represents the amortization of deferred loan costs incurred in connection with the issuance and amendments of debt. Loan expense changes are due to amortization of charges for costs incurred in connection with senior unsecured note issuances. The change in interest expense on the primary unsecured credit facility is due primarily to the net effect and timing of draws, paydowns and variable interest rate changes. Please refer to Note 9 of our unaudited consolidated financial statements for additional information regarding our primary unsecured credit facility.

General and administrative expenses as a percentage of consolidated revenues for the three months ended September 30, 2018 and 2017 were 2.33% and 2.74%, respectively. Other expenses primarily represent severance-related costs associated with the departure of certain executive officers and key employees.

The decrease in preferred dividends and the preferred stock redemption charge are due to the redemption of our 6.5% Series J preferred stock during 2017.

### Other

#### Non-GAAP Financial Measures

We believe that net income and net income attributable to common stockholders ("NICS"), as defined by U.S. GAAP, are the most appropriate earnings measurements. However, we consider FFO, NOI, SSNOI, EBITDA and Adjusted EBITDA to be useful supplemental measures of our operating performance. Historical cost accounting for real estate assets in accordance with U.S. GAAP implicitly assumes that the value of real estate assets diminishes predictably over time as evidenced by the provision for depreciation. However, since real estate values have historically risen or fallen with market conditions, many industry investors and analysts have considered presentations of operating results for real estate companies that use historical cost accounting to be insufficient. In response, the National Association of Real Estate Investment Trusts ("NAREIT") created funds from operations attributable to common stockholders ("FFO") as a supplemental measure of operating performance for REITs that excludes historical cost depreciation from net income. FFO, as defined by NAREIT, means NICS, computed in accordance with U.S. GAAP, excluding gains (or losses) from sales of real estate and impairment of depreciable assets, plus depreciation and amortization, and after adjustments for unconsolidated entities and noncontrolling interests.

Consolidated net operating income ("NOI") is used to evaluate the operating performance of our properties. We define NOI as total revenues, including tenant reimbursements, less property operating expenses. Property operating expenses represent costs associated with managing, maintaining and servicing tenants for our seniors housing operating and medical facility properties. These expenses include, but are not limited to, property-related payroll and benefits, property management fees paid to operators, marketing, housekeeping, food service, maintenance, utilities, property taxes and insurance. General and administrative expenses represent costs unrelated to property operations. These expenses include, but are not limited to, payroll and benefits, professional services, office expenses and depreciation of corporate fixed assets. Same store NOI ("SSNOI") is used to evaluate the operating performance of our properties under a consistent population which eliminates changes in the composition of our portfolio. As used herein, same store is generally defined as those revenue-generating properties in the portfolio for the reporting period subsequent to January 1, 2017. Land parcels, loans, and sub-leases as well as any properties acquired, developed/redeveloped, transitioned, sold or classified as held for sale during that period are excluded from the same store amounts. We believe NOI and SSNOI provide investors relevant and useful information because they measure the operating performance of our properties at the property level on an unleveraged basis. We use NOI and SSNOI to make decisions about resource allocations and to assess the property level performance of our properties.

EBITDA stands for earnings (net income) before interest, taxes, depreciation and amortization. We believe that EBITDA, along with net income and cash flow provided from operating activities, is an important supplemental measure because it provides additional information to assess and evaluate the performance of our operations. We primarily utilize EBITDA to measure our interest coverage ratio, which represents EBITDA divided by total interest, and our fixed charge coverage ratio, which represents EBITDA divided by fixed charges. Fixed charges include total interest, secured debt principal amortization and preferred dividends.

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Covenants in our senior unsecured notes contain financial ratios based on a definition of EBITDA that is specific to those agreements. Failure to satisfy these covenants could result in an event of default that could have a material adverse impact on our cost and availability of capital, which could in turn have a material adverse impact on our consolidated results of operations, liquidity and/or financial condition. Due to the materiality of these debt agreements and the financial covenants, we have disclosed Adjusted EBITDA, which represents EBITDA as defined above excluding unconsolidated entities and adjusted for items per our covenant. We use Adjusted EBITDA to measure our adjusted fixed charge coverage ratio, which represents Adjusted EBITDA divided by fixed charges on a trailing twelve months basis. Fixed charges include total interest (excluding capitalized interest and non-cash interest expenses), secured debt principal amortization and preferred dividends. Our covenant requires an adjusted fixed charge coverage ratio of at least 1.50 times.

Our supplemental reporting measures and similarly entitled financial measures are widely used by investors, equity and debt analysts and rating agencies in the valuation, comparison, rating and investment recommendations of companies. Management uses these financial measures to facilitate internal and external comparisons to our historical operating results and in making operating decisions. Additionally, these measures are utilized by the Board of Directors to evaluate management. None of our supplemental measures represent net income or cash flow provided from operating activities as determined in accordance with U.S. GAAP and should not be considered as alternative measures of profitability or liquidity. Finally, the supplemental measures, as defined by us, may not be comparable to similarly entitled items reported by other real estate investment trusts or other companies.

The following tables reflect the reconciliations of NOI and SSNOI to net income, the most directly comparable U.S. GAAP measure, for the periods presented. Dollars are in thousands.

	Three Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
<b>NOI Reconciliations:</b>							
Net income (loss)	\$ 337,610	\$ 203,441	\$ 89,299	\$ (89,743)	\$ 453,555	\$ 167,273	\$ 84,226
Loss (gain) on real estate dispositions, net	(244,092)	(42,155)	(1,622)	(56,381)	(338,184)	(10,755)	(24,723)
Loss (income) from unconsolidated entities	23,106	3,978	(3,408)	59,449	2,429	(1,249)	(344)
Income tax expense (benefit)	2,245	(8,448)	669	25,663	1,588	3,841	1,741
Other expenses	11,675	6,339	99,595	60,167	3,712	10,058	88,626
Impairment of assets	11,031	13,631	—	99,821	28,185	4,632	6,740
Provision for loan losses	—	—	—	62,966	—	—	—
Loss (gain) on extinguishment of debt, net	31,356	5,515	—	371	11,707	299	4,038
Loss (gain) on derivatives and financial instruments, net	1,224	736	324	—	(7,173)	(7,460)	8,991
General and administrative expenses	31,101	32,632	29,913	28,365	33,705	32,831	28,746
Depreciation and amortization	228,276	224,847	230,138	238,458	228,201	236,275	243,149
Interest expense	118,597	116,231	122,578	127,217	122,775	121,416	138,032
Consolidated net operating income (NOI)	<u>\$ 552,129</u>	<u>\$ 556,747</u>	<u>\$ 567,486</u>	<u>\$ 556,353</u>	<u>\$ 540,500</u>	<u>\$ 557,161</u>	<u>\$ 579,222</u>
NOI by segment:							
Triple-net	\$ 249,735	\$ 241,347	\$ 244,916	\$ 231,083	\$ 222,738	\$ 224,284	\$ 218,684
Seniors housing operating	209,442	218,978	225,100	226,509	225,226	239,505	265,846
Outpatient medical	92,719	96,183	96,772	98,393	92,168	92,874	93,997
Non-segment/corporate	233	239	698	368	368	498	695
Total NOI	<u>\$ 552,129</u>	<u>\$ 556,747</u>	<u>\$ 567,486</u>	<u>\$ 556,353</u>	<u>\$ 540,500</u>	<u>\$ 557,161</u>	<u>\$ 579,222</u>

	Nine Months Ended	
	September 30,	September 30,
	2017	2018
<b>NOI Reconciliations:</b>		
Net income (loss)	\$ 630,356	\$ 705,054
Loss (gain) on real estate dispositions, net	(287,869)	(373,662)
Loss (income) from unconsolidated entities	23,676	836
Income tax expense (benefit)	(5,535)	7,170
Other expenses	117,608	102,396
Impairment of assets	24,662	39,557
Loss (gain) on extinguishment of debt, net	36,870	16,044
Loss (gain) on derivatives and financial instruments, net	2,284	(5,642)
General and administrative expenses	93,643	95,282
Depreciation and amortization	683,262	707,625
Interest expense	357,405	382,223
Consolidated net operating income (NOI)	<u>\$ 1,676,362</u>	<u>\$ 1,676,883</u>

NOI by segment:		
Triple-net	\$ 735,998	\$ 665,706
Seniors housing operating	653,518	730,577
Outpatient medical	285,675	279,039
Non-segment/corporate	1,171	1,561
Total NOI	<u>\$ 1,676,362</u>	<u>\$ 1,676,883</u>



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		Three Months Ended						
		March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
<b>SSNOI Reconciliations:</b>		2017	2017	2017	2017	2018	2018	2018
<b>NOI:</b>								
Triple-net		\$ 249,735	\$ 241,347	\$ 244,916	\$ 231,083	\$ 222,738	\$ 224,284	\$ 218,684
Seniors housing operating		209,442	218,978	225,100	226,509	225,226	239,505	265,846
Outpatient medical		92,719	96,183	96,772	98,393	92,168	92,874	93,997
	<b>Total</b>	<b>551,896</b>	<b>556,508</b>	<b>566,788</b>	<b>555,985</b>	<b>540,132</b>	<b>556,663</b>	<b>578,527</b>
<b>Adjustments:</b>								
<b>Triple-net:</b>								
	Non SSNOI on same store properties	(8,152)	(7,305)	(7,232)	(6,821)	(7,959)	(2,382)	(3,734)
	NOI attributable to non same store properties	(103,340)	(94,330)	(95,278)	(83,614)	(77,078)	(79,771)	(76,077)
	<b>Subtotal</b>	<b>(111,492)</b>	<b>(101,635)</b>	<b>(102,510)</b>	<b>(90,435)</b>	<b>(85,037)</b>	<b>(82,153)</b>	<b>(79,811)</b>
<b>Seniors housing operating:</b>								
	Non SSNOI on same store properties	316	558	288	424	312	311	304
	NOI attributable to non same store properties	(7,218)	(7,573)	(9,311)	(14,913)	(17,953)	(28,920)	(57,534)
	<b>Subtotal</b>	<b>(6,902)</b>	<b>(7,015)</b>	<b>(9,023)</b>	<b>(14,489)</b>	<b>(17,641)</b>	<b>(28,609)</b>	<b>(57,230)</b>
<b>Outpatient medical:</b>								
	Non SSNOI on same store properties	(1,828)	(2,315)	(1,451)	(1,743)	(886)	(894)	(1,061)
	NOI attributable to non same store properties	(10,346)	(12,965)	(13,997)	(14,564)	(5,168)	(6,304)	(6,902)
	<b>Subtotal</b>	<b>(12,174)</b>	<b>(15,280)</b>	<b>(15,448)</b>	<b>(16,307)</b>	<b>(6,054)</b>	<b>(7,198)</b>	<b>(7,963)</b>
<b>SSNOI:</b>		<b>Properties</b>						
Triple-net	410	138,243	139,712	142,406	140,648	137,701	142,131	138,873
Seniors housing operating	399	202,540	211,963	216,077	212,020	207,585	210,896	208,616
Outpatient medical	219	80,545	80,903	81,324	82,086	86,114	85,676	86,034
	<b>Total</b>	<b>1,028</b>	<b>\$ 421,328</b>	<b>\$ 432,578</b>	<b>\$ 439,807</b>	<b>\$ 434,754</b>	<b>\$ 431,400</b>	<b>\$ 438,703</b>
								<b>\$ 433,523</b>
<b>SSNOI Property Reconciliation:</b>								
Total properties	1,529							
Acquisitions	(335)							
Developments	(26)							
Held for sale	(39)							
Transitions/restructurings	(93)							
Other <sup>(1)</sup>	(8)							
	<b>Same store properties</b>	<b>1,028</b>						

(1) Includes seven land parcels and one loan.

		Nine Months Ended	
		September 30,	September 30,
<b>SSNOI Reconciliations:</b>		2017	2018
<b>NOI:</b>			
Triple-net		\$ 735,998	\$ 665,706
Seniors housing operating		653,518	730,577
Outpatient medical		285,675	279,039
	<b>Total</b>	<b>1,675,191</b>	<b>1,675,322</b>
<b>Adjustments:</b>			
<b>Triple-net:</b>			
	Non SSNOI on same store properties	(22,689)	(14,075)
	NOI attributable to non same store properties	(292,948)	(232,926)
	<b>Subtotal</b>	<b>(315,637)</b>	<b>(247,001)</b>
<b>Seniors housing operating:</b>			
	Non SSNOI on same store properties	1,162	927
	NOI attributable to non same store properties	(24,102)	(104,407)
	<b>Subtotal</b>	<b>(22,940)</b>	<b>(103,480)</b>
<b>Outpatient medical:</b>			
	Non SSNOI on same store properties	(5,594)	(2,841)
	NOI attributable to non same store properties	(37,308)	(18,374)
	<b>Subtotal</b>	<b>(42,902)</b>	<b>(21,215)</b>
<b>SSNOI:</b>		<b>Properties</b>	



Triple-net	410	420,361	418,705
Seniors housing operating	399	630,578	627,097
Outpatient medical	219	242,773	257,824
Total	<u>1,028</u>	<u>\$ 1,293,712</u>	<u>\$ 1,303,626</u>

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The table below reflects the reconciliation of FFO to NICS, the most directly comparable U.S. GAAP measure, for the periods presented. Noncontrolling interest and unconsolidated entity amounts represent adjustments to reflect our share of depreciation and amortization. Amounts are in thousands except for per share data.

FFO Reconciliations:	Three Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
NICS	\$ 312,639	\$ 188,429	\$ 74,043	\$ (111,523)	\$ 437,671	\$ 154,432	\$ 64,384
Depreciation and amortization	228,276	224,847	230,138	238,458	228,201	236,275	243,149
Impairment of assets	11,031	13,631	—	99,821	28,185	4,632	6,740
Loss (gain) on real estate dispositions, net	(244,092)	(42,155)	(1,622)	(56,381)	(338,184)	(10,755)	(24,723)
Noncontrolling interests	(18,107)	(16,955)	(16,826)	(8,131)	(16,353)	(17,692)	(17,498)
Unconsolidated entities	16,484	16,593	9,989	16,980	13,700	11,833	13,220
FFO	<u>\$ 306,231</u>	<u>\$ 384,390</u>	<u>\$ 295,722</u>	<u>\$ 179,224</u>	<u>\$ 353,220</u>	<u>\$ 378,725</u>	<u>\$ 285,272</u>
Average common shares outstanding:							
Basic	362,534	366,524	369,089	370,485	371,426	371,640	373,023
Diluted for NICS purposes	364,652	368,149	370,740	370,485	373,257	373,075	374,487
Diluted for FFO purposes	364,652	368,149	370,740	372,145	373,257	373,075	374,487
Per share data:							
NICS							
Basic	\$ 0.86	\$ 0.51	\$ 0.20	\$ (0.30)	\$ 1.18	\$ 0.42	\$ 0.17
Diluted	0.86	0.51	0.20	(0.30)	1.17	0.41	0.17
FFO							
Basic	\$ 0.84	\$ 1.05	\$ 0.80	\$ 0.48	\$ 0.95	\$ 1.02	\$ 0.76
Diluted	0.84	1.04	0.80	0.48	0.95	1.02	0.76
FFO Reconciliations:	Nine Months Ended						
	September 30,	September 30,					
	2017	2018					
NICS	\$ 575,118	\$ 656,487					
Depreciation and amortization	683,262	707,625					
Impairment of assets	24,662	39,557					
Loss (gain) on real estate dispositions, net	(287,869)	(373,662)					
Noncontrolling interests	(51,887)	(51,543)					
Unconsolidated entities	43,066	38,753					
FFO	<u>\$ 986,352</u>	<u>\$ 1,017,217</u>					
Average common shares outstanding:							
Basic	366,096	372,052					
Diluted	367,894	373,638					
Per share data:							
NICS							
Basic	\$ 1.57	\$ 1.76					
Diluted	1.56	1.76					
FFO							
Basic	\$ 2.69	\$ 2.73					
Diluted	2.68	2.72					

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The table below reflects the reconciliation of EBITDA to net income, the most directly comparable U.S. GAAP measure, for the periods presented. Dollars are in thousands.

	Three Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
<b>EBITDA Reconciliations:</b>							
Net income (loss)	\$ 337,610	\$ 203,441	\$ 89,299	\$ (89,743)	\$ 453,555	\$ 167,273	\$ 84,226
Interest expense	118,597	116,231	122,578	127,217	122,775	121,416	138,032
Income tax expense (benefit)	2,245	(8,448)	669	25,663	1,588	3,841	1,741
Depreciation and amortization	228,276	224,847	230,138	238,458	228,201	236,275	243,149
<b>EBITDA</b>	<b>\$ 686,728</b>	<b>\$ 536,071</b>	<b>\$ 442,684</b>	<b>\$ 301,595</b>	<b>\$ 806,119</b>	<b>\$ 528,805</b>	<b>\$ 467,148</b>
<b>Interest Coverage Ratio:</b>							
Interest expense	\$ 118,597	\$ 116,231	\$ 122,578	\$ 127,217	\$ 122,775	\$ 121,416	\$ 138,032
Non-cash interest expense	(1,679)	(2,946)	(3,199)	(2,534)	(4,179)	(1,716)	(1,658)
Capitalized interest	4,129	3,358	2,545	3,456	2,336	2,100	1,921
Total interest	121,047	116,643	121,924	128,139	120,932	121,800	138,295
<b>EBITDA</b>	<b>\$ 686,728</b>	<b>\$ 536,071</b>	<b>\$ 442,684</b>	<b>\$ 301,595</b>	<b>\$ 806,119</b>	<b>\$ 528,805</b>	<b>\$ 467,148</b>
Interest coverage ratio	5.67x	4.60x	3.63x	2.35x	6.67x	4.34x	3.38x
<b>Fixed Charge Coverage Ratio:</b>							
Total interest	\$ 121,047	\$ 116,643	\$ 121,924	\$ 128,139	\$ 120,932	\$ 121,800	\$ 138,295
Secured debt principal payments	16,249	15,958	15,300	16,572	14,247	14,139	13,908
Preferred dividends	14,379	11,680	11,676	11,676	11,676	11,676	11,676
Total fixed charges	151,675	144,281	148,900	156,387	146,855	147,615	163,879
<b>EBITDA</b>	<b>\$ 686,728</b>	<b>\$ 536,071</b>	<b>\$ 442,684</b>	<b>\$ 301,595</b>	<b>\$ 806,119</b>	<b>\$ 528,805</b>	<b>\$ 467,148</b>
Fixed charge coverage ratio	4.53x	3.72x	2.97x	1.93x	5.49x	3.58x	2.85x

	Nine Months Ended	
	September 30,	September 30,
	2017	2018
<b>EBITDA Reconciliations:</b>		
Net income (loss)	\$ 630,356	\$ 705,054
Interest expense	357,405	382,223
Income tax expense (benefit)	(5,535)	7,170
Depreciation and amortization	683,262	707,625
<b>EBITDA</b>	<b>\$ 1,665,488</b>	<b>\$ 1,802,072</b>
<b>Interest Coverage Ratio:</b>		
Interest expense	\$ 357,405	\$ 382,223
Non-cash interest expense	(7,825)	(7,553)
Capitalized interest	10,033	6,357
Total interest	359,613	381,027
<b>EBITDA</b>	<b>\$ 1,665,488</b>	<b>\$ 1,802,072</b>
Interest coverage ratio	4.63x	4.73x
<b>Fixed Charge Coverage Ratio:</b>		
Total interest	\$ 359,613	\$ 381,027
Secured debt principal payments	47,507	42,294
Preferred dividends	37,734	35,028
Total fixed charges	444,854	458,349
<b>EBITDA</b>	<b>\$ 1,665,488</b>	<b>\$ 1,802,072</b>
Fixed charge coverage ratio	3.74x	3.93x

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

The table below reflects the reconciliation of Adjusted EBITDA to net income, the most directly comparable U.S. GAAP measure, for the periods presented. Dollars are in thousands.

Adjusted EBITDA	Twelve Months Ended						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
<b>Reconciliations:</b>							
Net income	\$ 1,254,208	\$ 1,246,899	\$ 981,458	\$ 540,613	\$ 656,551	\$ 620,384	\$ 615,311
Interest expense	506,982	490,886	483,765	484,622	488,800	493,986	509,440
Income tax expense (benefit)	(15,158)	(23,093)	(22,119)	20,128	19,471	31,761	32,833
Depreciation and amortization	900,822	899,100	911,180	921,720	921,645	933,072	946,083
EBITDA	2,646,854	2,613,792	2,354,284	1,967,083	2,086,467	2,079,203	2,103,667
Loss (income) from unconsolidated entities	29,643	31,662	26,505	83,125	62,448	57,221	60,285
Transaction costs	34,702	29,545	9,704	—	—	—	—
Stock-based compensation expense <sup>(1)</sup>	25,588	23,321	24,710	19,102	25,753	26,158	25,443
Loss (gain) on extinguishment of debt, net	48,593	54,074	54,074	37,241	17,593	12,377	16,415
Loss (gain) on real estate dispositions, net	(608,139)	(648,763)	(488,034)	(344,250)	(438,342)	(406,942)	(430,043)
Impairment of assets	33,923	47,554	37,849	124,483	141,637	132,638	139,378
Provision for loan losses	10,215	10,215	10,215	62,966	62,966	62,966	62,966
Loss (gain) on derivatives and financial instruments, net	(1,225)	(489)	2,351	2,284	(6,113)	(14,309)	(5,642)
Other expenses <sup>(1)</sup>	19,396	23,997	122,211	176,395	167,524	171,243	161,655
Additional other income	(16,664)	(4,853)	(4,853)	—	—	(10,805)	(10,805)
Adjusted EBITDA	\$ 2,222,886	\$ 2,180,055	\$ 2,149,016	\$ 2,128,429	\$ 2,119,933	\$ 2,109,750	\$ 2,123,319
Adjusted Fixed Charge Coverage Ratio:							
Interest expense	\$ 506,982	\$ 490,886	\$ 483,765	\$ 484,622	\$ 488,800	\$ 493,986	\$ 509,440
Capitalized interest	18,035	17,087	14,866	13,489	11,696	10,437	9,813
Non-cash interest expense	(3,958)	(5,386)	(8,041)	(10,359)	(12,858)	(11,628)	(10,087)
Total interest	521,059	502,587	490,590	487,752	487,638	492,795	509,166
Adjusted EBITDA	\$ 2,222,886	\$ 2,180,055	\$ 2,149,016	\$ 2,128,429	\$ 2,119,933	\$ 2,109,750	\$ 2,123,319
Adjusted interest coverage ratio	4.27x	4.34x	4.38x	4.36x	4.35x	4.28x	4.17x
Total interest	\$ 521,059	\$ 502,587	\$ 490,590	\$ 487,752	\$ 487,638	\$ 492,795	\$ 509,166
Secured debt principal payments	72,073	68,935	66,084	64,078	62,077	60,258	58,866
Preferred dividends	63,434	58,762	54,086	49,410	46,707	46,704	46,704
Total fixed charges	656,566	630,284	610,760	601,240	596,422	599,757	614,736
Adjusted EBITDA	\$ 2,222,886	\$ 2,180,055	\$ 2,149,016	\$ 2,128,429	\$ 2,119,933	\$ 2,109,750	\$ 2,123,319
Adjusted fixed charge coverage ratio	3.39x	3.46x	3.52x	3.54x	3.55x	3.52x	3.45x

(1) Certain severance-related costs are included in stock-based compensation and excluded from other expenses.

Our leverage ratios include book capitalization, undepreciated book capitalization and market capitalization. Book capitalization represents the sum of net debt (defined as total long-term debt less cash and cash equivalents and any IRC Section 1031 deposits), total equity and redeemable noncontrolling interests. Undepreciated book capitalization represents book capitalization adjusted for accumulated depreciation and amortization. Market capitalization represents book capitalization adjusted for the fair market value of our common stock. Our leverage ratios are defined as the proportion of net debt to total capitalization. The table below reflects the reconciliation of our leverage ratios to our balance sheets for the periods presented. Amounts are in thousands, except share price.

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

	As of						
	March 31,	June 30,	September 30,	December 31,	March 31,	June 30,	September 30,
	2017	2017	2017	2017	2018	2018	2018
<b>Book capitalization:</b>							
Borrowings under primary unsecured credit facility	\$ 522,000	\$ 385,000	\$ 420,000	\$ 719,000	\$ 865,000	\$ 540,000	\$ 1,312,000
Long-term debt obligations <sup>(1)</sup>	10,932,185	10,994,946	11,101,592	11,012,936	10,484,840	10,895,559	12,192,060
Cash & cash equivalents <sup>(2)</sup>	(380,360)	(442,284)	(250,776)	(249,620)	(202,824)	(215,120)	(191,199)
Total net debt	11,073,825	10,937,662	11,270,816	11,482,316	11,147,016	11,220,439	13,312,861
Total equity and noncontrolling interests <sup>(3)</sup>	15,495,681	15,702,399	15,631,412	15,300,646	15,448,201	15,198,644	15,670,065
Book capitalization	\$ 26,569,506	\$ 26,640,061	\$ 26,902,228	\$ 26,782,962	\$ 26,595,217	\$ 26,419,083	\$ 28,982,926
Net debt to book capitalization ratio	42%	41%	42%	43%	42%	42%	46%
<b>Undepreciated book capitalization:</b>							
Total net debt	\$ 11,073,825	\$ 10,937,662	\$ 11,270,816	\$ 11,482,316	\$ 11,147,016	\$ 11,220,439	\$ 13,312,861
Accumulated depreciation and amortization	4,335,160	4,568,408	4,826,418	4,838,370	4,990,780	5,113,928	5,394,274
Total equity and noncontrolling interests <sup>(3)</sup>	15,495,681	15,702,399	15,631,412	15,300,646	15,448,201	15,198,644	15,670,065
Undepreciated book capitalization	\$ 30,904,666	\$ 31,208,469	\$ 31,728,646	\$ 31,621,332	\$ 31,585,997	\$ 31,533,011	\$ 34,377,200
Net debt to undepreciated book capitalization ratio	36%	35%	36%	36%	35%	36%	39%
<b>Market capitalization:</b>							
Common shares outstanding	364,564	368,878	370,342	371,732	371,971	372,030	375,577
Period end share price	\$ 70.82	\$ 74.85	\$ 70.28	\$ 63.77	\$ 54.43	\$ 62.69	\$ 64.32
Common equity market capitalization	\$ 25,818,422	\$ 27,610,518	\$ 26,027,636	\$ 23,705,350	\$ 20,246,382	\$ 23,322,561	\$ 24,157,113
Total net debt	11,073,825	10,937,662	11,270,816	11,482,316	11,147,016	11,220,439	13,312,861
Noncontrolling interests <sup>(3)</sup>	859,478	873,567	901,487	877,499	889,766	856,721	1,362,380
Preferred stock	718,750	718,750	718,503	718,503	718,498	718,498	718,498
Enterprise value	\$ 38,470,475	\$ 40,140,497	\$ 38,918,442	\$ 36,783,668	\$ 33,001,662	\$ 36,118,219	\$ 39,550,852
Net debt to market capitalization ratio	29%	27%	29%	31%	34%	31%	34%

(1) Amounts include senior unsecured notes, secured debt and capital lease obligations as reflected on our Consolidated Balance Sheet.

(2) Inclusive of IRC Section 1031 deposits, if any.

(3) Includes all noncontrolling interests (redeemable and permanent) as reflected on our consolidated balance sheet.

### Critical Accounting Policies

Our unaudited consolidated financial statements are prepared in accordance with U.S. GAAP, which requires us to make estimates and assumptions. Management considers an accounting estimate or assumption critical if:

- the nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and
- the impact of the estimates and assumptions on financial condition or operating performance is material.

Management has discussed the development and selection of its critical accounting policies with the Audit Committee of the Board of Directors. Management believes the current assumptions and other considerations used to estimate amounts reflected in our unaudited consolidated financial statements are appropriate and are not reasonably likely to change in the future. However, since these estimates require assumptions to be made that were uncertain at the time the estimate was made, they bear the risk of change. If actual experience differs from the assumptions and other considerations used in estimating amounts reflected in our unaudited consolidated financial statements, the resulting changes could have a material adverse effect on our consolidated results of operations, liquidity and/or financial condition. Please refer to Note 2 to the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2017 for further information regarding significant accounting policies that impact us. There have been no material changes to these policies in 2018.

**Cautionary Statement Regarding Forward-Looking Statements**

This Quarterly Report on Form 10-Q may contain “forward-looking” statements as defined in the Private Securities Litigation Reform Act of 1995. When the company uses words such as “may,” “will,” “intend,” “should,” “believe,” “expect,” “anticipate,” “project,” “estimate” or similar expressions that do not relate solely to historical matters, it is making forward-looking statements. In particular, these forward-looking statements include, but are not limited to, those relating to the company’s opportunities to acquire, develop or sell properties; the company’s ability to close its anticipated acquisitions, investments or dispositions on currently anticipated terms or within currently anticipated timeframes; the expected performance of the company’s operators/tenants and properties; the company’s expected occupancy rates; the company’s ability to declare and to make distributions to shareholders; the company’s investment and financing opportunities and plans; the company’s continued qualification as a real estate investment trust (“REIT”); the company’s ability to access capital markets or other sources of funds; and the company’s ability to meet its earnings guidance. Forward-looking statements are not guarantees of future performance and involve risks and uncertainties that may cause the company’s actual results to differ materially from the company’s expectations discussed in the forward-looking statements. This may be a result of various factors, including, but not limited to: the status of the economy; the status of capital markets, including availability and cost of capital; issues facing the health care industry, including compliance with, and changes to, regulations and payment policies, responding to government investigations and punitive settlements and operators’/tenants’ difficulty in cost-effectively obtaining and maintaining adequate liability and other insurance; changes in financing terms; competition within the health care and seniors housing industries; negative developments in the operating results or financial condition of operators/tenants, including, but not limited to, their ability to pay rent and repay loans; the company’s ability to transition or sell properties with profitable results; the failure to make new investments or acquisitions as and when anticipated; natural disasters and other acts of God affecting the company’s properties; the company’s ability to re-lease space at similar rates as vacancies occur; the company’s ability to timely reinvest sale proceeds at similar rates to assets sold; operator/tenant or joint venture partner bankruptcies or insolvencies; the cooperation of joint venture partners; government regulations affecting Medicare and Medicaid reimbursement rates and operational requirements; liability or contract claims by or against operators/tenants; unanticipated difficulties and/or expenditures relating to future investments or acquisitions; environmental laws affecting the company’s properties; changes in rules or practices governing the company’s financial reporting; the movement of U.S. and foreign currency exchange rates; the company’s ability to maintain its qualification as a REIT; and key management personnel recruitment and retention. Other important factors are identified in the company’s Annual Report on Form 10-K for the year ended December 31, 2017, including factors identified under the headings “Business,” “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Finally, the company undertakes no obligation to update or revise publicly any forward-looking statements, whether because of new information, future events or otherwise, or to update the reasons why actual results could differ from those projected in any forward-looking statements.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to various market risks, including the potential loss arising from adverse changes in interest rates and foreign currency exchange rates. We seek to mitigate the underlying foreign currency exposures with gains and losses on derivative contracts hedging these exposures. We seek to mitigate the effects of fluctuations in interest rates by matching the terms of new investments with new long-term fixed rate borrowings to the extent possible. We may or may not elect to use financial derivative instruments to hedge interest rate exposure. These decisions are principally based on our policy to match our variable rate investments with comparable borrowings, but are also based on the general trend in interest rates at the applicable dates and our perception of the future volatility of interest rates. This section is presented to provide a discussion of the risks associated with potential fluctuations in interest rates and foreign currency exchange rates.

We historically borrow on our primary unsecured credit facility to acquire, construct or make loans relating to health care and seniors housing properties. Then, as market conditions dictate, we will issue equity or long-term fixed rate debt to repay the borrowings under our primary unsecured credit facility. We are subject to risks associated with debt financing, including the risk that existing indebtedness may not be refinanced or that the terms of refinancing may not be as favorable as the terms of current indebtedness. The majority of our borrowings were completed under indentures or contractual agreements that limit the amount of indebtedness we may incur. Accordingly, in the event that we are unable to raise additional equity or borrow money because of these limitations, our ability to acquire additional properties may be limited.

A change in interest rates will not affect the interest expense associated with our fixed rate debt. Interest rate changes, however, will affect the fair value of our fixed rate debt. Changes in the interest rate environment upon maturity of this fixed rate debt could have an effect on our future cash flows and earnings, depending on whether the debt is replaced with other fixed rate debt, variable rate debt or equity or repaid by the sale of assets. To illustrate the impact of changes in the interest rate markets, we performed a sensitivity analysis on our fixed rate debt instruments whereby we modeled the change in net present values arising from a hypothetical 1% increase in interest rates to determine the instruments' change in fair value. The following table summarizes the analysis performed as of the dates indicated (in thousands):

	September 30, 2018		December 31, 2017	
	Principal balance	Change in fair value	Principal balance	Change in fair value
Senior unsecured notes	\$ 9,052,727	\$ (570,754)	\$ 7,710,219	\$ (500,951)
Secured debt	1,623,202	(54,782)	1,749,958	(63,492)
Totals	\$ 10,675,929	\$ (625,536)	\$ 9,460,177	\$ (564,443)

Our variable rate debt, including our primary unsecured credit facility, is reflected at fair value. At September 30, 2018, we had \$2,869,522,000 outstanding related to our variable rate debt. Assuming no changes in outstanding balances, a 1% increase in interest rates would result in increased annual interest expense of \$28,695,000. At December 31, 2017, we had \$2,294,678,000 outstanding under our variable rate debt. Assuming no changes in outstanding balances, a 1% increase in interest rates would have resulted in increased annual interest expense of \$22,947,000.

We are subject to currency fluctuations that may, from time to time, affect our financial condition and results of operations. Increases or decreases in the value of the Canadian Dollar or Pounds Sterling relative to the U.S. Dollar impact the amount of net income we earn from our investments in Canada and the United Kingdom. Based solely on our results for the three months ended September 30, 2018, including the impact of existing hedging arrangements, if these exchange rates were to increase or decrease by 10%, our net income from these investments would increase or decrease, as applicable, by less than \$13,000,000. We will continue to mitigate these underlying foreign currency exposures with non-U.S. denominated borrowings and gains and losses on derivative contracts. If we increase our international presence through investments in, or acquisitions or development of, seniors housing and health care properties outside the U.S., we may also decide to transact additional business or borrow funds in currencies other than U.S. Dollars, Canadian Dollars or Pounds Sterling. To illustrate the impact of changes in foreign currency markets, we performed a sensitivity analysis on our derivative portfolio whereby we modeled the change in net present values arising from a hypothetical 1% increase in foreign currency exchange rates to determine the instruments' change in fair value. The following table summarizes the results of the analysis performed (dollars in thousands):

	September 30, 2018		December 31, 2017	
	Carrying Value	Change in fair value	Carrying Value	Change in fair value
Foreign currency forward contracts	\$ 43,664	\$ 16,681	\$ 23,238	\$ 12,929
Debt designated as hedges	1,602,727	16,027	1,620,273	16,203
Totals	\$ 1,646,391	\$ 32,708	\$ 1,643,511	\$ 29,132

For additional information regarding fair values of financial instruments, see “Item 2 — Management’s Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies” and Notes 11 and 16 to our unaudited consolidated financial statements.

#### **Item 4. Controls and Procedures**

Our management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective in providing reasonable assurance that information required to be disclosed by us in the reports we file with or submit to the SEC under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. No changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) occurred during the fiscal quarter covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

#### **Item 1. Legal Proceedings**

From time to time, there are various legal proceedings pending against us that arise in the ordinary course of our business. Management does not believe that the resolution of any of these legal proceedings either individually or in the aggregate will have a material adverse effect on our business, results of operations or financial condition. Further, from time to time, we are party to certain legal proceedings for which third parties, such as tenants, operators and/or managers are contractually obligated to indemnify, defend and hold us harmless. In some of these matters, the indemnitors have insurance for the potential damages. In other matters, we are being defended by tenants and other obligated third parties and these indemnitors may not have sufficient insurance, assets, income or resources to satisfy their defense and indemnification obligations to us. The unfavorable resolution of such legal proceedings could, individually or in the aggregate, materially adversely affect the indemnitors’ ability to satisfy their respective obligations to us, which, in turn, could have a material adverse effect on our business, results of operations or financial condition. It is management’s opinion that there are currently no such legal proceedings pending that will, individually or in the aggregate, have such a material adverse effect. Despite management’s view of the ultimate resolution of these legal proceedings, we may have significant legal expenses and costs associated with the defense of such matters. Further, management cannot predict the outcome of these legal proceedings and if management’s expectation regarding such matters is not correct, such proceedings could have a material adverse effect on our business, results of operations or financial condition.

#### **Item 1A. Risk Factors**

There have been no material changes from the risk factors identified under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2017.

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

Period	Issuer Purchases of Equity Securities			
	Total Number of Shares Purchased <sup>(1)</sup>	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>(2)</sup>	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
July 1, 2018 through July 31, 2018	—	\$ —	—	
August 1, 2018 through August 31, 2018	1,084	62.68		
September 1, 2018 through September 30, 2018	160	65.49		
Totals	1,244	\$ 63.04		

(1) During the three months ended September 30, 2018, the company acquired shares of common stock held by employees who tendered owned shares to satisfy tax withholding obligations.

(2) No shares were purchased as part of publicly announced plans or programs.

#### **Item 5. Other Information**

None.



**Item 6. Exhibits**

- 10.1 [Transfer Letter, dated August 17, 2018, by and between John A. Goodey and Welltower Inc.\\*](#)
- 10.2 [Credit Agreement dated as of July 19, 2018 by and among the Company; the lenders listed therein; KeyBank National Association, as administrative agent, L/C issuer and a swingline lender; Bank of America, N.A. and JPMorgan Chase Bank, N.A., as co-syndication agents; Deutsche Bank Securities Inc., as documentation agent; Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A., KeyBanc Capital Markets Inc. and Deutsche Bank Securities Inc., as U.S. joint lead arrangers; Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A., Key Banc Capital Markets Inc. and RBC Capital Markets, as Canadian joint lead arrangers; and Merrill Lynch, Pierce, Fenner & Smith Incorporated and JPMorgan Chase Bank, N.A., as joint book runners.](#)
- 12 [Statement Regarding Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends \(Unaudited\).](#)
- 31.1 [Rule 13a-14\(a\)/15d-14\(a\) Certification of Chief Executive Officer.](#)
- 31.2 [Rule 13a-14\(a\)/15d-14\(a\) Certification of Chief Financial Officer.](#)
- 32.1 [Certification pursuant to 18 U.S.C. Section 1350 by Chief Executive Officer.](#)
- 32.2 [Certification pursuant to 18 U.S.C. Section 1350 by Chief Financial Officer.](#)
- 101.INS XBRL Instance Document\*\*
- 101.SCH XBRL Taxonomy Extension Schema Document\*\*
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document\*\*
- 101.LAB XBRL Taxonomy Extension Label Linkbase Document\*\*
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document\*\*
- 101.DEF XBRL Taxonomy Extension Definition Linkbase Document\*\*

\* Management contract or compensatory plan or arrangement

\*\* Attached as Exhibit 101 to this Quarterly Report on Form 10-Q are the following materials, formatted in XBRL (eXtensible Business Reporting Language): (i) the Consolidated Balance Sheets at September 30, 2018 and December 31, 2017, (ii) the Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2018 and 2017, (iii) the Consolidated Statements of Equity for the nine months ended September 30, 2018 and 2017, (iv) the Consolidated Statements of Cash Flows for the nine months ended September 30, 2018 and 2017 and (v) the Notes to Unaudited Consolidated Financial Statements.

**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.

**WELLTOWER INC.**

Date: October 30, 2018 By: /s/ THOMAS J. DEROSA  
Thomas J. DeRosa,  
Chief Executive Officer  
(Principal Executive Officer)

Date: October 30, 2018 By: /s/ JOHN A. GOODEY  
John A. Goodey,  
Executive Vice President & Chief Financial Officer  
(Principal Financial Officer)

Date: October 30, 2018 By: /s/ JOSHUA T. FIEWEGER  
Joshua T. Fieweger,  
Vice President & Controller  
(Principal Accounting Officer)

October 24, 2018

John Goodey  
Chief Financial Officer  
Welltower Inc.  
1330 Avenue of the Americas, Suite 8B  
New York, New York 10019

Dear John:

This letter (the "Transfer Letter") outlines the terms and conditions of your international transfer (the "Transfer") to the United States (the "Host Country").

A. **General Terms**

Transfer Date: October 22, 2018  
Title: Chief Financial Officer  
Transfer Location: New York, New York, USA  
Reporting To: Chief Executive Officer

B. **Compensation and Benefits:**

1. **Base Salary and Bonus:** Please refer to your Employment Contract. You will be transferred to the U.S. payroll effective the Transfer Date.
2. **Benefits:** You will be entitled to participate in all Welltower benefit programs commensurate with other U.S.-based Welltower employees, including health, life and disability programs, and in Welltower's 401(k) plan, subject to your satisfaction of any eligibility criteria.

C. **Start of Transfer:**

1. **Destination/Settling-In Services:** Destination/settling-in services will be provided to you, your spouse and accompanying dependents to assist with integration to the Transfer Location. The Company will pay for a period of up to six months (beginning from October 22, 2018) for access to a services provider (selected by the Company) who will provide home finding assistance, identification of appropriate schooling for accompanying dependents, assistance with bank accounts, driver's licenses and familiarization with the goods and services available in the local community.
2. **Temporary Living Expenses:** The Company will reimburse reasonable costs for up to 51 days for lodging and car rental fees for you, your spouse and accompanying dependents from the Transfer Date through February 20, 2019. The cost of up to 30 days of temporary storage for your belongings shipped to the Transfer Location is also eligible for reimbursement.

D. **Moving and Storage:**

1. **Shipment of Household Goods and Personal Effects and Insurance:** The Company will cover the costs of packing and unpacking, loading and unloading, transporting, and associated fees (including insurance) and duties related to the shipment of household goods and personal effects. Air shipment is limited to 225 kilograms net weight for single transferees plus 125 kilograms each for accompanying spouse and dependents. The Company will also cover the costs for a sea or land shipment of a 20-foot container for single transferees and a 40-foot container for families. This one-time allowance may be used within 24 months after the Transfer Date.
2. **Transfer Location Housing:** If you purchase a home within 24 months of your Transfer Date, the Company will pay reasonable and customary closing costs for your home in the Transfer Location.
3. **Move Journey Costs:** Travel to the Transfer Location will be provided for you, your spouse and accompanying dependents. One-way business airfare via the most direct route between your home (or agreed travel point of origin) and the Transfer Location will be paid according to the Company's T&E Expense Policies and Procedures. Ground transportation to and from the airports will also be reimbursed.
4. **Sale of Existing Home:** If you sell your existing home in the UK within 24 months of your Transfer Date, the Company will reimburse you for reasonable and customary closing costs not to exceed 2.5% of the sale price.

E. **Assistance & Allowances**

1. **Miscellaneous Relocation Allowance:** In the pay period following your final move to the Transfer Location, the Company will pay you a relocation allowance in the amount of \$50,000.00 in a lump sum payment (net of taxes) to contribute to the cost of any incremental expenses that may be incurred during your relocation and that are not otherwise reimbursed pursuant to this letter.
  2. **Tax Preparation Assistance:** The Company will retain a tax service provider to prepare the required income tax returns for you as well as your spouse (if filing jointly) to the extent that these are affected by your move. Such tax preparation services will be provided for tax years 2018 and 2019. You will also receive a pre-transfer tax orientation at the beginning of your Transfer. Although the Company will provide tax assistance to you, it is your responsibility to ensure that your requirements are fulfilled.
  3. **Home Visit:** The Company will pay all reasonable travel expenses (including airfare and ground transportation) incurred by you, your spouse and dependents for travel back to the UK once in the calendar year 2019. You should work through the Company's corporate travel service to arrange for and book such travel, and such expenses should be paid for with your corporate American Express card. Any such travel period will be considered PTO. In addition, the Company will pay for one personal trip (including airfare and ground transportation) for you back to the UK between October 1, 2018 and December 31, 2018.
  4. **Business Trips:** After the Transfer Date, all business-related trips must be preapproved by the CEO.
- F. **Termination Following Transfer:** In consideration of the Company's direct payment and/or reimbursement of expenses associated with this relocation, you agree that in the event of your voluntary termination of employment within 24 months of the Transfer Date, or in the event that the Company should terminate you for cause, you will be liable to repay to the Company the following:
- 100% of all expenses incurred/reimbursed by the Company, if termination is within 12 months after Transfer Date; and
  - 50% of all expenses incurred/reimbursed by the Company, if termination is within 13-24 months after the Transfer Date.

Assuming this offer is acceptable to you, please indicate your acceptance by signing the enclosed copy of this letter and returning it to my attention.

Very truly yours,

**Welltower Inc.**

**Accepted By:**

/s/ Christy Stone

/s/ John Goodey

\_\_\_\_\_  
Christy Stone

\_\_\_\_\_  
John A. Goodey

Senior Vice President, Human Capital

Dated: 8/7/2018

Dated: 8/7/2018

**CREDIT AGREEMENT**

Dated as of July 19, 2018

among

**WELLTOWER INC.,**  
as the Borrower

**KEYBANK NATIONAL ASSOCIATION,**  
as Administrative Agent, L/C Issuer and a Swingline Lender

and

The Other Lenders Party Hereto

**BANK OF AMERICA, N.A. and JPMORGAN CHASE BANK, N.A.,**  
as Co-Syndication Agents

**DEUTSCHE BANK SECURITIES INC.,**  
as Documentation Agent

—  
**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,**  
**JPMORGAN CHASE BANK, N.A., KEYBANC CAPITAL MARKETS INC. and**  
**DEUTSCHE BANK SECURITIES INC.,**  
as U.S. Joint Lead Arrangers

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,**  
**JPMORGAN CHASE BANK, N.A., KEYBANC CAPITAL MARKETS INC. and**  
**RBC CAPITAL MARKETS,**  
as Canadian Joint Lead Arrangers

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED and**  
**JPMORGAN CHASE BANK, N.A.,**  
as Joint Book Runners

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Exhibit H-3	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit H-4	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)
Exhibit I	Form of Funding Indemnity Letter

## CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of July 19, 2018, among:

WELLTOWER INC., a Delaware corporation (the “Borrower”);

Each Lender from time to time party hereto (individually, a “Lender” and collectively, the “Lenders”); and

KEYBANK NATIONAL ASSOCIATION, a national banking association, as Administrative Agent.

### PRELIMINARY STATEMENTS:

WHEREAS, the Borrower has requested that the Lenders, the Swingline Lender and the L/C Issuer provide revolving credit and term loan facilities and other financial accommodations to the Borrower for the purposes set forth herein; and

WHEREAS, the Lenders, the Swingline Lender and the L/C Issuer have agreed to provide such revolving credit and term loan facilities and such other financial accommodations to the Borrower on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I

#### DEFINITIONS AND ACCOUNTING AND OTHER TERMS

##### Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“Absolute Rate” has the meaning assigned to such term in Section 2.01(c)(ii)(C).

“Acquisition” means the acquisition by the Borrower of all of the equity interests of the Target pursuant to the Acquisition Agreement.

“Acquisition Agreement” means that certain Agreement and Plan of Merger, dated as of April 25, 2018 (as amended, modified, supplemented or waived solely in accordance with Section 4.02) by and among the Borrower, Potomac Acquisition LLC, the Target, QCP AL REIT, LLC, QCP SNF West REIT, LLC, QCP SNF Central REIT, LLC, QCP SNF East, LLC, OCP HoldCo REIT, LLC and OCP TRS LLC.

“Act” has the meaning assigned to such term in Section 10.20.

“Administrative Agent” means KeyBank National Association in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.01(a) with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“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.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Agreement Currency” has the meaning assigned to such term in Section 10.19.

“Alternative Currency” means each of Australian Dollars, Canadian Dollars, Euro, Sterling, Swiss Francs, Yen and Dollars and each other currency that is approved in accordance with Section 1.07.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as reasonably determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Tranche L/C Exposure” means, at any time, (i) the aggregate undrawn amount of all outstanding Alternative Currency Tranche Letters of Credit at such time and (ii) the aggregate amount of all L/C Disbursements in respect of Alternative Currency Tranche Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The Alternative Currency Tranche L/C Exposure of any Revolving Lender at any time shall be its Applicable Alternative Currency Tranche Percentage of the total Alternative Currency Tranche L/C Exposure at such time.

“Alternative Currency Tranche Letter of Credit” means a Letter of Credit denominated in an Alternative Currency.

“Alternative Currency Tranche Revolving Borrowing” means a borrowing consisting of simultaneous Alternative Currency Tranche Revolving Loans of the same Type, in the same currency and having the same Interest Period made by each of the Alternative Currency Tranche Revolving Lenders pursuant to Section 2.01(b)(ii).

“Alternative Currency Tranche Revolving Commitment” means, as to each Alternative Currency Tranche Revolving Lender, its obligation to make Alternative Currency Tranche Revolving Loans to the Borrower pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding the Dollar Equivalent of which does not exceed the Dollar amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Alternative Currency Tranche Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Alternative Currency Tranche Revolving Commitments of all of the Alternative Currency Tranche Revolving Lenders on the Closing Date shall be \$1,000,000,000.

“Alternative Currency Tranche Revolving Exposure” means, as to any Alternative Currency Tranche Revolving Lender at any time, (i) the Outstanding Amount at such time of such Lender’s Alternative Currency Tranche Revolving Loans plus (ii) the Outstanding Amount of such Lender’s participation in L/C Obligations with respect to Alternative Currency Tranche Letters of Credit, in each case, at such time.

“Alternative Currency Tranche Revolving Lender” means, at any time, (a) so long as any Alternative Currency Tranche Revolving Commitment is in effect, any Lender that has an Alternative Currency Tranche Revolving Commitment at such time or (b) if the Alternative Currency Tranche Revolving Commitments have terminated or expired, any Lender that has an Alternative Currency Tranche Revolving Loan at such time.

“Alternative Currency Tranche Revolving Loan” has the meaning assigned to such term in Section 2.01(b)(ii).

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including without limitation, the United States Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010.

“Applicable Alternative Currency Tranche Percentage” means with respect to any Alternative Currency Tranche Revolving Lender at any time, such Alternative Currency Tranche Revolving Lender’s Applicable Percentage in respect of the Alternative Currency Tranche Revolving Commitments of all Alternative Currency Tranche Lenders at such time.

“Applicable Percentage” means (a) in respect of the U.S. Term Facility, with respect to any U.S. Term Lender at any time, the percentage (carried out to the ninth decimal place) of the U.S. Term Facility represented by (i) on or prior to the Closing Date, such U.S. Term Lender’s U.S. Term Commitment at such time and (ii) thereafter, the outstanding principal amount of such U.S. Term Lender’s U.S. Term Loans at such time; (b) in respect of the Canadian Term Facility, with respect to any Canadian Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Canadian Term Facility represented by (i) on or prior to the Closing Date, such Canadian Term Lender’s Canadian Term Commitment at such time and (ii) thereafter, the outstanding principal amount of such Canadian Term Lender’s Canadian Term Loans at such time; (c) in respect of the Revolving Facility, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.15; (d) in respect of the U.S. Tranche Revolving Commitments, with respect to any U.S. Tranche Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the U.S. Tranche Revolving Commitments of all U.S. Tranche Revolving Lenders represented by such U.S. Tranche Revolving Lender’s Revolving Commitment at such time and (e) in respect of the Alternative Currency Tranche Revolving Commitments, with respect to any Alternative Currency Tranche Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Alternative Currency Tranche Revolving Commitments of all Alternative Currency Tranche Revolving Lenders represented by such Alternative Currency Tranche Revolving Lender’s Revolving Commitment at such time. If the Commitments of all of the Lenders to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Commitments have expired, then the Applicable Percentage of each Lender in respect of the applicable Facility shall be determined based on the Applicable Percentage of such Lender in respect of such Facility most recently in effect, giving effect to any subsequent assignments. The Applicable Percentage of each Lender in respect of each Facility is initially as set forth opposite the name of such Lender on Schedule 1.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.16, as applicable.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (corresponding to the Rating of the Borrower in effect from time to time as shown below), it being understood that the Applicable Rate for (a) Revolving Loans that are Eurocurrency Rate Loans shall be the percentage set forth under the columns “Revolving Loans” and “Eurocurrency Rate”, (b) Revolving Loans that are Base Rate Loans shall be the percentage set forth under the columns “Revolving Loans” and “Base Rate”, (c) that portion of any Term Loan comprised of Eurocurrency Rate Loans shall be the percentage set forth under the columns “Term Loan” and “Eurocurrency Rate”, (d) that portion of the U.S. Term Loan comprised of Base Rate Loans shall be the percentage set forth under the columns “Term Loan” and “Base Rate”, (e) Swingline Loans shall be the percentage set forth under the column “Swingline Loans”, (f) the Letter of Credit Fee shall be the percentage set forth under the column “Letter of Credit Fee” and (g) the Facility Fee shall be the percentage set forth under the column “Facility Fee”.

Applicable Rate							
Level	Revolving Loans		Term Loans		Swingline Loans	Letter of Credit Fee	Facility Fee
	Eurocurrency Rate	Base Rate <sup>2</sup>	Eurocurrency Rate	Base Rate <sup>2</sup>			
<u>Level 1</u> ≥ A from S&P or Fitch or ≥ A2 from Moody's	0.750%	0.000%	0.800%	0.000%	0.750%	0.750%	0.100%
<u>Level 2</u> A- from S&P or Fitch or A3 from Moody's	0.775%	0.000%	0.850%	0.000%	0.775%	0.775%	0.125%
<u>Level 3</u> BBB+ from S&P or Fitch or Baa1 from Moody's	0.825%	0.000%	0.900%	0.000%	0.825%	0.825%	0.150%
<u>Level 4</u> BBB from S&P or Fitch or Baa2 from Moody's	0.900%	0.000%	1.000%	0.000%	0.900%	0.900%	0.200%
<u>Level 5</u> BBB- from S&P or Fitch or Baa3 from Moody's	1.100%	0.100%	1.250%	0.250%	1.100%	1.100%	0.250%
<u>Level 6</u> <BBB- from S&P or Fitch or Baa3 from Moody's or unrated from S&P, Fitch or Moody's	1.450%	0.450%	1.650%	0.650%	1.450%	1.450%	0.300%

For purposes of the foregoing: (a)(i) at any time when the Borrower has Ratings from only two (2) Ratings Agencies, if the Ratings established by such Ratings Agencies shall fall within different levels and (A) the difference between such Ratings is one ratings category (e.g. Baa2 by Moody's and BBB- by S&P or Fitch) the Applicable Rate shall be based upon the higher of the two Ratings, or (B) the difference between such Ratings is two ratings categories (e.g. Baa1 by Moody's and BBB- by S&P or Fitch) or more, the median of the applicable Ratings shall apply and (ii) at any time when the Borrower has Ratings from all three (3) Ratings Agencies, if the Ratings established by such Ratings Agencies shall fall within different levels and (A) the difference between the highest and the lowest such Ratings is one ratings category (e.g. Baa2 by Moody's and BBB- by S&P or Fitch), the highest of such Ratings shall apply, or (B) the difference between such Ratings is two ratings categories (e.g. Baa1 by Moody's and BBB- by S&P or Fitch)

or more, the average of the two (2) highest Ratings shall apply, provided that if such average is not a recognized rating category, then the second highest Rating of the three shall apply; and (b) if any Rating shall be changed (other than as a result of a change in the rating system of the applicable Ratings Agency), such change shall be effective as of the date on which it is first announced by the Ratings Agency making such change. Each such change in the Applicable Rate shall apply to all outstanding Eurocurrency Rate Loans, Swingline Loans, Base Rate Loans and Letters of Credit during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. The Borrower shall notify the Administrative Agent in writing immediately upon any change in its Ratings. If the rating system of any Ratings Agency shall change, the parties hereto shall negotiate in good faith to amend the references to specific ratings in this definition to reflect such changed rating system.

“Applicable Revolving Percentage” means, with respect to any Revolving Lender at any time, such Revolving Lender’s Applicable Percentage in respect of the Revolving Facility at such time.

“Applicable U.S. Tranche Percentage” means, with respect to any U.S. Tranche Revolving Lender at any time, such U.S. Tranche Revolving Lender’s Applicable Percentage in respect of the U.S. Tranche Revolving Commitments of all U.S. Tranche Revolving Lenders at such time.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appropriate Lender” means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, the U.S. Tranche Revolving Lenders and the Alternative Currency Tranche Revolving Lenders, as applicable and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

“Approved Currency” means each of Dollars and each Alternative Currency.

“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 an entity that administers or manages a Lender.

“Arrangers” means (x) Merrill Lynch, Pierce, Fenner & Smith Incorporated and JPMorgan Chase Bank, N.A., each in its capacity as joint book runners, (y) Merrill Lynch, Pierce, Fenner & Smith Incorporated, and JPMorgan Chase Bank, N.A., KeyBanc Capital Markets Inc. and Deutsche Bank Securities Inc., each in its capacity as U.S. joint lead arrangers and (z) Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A., KeyBanc Capital Markets Inc. and RBC Capital Markets<sup>4</sup>, each in its capacity as Canadian joint lead arrangers.

“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 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form (including an electronic documentation form generated by MarkitClear or another electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

“Australian Dollars” or “AUD” means the lawful currency of the Commonwealth of Australia.

“Automatic Alternative Currency Conversion Date” means any date on which the Automatic Alternative Currency Conversion Trigger shall have occurred.

“Automatic Alternative Currency Conversion Trigger” means either (a) an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States shall have occurred or (b) the Commitments shall have been terminated prior to the Maturity Date and/or the Loans shall have been declared immediately due and payable, in either case pursuant to Article VIII.

“Availability Period” means (a) in respect of the U.S. Tranche Revolving Commitments, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Facility, (ii) the date of termination of the U.S. Tranche Revolving Commitments pursuant to Section 2.06 and (iii) the date of termination of the Commitment of each U.S. Tranche Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02 and (b) in respect of the Alternative Currency Tranche Revolving Commitments, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Facility, (ii) the date of termination of the Alternative Currency Tranche Revolving Commitments pursuant to Section 2.06 and (iii) the date of termination of the Commitment of each Alternative Currency Tranche Revolving Lender to make Revolving Alternative Currency Tranche Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

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

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Basel III” means the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the Closing Date.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by KeyBank National Association as its “prime rate,” and (c) the Eurocurrency Rate plus 1.00%. The “prime rate” is a rate set by KeyBank National Association based upon various factors including KeyBank National Association’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by KeyBank National Association shall take effect at the opening of business on the day specified in the public announcement of such change; provided, that if the Base Rate is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Base Rate Loan” means a U.S. Tranche Revolving Loan or a U.S. Term Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“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 Section 4975 of the 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 Code) the assets of any such “employee benefit plan” or “plan”.

“Bid Loan” has the meaning assigned to such term in Section 2.01(c)(i).

“Bid Loan Borrowing” has the meaning assigned to such term in Section 2.01(c)(i).

“Bid Loan Note” means a Bid Loan Note made by the Borrower, in substantially the form of Exhibit F-2, payable to the order of a Lender, evidencing the obligation of the Borrower to repay the Bid Loans made by such Lender, and includes any Bid Loan Note issued in exchange or substitution therefor.



“Bid Loan Quote” has the meaning assigned to such term in Section 2.01(c)(ii).

“Bid Loan Quote Request” has the meaning assigned to such term in Section 2.01(c)(ii).

“Bid Loan Sublimit” means an amount equal to fifty percent (50%) of the aggregate Revolving Commitments. The Bid Loan Sublimit is part of, and not in addition to, the Revolving Facility.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.01.

“Borrowing” means a Revolving Borrowing, a Bid Loan Borrowing, a Swingline Borrowing or a Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Canadian Dollars” and “CAD” mean the lawful currency of Canada.

“Canadian Term Borrowing” means a borrowing consisting of simultaneous Canadian Term Loans of the same Type and having the same Interest Period made by each of the Canadian Term Lenders pursuant to Section 2.01(a)(ii).

“Canadian Term Commitment” means, as to each Canadian Term Lender, its obligation to make a Canadian Term Loan to the Borrower pursuant to Section 2.01(a)(ii) in an aggregate principal amount equal to the amount set forth opposite such Canadian Term Lender’s name on Schedule 1.01(b) under the caption “Canadian Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Canadian Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Canadian Term Commitment of all of the Canadian Term Lenders on the Closing Date shall be CAD 250,000,000.

“Canadian Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Canadian Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Canadian Term Loans of all Canadian Term Lenders outstanding at such time.

“Canadian Term Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Canadian Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Canadian Term Loans at such time.

“Canadian Term Loan” has the meaning specified in Section 2.01(a)(ii).

“Canadian Term Note” means a promissory note made by the Borrower in favor of a Canadian Term Lender, evidencing Canadian Term Loans made by such Canadian Term Lender, substantially in the form of Exhibit F-5.

“Capital Lease(s)” means all leases that have been or should be, in accordance with GAAP, recorded as capital leases.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer or the Lenders, as collateral for L/C Obligations, the Obligations, or obligations of the Revolving Lenders to fund participations in respect of L/C Obligations, (a) cash or deposit account balances, (b) backstop letters of credit entered into on terms, from issuers and in amounts satisfactory to the Administrative Agent and the L/C Issuer and/or (c) if the Administrative Agent and the L/C Issuer shall agree, in their sole discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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 United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, implemented or issued.

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder.

“Commitment” means a Term Commitment or a Revolving Commitment, as the context may require.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“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.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated EBITDA” means the sum of (a) EBITDA of the Borrower and its Subsidiaries on a Consolidated basis, plus (b) without duplication, the Borrower’s Pro Rata Share of EBITDA of each Joint Venture.

“Consolidated Fixed Charges” means, for any period, with respect to the Borrower and its Subsidiaries on a Consolidated basis, the sum of, without duplication, (a) Consolidated Interest Expense, plus (b) Scheduled Principal

Payments, plus (c) cash dividends and distributions in respect of preferred stock (but excluding redemption payments or charges in connection with the redemption of preferred stock) of the Borrower and its Subsidiaries, in each case determined in accordance with GAAP; but excluding, in any event, (i) gains and losses from unwinding or break-funding of Swap Contracts, (ii) write-offs of unamortized deferred financing fees, (iii) prepayment fees, premiums and penalties, and (iv) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

“Consolidated Interest Expense” means the sum of (a) Interest Expense of the Borrower and its Subsidiaries on a Consolidated basis, plus (b) without duplication, the Borrower’s Pro Rata Share of Interest Expense of each Joint Venture.

“Consolidated Tangible Net Worth” means, on any date, the sum of (a) Tangible Net Worth, plus (b) without duplication, the Borrower’s Pro Rata Share of each Joint Venture’s total equity minus goodwill plus accumulated depreciation and amortization and redeemable noncontrolling interests, as all such amounts would appear on a balance sheet of such Joint Venture prepared as of such date in accordance with GAAP consistently applied.

“Consolidated Total Asset Value” means the sum of (a) Total Asset Value of the Borrower and its Subsidiaries on a Consolidated basis, plus (b) without duplication, the Borrower’s Pro Rata Share of Total Asset Value of each Joint Venture; provided that, for purposes of calculating the Leverage Ratio, Consolidated Total Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents netted against Indebtedness of the Borrower and its Subsidiaries maturing in the immediately succeeding 24 months.

“Consolidated Total Indebtedness” means the sum of (a) Indebtedness of the Borrower and its Subsidiaries on a Consolidated basis (net of unrestricted cash and cash equivalents up to an amount not to exceed the aggregate amount of Indebtedness of the Borrower and its Subsidiaries maturing in the immediately succeeding 24 months), plus (b) without duplication, the Borrower’s Pro Rata Share of Indebtedness of each Joint Venture; provided that Consolidated Total Indebtedness shall not include security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP. Notwithstanding anything to the contrary set forth herein, until the earlier of (A) the consummation of each Significant Acquisition and (B) the date on which the acquisition agreement with respect to such Significant Acquisition terminates or expires, any Indebtedness incurred by the Borrower to finance such Significant Acquisition shall be disregarded for the purpose of determining compliance with Sections 6.09(a) and (d) to the extent that, and so long as, (a) either (x) the cash proceeds of such Indebtedness are held in escrow on customary terms or (y) such Indebtedness is subject to customary special mandatory redemption option in the event such Significant Acquisition is not consummated, and the cash proceeds of such Indebtedness are held by the Borrower as unrestricted cash or cash equivalents and (b) the cash proceeds of such Indebtedness is not otherwise deducted in calculating Consolidated Total Indebtedness.

“Consolidated Unencumbered Asset Value” means the sum of (a) Unencumbered Asset Value of the Borrower and its Subsidiaries on a Consolidated basis, plus (b) without duplication, the Borrower’s Pro Rata Share of Unencumbered Asset Value of each Joint Venture.

“Construction Investments” means financing extended by the Borrower or any of its Subsidiaries with respect to a Health Care Facility that is under construction i.e., has not received a certificate of occupancy and the Borrower conditions for conversion to permanent financing for the Health Care Facility have not been satisfied.

“Continuing Directors” means, during any twenty-four (24) month period, individuals who, as of the beginning of such period, constitute the Board of Directors of the Borrower. For this purpose, any person who is nominated for election as a member of such Board of Directors after the date of this Agreement shall also be considered a “Continuing Director” if, and only if, his or her nomination for election to such Board of Directors is approved or recommended by a majority of the members of such Board of Directors (or of the relevant nominating committee) and at least five (5) members of such Board of Directors are themselves Continuing Directors at the time of such nomination.

“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.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

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

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) plus the rate (including any Applicable Rate and any Mandatory Cost) otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Loans that are Base Rate Loans plus two percent (2%), in each case, to the fullest extent permitted by applicable Law.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s 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 L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (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 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 any one or more of clauses (a) through (d) above, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) upon delivery of written notice of such determination to the Borrower, the L/C Issuer, the Swingline Lender and each other Lender.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any Sanction.

“Development Property” means any real property in which the development and construction with respect thereto are not complete.

“Disposition” means the sale, lease, conveyance, transfer or other disposition of any Health Care Facility (whether in one or a series of transactions), including accounts and notes receivable (with or without recourse) and sale-leaseback transactions.

“Dollar” and “\$” mean lawful money of the United States.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“EBITDA” means, for any period, for a Person and its Subsidiaries on a Consolidated basis, an amount equal to the Net Income of such Person and its Subsidiaries for such period plus (a) the following to the extent deducted in calculating such Net Income: (i) Consolidated Interest Expense for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by such Person and its Subsidiaries for such period, (iii) depreciation and amortization expense for such period and (iv) expenses of such Person and its Subsidiaries reducing such Net Income during such period which do not represent a cash expenditure in such period or any prior or future period and minus (b) all items of such Person and its Subsidiaries increasing Net Income for such period which do not represent a cash receipt in such period or any prior or future period.

“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 delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06 (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Employee Benefit Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA which is subject to ERISA and (a) is maintained for employees of the Borrower or (b) with respect to which the Borrower has any liability.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or human health and safety or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of or relating to the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Proceeding” means any judgment, action, claim, suit, investigation or other proceeding pending before any court or Governmental Authority, with respect to the Borrower or any Subsidiary and arising under or relating to any Environmental Laws.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests) and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“Euro” and “EUR” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“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.

“Eurocurrency Rate” means:

(a) for any Interest Period, with respect to any Credit Extension:

(i) denominated in a LIBOR Quoted Currency, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in such LIBOR Quoted Currency, with a term equivalent to such Interest Period;

(ii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dealer Offered Rate (“CDOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “CDOR Rate”) at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period;

(iii) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate (“BBSY”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as

may be designated by the Administrative Agent from time to time) at or about 10:30 a.m. (Melbourne, Australia time) on the Rate Determination Date with a term equivalent to such Interest Period;

(iv) denominated in a Non-LIBOR Quoted Currency other than Canadian Dollars or Australian Dollars, the rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.07(a); and

(b) for any interest rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m. (London time) determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for deposits in Dollars with a term of one (1) month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) if the Eurocurrency Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any 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 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 a 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 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), 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 3.01(e); and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” means that certain Credit Agreement, dated as of May 13, 2016, by and among the Borrower, the Lenders from time to time party thereto and KeyBank National Association, as Administrative Agent, as amended, modified, supplemented and/or restated from time to time through the Closing Date.

“Existing Letter(s) of Credit” means those certain letters of credit set forth on Schedule 1.01(c).

“Facility” means the U.S. Term Facility, the Canadian Term Facility or the Revolving Facility (including therein the U.S. Tranche Revolving Commitments and the Alternative Currency Tranche Revolving Commitments), as the context may require.

“Facility Fee” has the meaning assigned to such term in Section 2.09(a).

“Facility Office” means, with respect to any Lender, the office through which such Lender will perform its obligations under this Agreement.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated; (b) all Obligations have been paid in full (other than contingent indemnification obligations); and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as

to which other arrangements with respect thereto satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

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

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that if the Federal Funds Rate for any day is less than zero, the Federal Funds Rate for such day will be deemed to be zero.

“Financial Statements” means, with respect to the Borrower, its audited Consolidated Balance Sheet as at December 31, 2017, together with the related audited Consolidated Income Statement and Statement of Changes in Cash Flow for the fiscal year then ended.

“Fitch” means Fitch Ratings Ltd.

“Fixed Charge Coverage Ratio” means, on the last day of any fiscal quarter, the ratio of (a) Consolidated EBITDA for the four (4) consecutive fiscal quarters ending on such date to (b) Consolidated Fixed Charges for the four (4) consecutive fiscal quarters ending on such date.

“Foreign Lender” means a Lender that is not a U.S. Person. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders in accordance with the terms hereof.

“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 activities.

“Funding Indemnity Letter” means a funding indemnity letter, substantially in the form of Exhibit I.

“GAAP” means generally accepted accounting principles in the United States of America applied on a consistent basis and subject to the terms of Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (e) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner,



whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (e) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Health Care Facility” means (a) a health care facility offering health care-related products and services, including but not limited to any acute care hospital, rehabilitation hospital, nursing facility, assisted living facility, retirement center, long-term care facility, out-patient diagnostic facility or medical office building, life science research and development facility or office and any related or ancillary facility, service or product and (b) housing intended to be occupied primarily by persons over the age of 55 and related or ancillary facilities, services and products.

“Honor Date” has the meaning set forth in Section 2.03(c).

“Incremental Canadian Term Commitment” has the meaning assigned to such term in Section 2.18(a).

“Incremental Canadian Term Lender” has the meaning assigned to such term in Section 2.18(b).

“Incremental Canadian Term Loan Request” has the meaning assigned to such term in Section 2.18(a).

“Incremental Revolving Lender” has the meaning assigned to such term in Section 2.16(b).

“Incremental U.S. Term Commitment” has the meaning assigned to such term in Section 2.17(a).

“Incremental U.S. Term Lender” has the meaning assigned to such term in Section 2.17(b).

“Incremental U.S. Term Loan Request” has the meaning assigned to such term in Section 2.17(a).

“Indebtedness” means, with respect to any Person, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money, whether secured or unsecured, and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments including, without limitation, recourse and non-recourse mortgage debt;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) aggregate net obligations of such Person under Swap Contracts;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, to the extent of the value of the property encumbered by such Lien;

(f) Capital Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person at any time prior to the date that is six months after the Maturity Date, valued, in the case of a redeemable preferred interest, at the liquidation preference thereof, and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, (i) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date (which shall be a positive number if such amount would be owed by the Borrower and a negative number if such amount would be owed to the Borrower) and the net obligations under Swap Contracts shall not be less than zero and (ii) the amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“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 under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Intangible Assets” means assets of a Person and its Subsidiaries that are classified as intangible assets under GAAP, but excluding interests in real estate that are classified as intangible assets in accordance with GAAP.

“Interest Expense” means, for any period, for a Person and its Subsidiaries on a Consolidated basis, the sum of (a) all interest expense for such period determined in accordance with GAAP (excluding unamortized debt issuance costs) and (b) interest that is capitalized in such period in accordance with GAAP.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan and any Bid Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Swingline Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swingline Loans being deemed made under the Revolving Facility for purposes of this definition).

“Interest Period” means, as to (i) each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the Borrower in its Loan Notice; and (ii) each Bid Loan, the period commencing on the date of such Bid Loan and ending on the date specified in the Bid Loan Quote Request in which the Bid Loan Quote to make such Bid Loan was extended; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made;

(d) notwithstanding clause (c) above, no Interest Period with respect to a Eurocurrency Rate Loan shall have a duration of less than one month; and

(e) no Interest Period with respect to a Bid Loan shall have a duration of more than 180 days.

In the event that the Borrower fails to select the duration of any Interest Period for any Eurocurrency Rate Loan denominated in Dollars within the time period and otherwise as provided in Section 2.02, such Eurocurrency Rate Loan will be automatically converted into a Base Rate Loan on the last day of the preceding Interest Period for such Eurocurrency Rate Loan.

“Investment(s)” means, by any Person:

(a) the amount paid or committed to be paid, or the value of property or services contributed or committed to be contributed, by such Person for or in connection with the acquisition by such Person of any stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person; and

(b) the amount of any advance, loan or extension of credit by such Person, to any other Person, or guaranty or other similar obligation of such Person with respect to any Indebtedness of such other Person, and (without duplication) any amount committed to be advanced, loaned, or extended by such Person to any other Person, or any amount the payment of which is committed to be assured by a guaranty or similar obligation by such Person for the benefit of, such other Person.

For the purposes of clarity, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Joint Venture” means any Person in which the Borrower, directly or indirectly, has an ownership interest accounted for under the equity method of accounting but does not consolidate the assets or income of such Person in preparing its consolidated financial statements.

“Judgment Currency” has the meaning assigned to such term in Section 10.19.

“Latest Balance Sheet” has the meaning assigned to such term in Section 5.09(c).

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes 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.

“L/C Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means KeyBank, National Association, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit who agrees to act in such capacity hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and their successors and assigns and, unless the context requires otherwise, includes the Swingline Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit; provided, however, that any commercial letter of credit issued hereunder shall provide solely for cash payment upon presentation of a sight draft and any other required documents.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is five (5) days prior to the Maturity Date then in effect for the Revolving Facility (or, if such day is not a Business Day, the next preceding Business Day); provided that the Letter of Credit Expiration Date may, subject to the Borrower providing Cash Collateral as provided in Section 2.14, be extended for up to one year after the Maturity Date then in effect for the Revolving Facility.

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$100,000,000 and (b) the Revolving Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

“Leverage Ratio” means, on the last day of any fiscal quarter, the ratio of (a) Consolidated Total Indebtedness outstanding on such date to (b) Consolidated Total Asset Value as of such date.

“LIBOR” has the meaning assigned to such term in the definition of Eurocurrency Rate.

“LIBOR Quoted Currency” means Dollars, Euro, Sterling, Yen and Swiss Francs, in each case as long as there is a published LIBOR rate with respect thereto.

“LIBOR Rate” has the meaning assigned to such term in the definition of Eurocurrency Rate.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever, claim or charge of any kind (including any agreement to give any of the foregoing), any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Loan, a Bid Loan or a Swingline Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) each separate fee letter, (d) each Issuer Document and (e) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of this Agreement including Section 2.14.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit D-1.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Mandatory Cost” means any amount incurred periodically by any Lender during the term of the Facilities which constitutes fees, costs or charges imposed on lenders generally by any Governmental Authority in the jurisdiction in which such Lender is domiciled, subject to regulation, or has its Facility Office.

“Material Adverse Effect” means any fact or circumstance which (a) materially and adversely affects the business, operation, property or financial condition of the Borrower and the Subsidiaries taken as a whole or (b) has a material adverse effect on the ability of the Borrower and the Subsidiaries taken as a whole to perform its obligations under this Agreement, the Notes or the other Loan Documents.

“Maturity Date” means (a) with respect to the Revolving Facility, July 19, 2022 (b) with respect to the U.S. Term Facility, July 19, 2023 and (c) with respect to the Canadian Term Facility, July 19, 2023, or, in the case of the Revolving Facility, any later date established in accordance with Section 2.19; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day. When used in the definition of “Indebtedness”, Maturity Date shall mean the latest to occur of each of the foregoing dates.

“Merger with No Actual Change in Control” means (i) the stockholders of the Borrower, immediately before such merger or consolidation, own, directly or indirectly, immediately following such merger or consolidation, more than fifty percent (50%) of the then outstanding shares of common stock (or the equivalent in voting power of any class or classes of securities of the corporation entitled to vote in elections of directors) of the corporation resulting from such merger or consolidation (the “Surviving Company”) in substantially the same proportion as their ownership of the Borrower’s outstanding common stock (or the equivalent in voting power of any class or classes of securities of the Borrower entitled to vote in elections of directors) immediately before such merger or consolidation and (ii) the

persons who were Continuing Directors immediately prior to the execution of the agreement providing for such merger or consolidation constitute more than fifty percent (50%) of the members of the Board of Directors of the Surviving Company.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during any period when a Lender constitutes a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.14(a)(i), (a)(ii), (a)(iii) or (a)(iv), an amount equal to 100% of the Outstanding Amount of all L/C Obligations and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage(s)” means mortgages of primarily real property constituting a Health Care Facility or real estate for which the Borrower or one of its Subsidiaries is a mortgagee.

“Mortgage Lien” means any Lien that encumbers a real property owned by a Person, other than Permitted Liens.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions or, during the preceding five (5) plan years, has made or been obligated to make contributions.

“Net Income” means, for any period, for a Person and its Subsidiaries on a Consolidated basis, the net income of such Person and its Subsidiaries for such period as determined in accordance with GAAP (excluding, without duplication, gains and losses from dispositions of depreciable real estate investments, impairment charges, the early extinguishment of debt and transaction costs of acquisitions not permitted to be capitalized pursuant to GAAP and other non-recurring items, including, without limitation, charges resulting from settlement of options to repurchase remarketable bonds and other similar charges).

“New Canadian Term Lender” has the meaning assigned to such term in Section 2.18(a).

“New Revolving Lender” has the meaning assigned to such term in Section 2.16(a).

“New U.S. Term Lender” has the meaning assigned to such term in Section 2.17(a).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (b) has been approved by the Required Lenders.

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

“Non-LIBOR Quoted Currency” means any currency other than a LIBOR Quoted Currency.

“Nonrecourse Indebtedness” means, with respect to the Borrower or any Subsidiary, Indebtedness of the Borrower or such Subsidiary that is secured by a Lien on Property of the Borrower or such Subsidiary, as applicable, the sole recourse for the repayment of which is such Property and where the Borrower or such Subsidiary, as applicable, would not be liable for any deficiency after the application of the proceeds of such Property to such Indebtedness, other than in respect of environmental liabilities, fraud, misrepresentation and other similar matters.

“Note” means a Term Note, a Revolving Note, a Bid Loan Note or a Swingline Note, as the context may require.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any of its Affiliates of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operator” means (a) the lessee of any Health Care Facility owned or leased by the Borrower and (b) the mortgagor of a Health Care Facility which is subject to a Mortgage to the extent that such entity controls the operation of such Health Care Facility.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all other entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“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 3.06).

“Outstanding Amount” means (i) with respect to Term Loans, Revolving Loans, Bid Loans and Swingline Loans on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Loans, Bid Loans and Swingline Loans, as the case may be, occurring on such date and (ii) with respect to any L/C Obligations on any date, the Dollar Equivalent of the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Participating Member State” means each state so described in any EMU Legislation.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Permitted Liens” means Liens permitted under Sections 7.02(c) - (m) and (o) - (q).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.01.

“Property” means any estate or interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Proposed Canadian Term Lender” has the meaning assigned to such term in Section 2.18(a).

“Proposed Revolving Lender” has the meaning assigned to such term in Section 2.16(a).

“Proposed U.S. Term Lender” has the meaning assigned to such term in Section 2.17(a).

“Pro Rata Share” means the Borrower’s direct or indirect percentage ownership interest in a Joint Venture.

“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.

“Public Lender” has the meaning specified in Section 6.01.

“Rate Determination Date” means, with respect to any Interest Period, two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in the relevant interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent).

“Ratings” means the ratings from time to time established by the Ratings Agencies for long term, senior, unsecured, non-credit enhanced debt of the Borrower.

“Ratings Agencies” means Moody’s, S&P and Fitch.

“Recipient” means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any Obligation.

“Recourse Indebtedness” means, with respect to the Borrower or any Subsidiary, all Indebtedness of the Borrower or such Subsidiary other than Nonrecourse Indebtedness.

“Register” has the meaning specified in Section 10.06(c).

“REIT” means a real estate investment trust as defined in Sections 856-860 of the Code.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, shareholders, administrators, managers, advisors, representatives, attorneys and controlling Persons of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.



“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, (c) with respect to a Swingline Loan, a Swingline Loan Notice and (d) with respect to a Bid Loan, a Bid Loan Quote Request.

“Required Alternative Currency Tranche Revolving Lenders” means, at any time, Alternative Currency Tranche Revolving Lenders having Total Alternative Currency Credit Exposures representing more than 50% of the Total Alternative Currency Credit Exposures of all Alternative Currency Tranche Revolving Lenders. The Total Alternative Currency Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Alternative Currency Tranche Revolving Lenders at any time; provided that, the amount of any participation in any Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the L/C Issuer in making such determination.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or L/C Issuer, as the case may be, in making such determination. For purposes of this definition, the Outstanding Amount of all Bid Loans shall be disregarded in determining Total Credit Exposures.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, senior vice president - legal, assistant treasurer or controller of the Borrower, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of the Borrower. Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate, in form and substance satisfactory to the Administrative Agent.

“Revaluation Date” means, with respect to (a) any Letter of Credit, each of the following: (i) each date of issuance of an Alternative Currency Tranche Letter of Credit, (ii) each date of an amendment of any Alternative Currency Tranche Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the L/C Issuer under any Alternative Currency Tranche Letter of Credit, (iv) in the case of the Existing Letters of Credit, the Closing Date and (v) such additional dates (not more frequently than monthly) as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require and (b) any Loan, each of the following: (i) each date of Borrowing of an Alternative Currency Tranche Revolving Loan, (ii) each date of any continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02 and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require.

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type, in the same currency and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(b).

“Revolving Commitment” means, with respect to any Revolving Lender, the sum of such Lender’s U.S. Tranche Revolving Commitment and such Lender’s Alternative Currency Tranche Revolving Commitment. The Revolving Commitment of all of the Revolving Lenders on the Closing Date shall be \$3,000,000,000.

“Revolving Exposure” means, as to any Lender at any time, the sum of such Lender’s U.S. Tranche Revolving Exposure and such Lender’s Alternative Currency Tranche Revolving Exposure.

“Revolving Facility” means, at any time, the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time.

“Revolving Facility Increase” has the meaning assigned to such term in Section 2.16(a).

“Revolving Increase Request” has the meaning assigned to such term in Section 2.16(a).

“Revolving Lender” means a U.S. Tranche Revolving Lender or an Alternative Currency Tranche Revolving Lender.

“Revolving Loan” means a U.S. Tranche Revolving Loan or an Alternative Currency Tranche Revolving Loan.

“Revolving Note” means a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans, made by such Revolving Lender, substantially in the form of Exhibit F-1.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the applicable L/C Issuer, as applicable, to be customary in the place of disbursement or payment for the settlement of international banking transactions in such Alternative Currency.

“Sanction(s)” means any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States Government (including, without limitation, OFAC) or (b) the United Nations Security Council, the European Union or any member state thereof, Her Majesty’s Treasury of the United Kingdom or any other relevant sanctions authority.

“Scheduled Principal Payment” means (a) all scheduled principal payments with respect to Indebtedness of the Borrower and its Subsidiaries on a Consolidated basis (excluding any balloon or final payment) and (b) without duplication, the Borrower’s Pro Rata Share of all scheduled principal payments with respect to Indebtedness (excluding any balloon or final payment) of each Joint Venture, in each case without giving effect to any reduction in such scheduled principal payments as a result of any voluntary or mandatory prepayment with respect thereto made in the same period in which such principal payment was scheduled to be made. For purposes of determining Scheduled Principal Payments, Indebtedness shall not include security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

“SEC” means the Securities and Exchange Commission.

“Secured Debt” means that portion of Consolidated Total Indebtedness that is subject to a Lien (other than Permitted Liens).

“Secured Debt Ratio” means, on the last day of any fiscal quarter, the ratio of (a) Secured Debt outstanding on such date to (b) Consolidated Total Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Secured Debt pursuant to the definition of Consolidated Total Indebtedness shall exclude the aggregate amount of all such unrestricted cash and cash equivalents used to determine the Unsecured Leverage Ratio as of such date.

“Significant Acquisition” means the acquisition (in one or a series of related transactions) of all or substantially all of the assets or Equity Interests of a Person or any division, line of business or business unit of a Person for an aggregate consideration (whether in the form of cash, securities, goodwill, or otherwise) in excess of \$750,000,000.

“Solvent” and “Solvency” mean, with respect to the Borrower on any date of determination, that on such date (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise,

as such debts and other liabilities become absolute and matured, (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. (London time) on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided, further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subsidiary” means, with respect to any Person, any corporation, partnership, joint venture or other entity, whether now existing or hereafter organized or acquired: (a) in the case of a corporation, of which a majority of the securities having ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) are at the time owned by such Person and/or one or more Subsidiaries of such Person, (b) in the case of a partnership or other entity, in which such Person is a general partner or of which a majority of the partnership or other equity interests are at the time owned by such Person and/or one or more of its Subsidiaries, or (c) in the case of a joint venture, in which such Person is a joint venturer and of which a majority of the ownership interests are at the time owned by such Person and/or one or more of its Subsidiaries. Unless the context otherwise requires, references in this Agreement to “Subsidiary” or “Subsidiaries” shall be deemed to be references to a Subsidiary or Subsidiaries of the Borrower.

“Surviving Company” has the meaning assigned to such term in the definition of “Merger with No Actual Change in Control” contained in this Section 1.01.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swingline Borrowing” means a borrowing of a Swingline Loan pursuant to Section 2.04.

“Swingline Lender” means KeyBank National Association in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

“Swingline Loan” has the meaning specified in Section 2.04(a).

“Swingline Loan Notice” means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit D-2.

“Swingline Note” means a promissory note made by the Borrower in favor of a Swingline Lender evidencing Swingline Loans, made by such Swingline Lender, substantially in the form of Exhibit F-3.

“Swingline Sublimit” means an amount equal to the lesser of (a) \$100,000,000 and (b) the Revolving Facility. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

“Swiss Francs” means the lawful currency of Switzerland.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) any similar off-balance sheet financing product that is considered borrowed money indebtedness for tax purposes but classified as an operating lease under GAAP.

“Tangible Net Worth” means, on any date, the sum of total equity minus Intangible Assets plus accumulated depreciation and amortization and redeemable noncontrolling interests, as all such amounts would appear on a Consolidated balance sheet of the Borrower and its Subsidiaries prepared as of such date in accordance with GAAP consistently applied.

“Target” means Quality Care Properties, Inc.

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“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.

“Term Borrowing” means a Canadian Term Borrowing or a U.S. Term Borrowing.

“Term Commitment” means a Canadian Term Commitment or a U.S. Term Commitment.

“Term Facility(ies)” means collectively, the Canadian Term Facility and the U.S. Term Facility and individually, either such Facility.

“Term Lender” means a Canadian Term Lender or a U.S. Term Lender.

“Term Loan” means an advance made by any Term Lender under a Term Facility.

“Term Note” means a Canadian Term Note or a U.S. Term Note.

“Threshold Amount” means, with respect to Recourse Indebtedness, \$100,000,000.

“Total Alternative Currency Credit Exposure” means, as to any Lender at any time, the unused Alternative Currency Tranche Revolving Commitment and the Alternative Currency Tranche Revolving Exposure of such Lender at such time.

“Total Asset Value” means an amount equal to (a) all assets of a Person and its Subsidiaries as determined in accordance with GAAP plus (b) all accumulated depreciation associated with such assets minus (c) Intangible Assets.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments, Revolving Exposure and Outstanding Amount of all Term Loans of such Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans, Bid Loans and L/C Obligations.

“2018 Term Loan Agreement” means that certain Credit Agreement, dated as of May 25, 2018, (as it may be amended, supplemented or otherwise modified from time to time) among the Borrower, the lenders from time to time party thereto and Barclays Bank PLC, as administrative agent.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

“Unencumbered Asset Value” means the sum of (a) the aggregate net book value, as determined in accordance with GAAP, of all real property of a Person that is not subject to a Mortgage Lien, plus (b) all accumulated depreciation and amortization with respect to such real properties, plus (c) unrestricted cash and cash equivalents of such Person, plus (d) the sum of (i) unencumbered mezzanine and mortgage loan receivables (at the value reflected in the consolidated financial statements of the Borrower, in accordance with GAAP, as of such date, including the effect of any impairment charges), (ii) unencumbered marketable securities (at the value reflected in the consolidated financial statements of the Borrower, in accordance with GAAP, as of such date, including the effect of any impairment charges), provided that the items described in this clause (ii) and in the preceding clause (i) shall not be taken into account to the extent that the amounts of such items exceed, in the aggregate, 20% of Unencumbered Asset Value.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unsecured Debt” means that portion of Consolidated Total Indebtedness that is not Secured Debt or a Guarantee of Secured Debt.

“Unsecured Leverage Ratio” means, on the last day of any fiscal quarter, the ratio of (a) Unsecured Debt outstanding on such date to (b) Consolidated Unencumbered Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Unsecured Debt pursuant to the definition of Consolidated Total Indebtedness shall exclude the aggregate amount of all such unrestricted cash and cash equivalents used to determine the Secured Debt Ratio as of such date.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“U.S. Term Borrowing” means a borrowing consisting of simultaneous U.S. Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the U.S. Term Lenders pursuant to Section 2.01(a)(i).

“U.S. Term Commitment” means, as to each U.S. Term Lender, its obligation to make a U.S. Term Loan to the Borrower pursuant to Section 2.01(a)(i) in an aggregate principal amount equal to the amount set forth opposite such U.S. Term Lender’s name on Schedule 1.01(b) under the caption “U.S. Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such U.S. Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The U.S. Term Commitment of all of the U.S. Term Lenders on the Closing Date shall be \$500,000,000.

“U.S. Term Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the U.S. Term Commitments at such time and (b) thereafter, the aggregate principal amount of the U.S. Term Loans of all U.S. Term Lenders outstanding at such time.

“U.S. Term Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a U.S. Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds U.S. Term Loans at such time.

“U.S. Term Loan” has the meaning specified in Section 2.01(a)(i).

“U.S. Term Note” means a promissory note made by the Borrower in favor of a U.S. Term Lender, evidencing U.S. Term Loans made by such U.S. Term Lender, substantially in the form of Exhibit F-4.

“U.S. Tranche L/C Exposure” means, at any time, (i) the aggregate undrawn amount of all outstanding U.S. Tranche Letters of Credit at such time and (ii) the aggregate amount of all L/C Disbursements in respect of U.S. Tranche Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The U.S. Tranche L/C Exposure of any Revolving Lender at any time shall be its Applicable U.S. Tranche Percentage of the total U.S. Tranche L/C Exposure at such time.

“U.S. Tranche Letter of Credit” means a Letter of Credit denominated in Dollars.

“U.S. Tranche Revolving Borrowing” means a borrowing consisting of simultaneous U.S. Tranche Revolving Loans of the same Type, and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the U.S. Tranche Revolving Lenders pursuant to Section 2.01(b)(i).

“U.S. Tranche Revolving Commitment” means, as to each U.S. Tranche Revolving Lender, its obligation to (a) make U.S. Tranche Revolving Loans to the Borrower pursuant to Section 2.01(b)(i), (b) purchase participations in L/C Obligations in respect of U.S. Tranche Letters of Credit and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding which does not exceed the Dollar amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “U.S. Tranche Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The U.S. Tranche Revolving Commitments of all of the U.S. Tranche Revolving Lenders on the Closing Date shall be \$2,000,000,000.

“U.S. Tranche Revolving Exposure” means, as to any U.S. Tranche Revolving Lender at any time, (i) the Outstanding Amount at such time of such Lender’s U.S. Tranche Revolving Loans, plus (ii) the Outstanding Amount at such time of such Lender’s Bid Loans, plus (iii) the Outstanding Amount of such Lender’s participation in L/C

Obligations with respect to U.S. Tranche Letters of Credit, plus (iv) the Outstanding Amount of such Lender's participation in Swingline Loans, in each case, at such time.

"U.S. Tranche Revolving Lender" means, at any time, (a) so long as any U.S. Tranche Revolving Commitment is in effect, any Lender that has a U.S. Tranche Revolving Commitment at such time or (b) if the U.S. Tranche Revolving Commitments have terminated or expired, any Lender that has a U.S. Tranche Revolving Loan, a Bid Loan or a participation in L/C Obligations with respect to U.S. Tranche Letters of Credit or Swingline Loans at such time.

"U.S. Tranche Revolving Loan" has the meaning specified in Section 2.01(b)(i).

"Write-Down and Conversion Powers" means, 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.

"Yen" and "¥" mean the lawful currency of Japan.

### **Section 1.02 Other Interpretive Provisions.**

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### **Section 1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required

to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Financial Statements, except as otherwise specifically prescribed herein and except that all covenants that involve GAAP shall be computed in accordance with GAAP in effect on the Closing Date. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. Other than as set forth above, if at any time any change in GAAP would affect any requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders such other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such requirement made before and after giving effect to such change in GAAP.

**Section 1.04 Rounding.**

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**Section 1.05 Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**Section 1.06 Exchange Rates; Currency Equivalents.**

(a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating the Dollar Equivalent of L/C Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered hereunder or calculating covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Revolving Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Revolving Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

(c) The Administrative Agent does not warrant, or accept responsibility for, nor shall the Administrative Agent have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any comparable or successor rate thereto.



## **Section 1.07 Additional Alternative Currencies.**

(a) The Borrower may from time to time request that Alternative Currency Tranche Revolving Loans be made and/or Alternative Currency Tranche Letters of Credit be issued in a currency other than those specifically listed in the definition of “Alternative Currency;” provided that (i) such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars and (ii) such requested currency shall only be treated as a “LIBOR Quoted Currency” to the extent that there is published LIBOR rate for such currency. In the case of any such request with respect to the making of Alternative Currency Tranche Revolving Loans, such request shall be subject to the approval of the Administrative Agent and each Lender with a Commitment under which such currency is requested to be made available; and in the case of any such request with respect to the issuance of Alternative Currency Tranche Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Alternative Currency Tranche Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Alternative Currency Tranche Revolving Loans, the Administrative Agent shall promptly notify each Alternative Currency Tranche Revolving Lender thereof; and in the case of any such request pertaining to Alternative Currency Tranche Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Alternative Currency Tranche Revolving Lender (in the case of any such request pertaining to Alternative Currency Tranche Revolving Loans) or the L/C Issuer (in the case of a request pertaining to Alternative Currency Tranche Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Alternative Currency Tranche Revolving Loans or the issuance of Letters of Credit, as the case may be, in such requested currency and whether it is able to fund in such requested currency.

(c) Any failure by an Alternative Currency Tranche Revolving Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the L/C Issuer, as the case may be, to permit Alternative Currency Tranche Revolving Loans to be made or Alternative Currency Tranche Letters of Credit to be issued in such requested currency. If the Administrative Agent and the Required Alternative Currency Tranche Revolving Lenders consent to making Alternative Currency Tranche Revolving Loans in such requested currency, and the Administrative Agent and such Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Borrower and (i) the Administrative Agent and such Lenders may amend the definition of Eurocurrency Rate for any Non-LIBOR Quoted Currency to the extent necessary to add the applicable Eurocurrency Rate for such currency and (ii) to the extent the definition of Eurocurrency Rate reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Alternative Currency Tranche Eurocurrency Rate Loans; and if the Administrative Agent and the L/C Issuer consent to the issuance of Alternative Currency Tranche Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and (A) the Administrative Agent and the L/C Issuer may amend the definition of Eurocurrency Rate for any Non-LIBOR Quoted Currency to the extent necessary to add the applicable Eurocurrency Rate for such currency and (B) to the extent the definition of Eurocurrency Rate reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Alternative Currency Tranche Letter of Credit issuances. In the event that an Alternative Currency Tranche Revolving Lender shall have notified the Administrative Agent, as provided in Section 1.07(b), that it is not able to fund in the requested currency, such Alternative Currency Tranche Revolving Lender shall have no obligation to make Loans in such requested currency. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.07, the Administrative Agent shall promptly so notify the Borrower. Any specified currency of an Existing Letter of Credit that is neither Dollars nor one of the Alternative Currencies specifically listed in the definition of “Alternative Currency” shall be deemed an Alternative Currency with respect to such Existing Letter of Credit only.

**Section 1.08 Change of Currency.**

(a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any Participating Member State of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such Participating Member State, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such Participating Member State adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such Participating Member State is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

**Section 1.09 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**Section 1.10 Pro Forma Calculations.**

For the purpose of calculating Consolidated EBITDA and Consolidated Fixed Charges for any period, if during such period the Borrower or any Subsidiary shall have made a Significant Acquisition or disposition involving consideration in excess of \$750,000,000, Consolidated EBITDA and Consolidated Fixed Charges shall be calculated giving pro forma effect (in accordance with Article 11 of Regulation S-X under the Securities Act of 1933, as amended) thereto as if such Significant Acquisition or material disposition occurred on the first day of such period.

**ARTICLE II**

**COMMITMENTS AND CREDIT EXTENSIONS**

**Section 2.01 Loans.**

(a) Term Borrowings.

(i) U.S. Term Loan. Subject to the terms and conditions set forth herein, each U.S. Term Lender severally agrees to make a single loan to the Borrower (each such loan and each loan, if any, made under the Incremental U.S. Term Commitments, referred to individually as a "U.S. Term Loan" and, collectively, the "U.S. Term Loans"), in Dollars, on the Closing Date, in an aggregate amount equal to such U.S. Term Lender's U.S. Term Commitment. In addition, in the event of the establishment of one or more Incremental U.S. Term Commitments as provided in Section 2.17, each Incremental U.S. Term Lender hereby severally agrees, on the terms and subject to the conditions of this Agreement, to make a single U.S. Term Loan to the Borrower on the effective date of the establishment of each such Incremental U.S. Term Commitment, in a principal amount equal to such Incremental U.S. Term Lender's

(i) increase to its U.S. Term Commitment or (ii) U.S. Term Commitment, as applicable. Each U.S. Term Borrowing shall consist of U.S. Term Loans made simultaneously by the U.S. Term Lenders. After giving effect to each U.S. Term Loan the Outstanding Amount of all U.S. Term Loans shall not exceed the U.S. Term Facility as then in effect. U.S. Term Borrowings prepaid or repaid, in whole or in part, may not be reborrowed. U.S. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein; provided, however, any U.S. Term Borrowing made on the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter to the Administrative Agent not less than three (3) Business Days prior to the date of such U.S. Term Borrowing.

(ii) Canadian Term Loan. Subject to the terms and conditions set forth herein, each Canadian Term Lender severally agrees to make a single loan to the Borrower (each such loan and each loan, if any, made under the Incremental Canadian Term Commitments, referred to individually as a "Canadian Term Loan" and, collectively, the "Canadian Term Loans"), in Canadian Dollars, on the Closing Date, in an aggregate amount equal to such Canadian Term Lender's Canadian Term Commitment. In addition, in the event of the establishment of one or more Incremental Canadian Term Commitments as provided in Section 2.18, each Incremental Canadian Term Lender hereby severally agrees, on the terms and subject to the conditions of this Agreement, to make a single Canadian Term Loan to the Borrower on the effective date of the establishment of each such Incremental Canadian Term Commitment, in a principal amount equal to such Incremental Canadian Term Lender's (i) increase to its Canadian Term Commitment or (ii) Canadian Term Commitment, as applicable. Each Canadian Term Borrowing shall consist of Canadian Term Loans made simultaneously by the Canadian Term Lenders. After giving effect to each Canadian Term Loan the Outstanding Amount of all Canadian Term Loans shall not exceed the Canadian Term Facility as then in effect. Canadian Term Borrowings prepaid or repaid, in whole or in part, may not be reborrowed. Canadian Term Loans must consist of Eurocurrency Rate Loans. Any Canadian Term Borrowing made on the Closing Date shall be subject to the receipt by Administrative Agent of a Funding Indemnity Letter from the Borrower not less than three (3) Business Days prior to the date of such Canadian Term Borrowing.

(b) Revolving Borrowings.

(i) U.S. Tranche Revolving Loans. Subject to the terms and conditions set forth herein, each U.S. Tranche Revolving Lender severally agrees to make loans (each such loan, a "U.S. Tranche Revolving Loan") in Dollars from time to time on any Business Day during the Availability Period with respect to the U.S. Tranche Revolving Commitments, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's U.S. Tranche Revolving Commitment; provided, however, that after giving effect to any U.S. Tranche Revolving Borrowing, (i) the U.S. Tranche Revolving Exposure of any U.S. Tranche Revolving Lender shall not exceed such U.S. Tranche Revolving Lender's U.S. Tranche Revolving Commitment, (ii) the aggregate U.S. Tranche Revolving Exposures shall not exceed the total U.S. Tranche Revolving Commitments and (iii) the Total Revolving Outstandings shall not exceed the Revolving Facility. Within the limits of each U.S. Tranche Revolving Lender's U.S. Tranche Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow U.S. Tranche Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01(b)(i). U.S. Tranche Revolving Loans may consist of Base Rate Loans or Eurocurrency Rate Loans, or a combination thereof, as further provided herein. Notwithstanding the preceding sentence, any U.S. Tranche Revolving Borrowings made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter to the Administrative Agent not less than three (3) Business Days prior to the date of such U.S. Tranche Revolving Borrowing. U.S. Tranche Revolving Loans may be repaid and reborrowed in accordance with the provisions hereof.

(ii) Alternative Currency Tranche Revolving Loans. Subject to the terms and conditions set forth herein, each Alternative Currency Tranche Revolving Lender severally agrees to make loans (each such loan, an "Alternative Currency Tranche Revolving Loan") in one or more Alternative Currencies from time to time on any Business Day during the Availability Period with respect to the Alternative Currency Tranche Revolving Commitments, in an aggregate amount not to exceed at any time outstanding the amount of such Alternative Currency Tranche Revolving Lender's Alternative Currency Tranche Revolving Commitment; provided, however, that after giving effect to any Alternative Currency Tranche Revolving Borrowing, (i) the Alternative Currency Tranche Revolving Exposure of any Alternative Currency Tranche Revolving Lender shall not exceed such Alternative Currency Tranche Revolving Lender's Alternative Currency Tranche Revolving Commitment, (ii) the aggregate Alternative

Currency Tranche Revolving Exposures shall not exceed the total Alternative Currency Tranche Revolving Commitments and (iii) the Total Revolving Outstandings shall not exceed the Revolving Facility. Within the limits of each Alternative Currency Tranche Revolving Lender's Alternative Currency Tranche Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow Alternative Currency Tranche Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01(b)(ii). Alternative Currency Tranche Revolving Loans must consist of Eurocurrency Rate Loans. Notwithstanding the preceding sentence, any Alternative Currency Tranche Revolving Borrowings made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be subject to the receipt by the Administrative Agent of a Funding Indemnity Letter from the Borrower not less than three (3) Business Days prior to the date of such Alternative Currency Tranche Revolving Borrowing. Alternative Currency Tranche Revolving Loans may be repaid and reborrowed in accordance with the provisions hereof.

(c) Bid Loans Borrowings.

(i) General Terms. At any time commencing on the Closing Date and prior to the Business Day immediately preceding the Maturity Date with respect to the Revolving Facility, the Borrower may request the Revolving Lenders to make offers to make bid loans to the Borrower (each a "Bid Loan"); provided that (i) the sum of all Bid Loans outstanding shall not exceed the Bid Loan Sublimit, (ii) the Total Revolving Outstandings shall not exceed the Revolving Facility, (iii) the aggregate amount of Bid Loans requested for any date and with the same Interest Period (each a "Bid Loan Borrowing") shall be at least \$2,000,000 and in integral multiples of \$1,000,000 in excess thereof; and (iv) all Interest Periods applicable to Bid Loans shall be subject to and shall comply with the definition of "Interest Period". The Revolving Lenders may, but shall have no obligation to, make such offers, and the Borrower may, but shall have no obligation to, accept any such offers in the manner set forth in this Section 2.01(c). In no event shall Bid Loans be made to the Borrower unless, at the time such Loans are made, two of the three ratings from S&P, Moody's or Fitch are BBB-or better (Baa3 in the case of Moody's).

(ii) Bid Loan Procedures.

(A) When the Borrower wishes to request offers to make Bid Loans, it shall provide telephonic or electronic notice to the Administrative Agent (which shall promptly notify the Revolving Lenders) followed promptly by written notice substantially in the form of Exhibit E-1 (each, a "Bid Loan Quote Request") duly completed and executed by a duly authorized executive officer of the Borrower, so as to be received no later than 10:00 a.m. on the second Business Day before the proposed funding date (or such other time and date as the Borrower and the Administrative Agent, with the consent of the Required Lenders, may agree). Subject to the definition of "Interest Period", the Borrower may request offers for up to three different Bid Loan Borrowings in a single Bid Loan Quote Request, in which case such Bid Loan Quote Request shall be deemed a separate Bid Loan Quote Request for each such borrowing. Except as otherwise provided in this Section 2.01(c), no Bid Loan Quote Request shall be given within five Business Days (or such other number of days as the Borrower and the Administrative Agent, with the consent of the Required Lenders, may agree) of any other Bid Loan Quote Request.

(B) Each Revolving Lender may, but shall not be obligated to, in response to any Bid Loan Quote Request submit one or more written quotes substantially in the form of Exhibit E-2 (each a "Bid Loan Quote"), duly completed, each containing an offer to make a Bid Loan for the Interest Period requested and setting forth the Absolute Rate to be applicable to such Bid Loan; provided that (1) a Revolving Lender may make a single submission containing one or more Bid Loan Quotes in response to several Bid Loan Quote Requests given at the same time; and (2) the principal amount of the Bid Loan for which each such offer is being made shall be at least \$2,000,000 and multiples of \$1,000,000 in excess thereof; provided that the aggregate principal amount of all Bid Loans for which a Revolving Lender submits Bid Loan Quotes (x) may be greater or less than the Revolving Credit Commitment of such Revolving Lender but (y) may not exceed the principal amount of the Bid Loan Borrowing for which offers were requested. Each Bid Loan Quote by a Revolving Lender other than the Person serving as the Administrative Agent must be submitted to the Administrative Agent by fax not later than 8:00 a.m. on the funding date (or such other time and date as the Borrower and the Administrative Agent, with the consent of the Required Lenders, may agree); provided that any Bid Loan Quote may be submitted by the Person serving as the Administrative Agent, in its capacity as a Revolving Lender, only if the Person serving as the Administrative Agent notifies the Borrower of the terms of the offer contained therein not later than 7:45 a.m. on the funding date. Subject to Articles IV and VIII, any Bid Loan

Quote so made shall be irrevocable except with the consent of the Administrative Agent given on the instructions of the Borrower. Unless otherwise agreed by the Administrative Agent and the Borrower, no Bid Loan Quote shall contain qualifying, conditional or similar language or propose terms other than or in addition to those set forth in the applicable Bid Loan Quote Request and, in particular, no Bid Loan Quote may be conditioned upon acceptance by the Borrower of all (or some specified minimum) of the principal amount of the Bid Loan for which such Bid Loan Quote is being made.

(C) The Administrative Agent shall, as promptly as practicable after any Bid Loan Quote is submitted (but in any event not later than 8:30 a.m. on the funding date, or 7:45 a.m. on the Funding Date with respect to any Bid Loan Quote submitted by the Person serving as the Administrative Agent, in its capacity as a Revolving Lender), notify the Borrower of the terms (1) of any Bid Loan Quote submitted by a Revolving Lender that is in accordance with Section 2.01(c)(ii)(B) and (2) of any Bid Loan Quote that amends, modifies or is otherwise inconsistent with a previous Bid Loan Quote submitted by such Revolving Lender with respect to the same Bid Loan Quote Request. Any subsequent Bid Loan Quote shall be disregarded by the Administrative Agent unless the subsequent Bid Loan Quote is submitted solely to correct a manifest error in a former Bid Loan Quote. The Administrative Agent's notice to the Borrower shall specify (x) the aggregate principal amount of the Bid Loan Borrowing for which Bid Loan Quotes have been received and (y) (I) the respective principal amounts and (II) the rates of interest (which shall be expressed as an absolute number and not in terms of a specified margin over the quoting Revolving Lender's cost of funds) (the "Absolute Rate") so offered by each Revolving Lender (identifying the Revolving Lender that made each such Bid Loan Quote).

(D) Not later than 9:00 a.m. on the funding date (or such other time and date as the Borrower and the Administrative Agent, with the consent of each Revolving Lender that has submitted a Bid Loan Quote may agree), the Borrower shall notify the Administrative Agent of its acceptance or nonacceptance of the Bid Loan Quotes so notified to it pursuant to Section 2.01(c)(ii)(C) (and the failure of the Borrower to give such notice by such time shall constitute nonacceptance), and the Administrative Agent shall promptly notify each affected Revolving Lender. In the case of acceptance, such notice shall specify the aggregate principal amount of offers for each Interest Period that are accepted. The Borrower may accept any Bid Loan Quote in whole or in part; provided that (1) any Bid Loan Quote accepted in part shall be at least \$1,000,000 and multiples of \$1,000,000 in excess thereof; (2) the aggregate principal amount of each Bid Loan Borrowing may not exceed the applicable amount set forth in the related Bid Loan Quote Request; (3) the aggregate principal amount of each Bid Loan Borrowing shall be at least \$2,000,000 and multiples of \$1,000,000 in excess thereof and shall not cause the limits specified in Section 2.01(c) to be violated; (4) acceptance of offers may be made only in ascending order of Absolute Rates, beginning with the lowest rate so offered; and (5) the Borrower may not accept any offer where the Administrative Agent has advised the Borrower that such offer fails to comply with Section 2.01(c)(ii) or otherwise fails to comply with the requirements of this Agreement (including Section 2.01(a)). If offers are made by two or more Revolving Lenders with the same Absolute Rates for a greater aggregate principal amount than the amount in respect of which offers are permitted to be accepted for the related Interest Period, the principal amount of Bid Loans in respect of which such offers are accepted shall be allocated by the Borrower among such Revolving Lenders as nearly as possible (in amounts of at least \$1,000,000 and multiples of \$500,000 in excess thereof) in proportion to the aggregate principal amount of such offers. Determinations by the Borrower of the amounts of Bid Loans shall be conclusive in the absence of manifest error. Notwithstanding anything else contained herein, the Borrower shall have no obligation to accept any Bid Loan Quote by a Defaulting Lender.

(E) Subject to the terms set forth in this Agreement, any Revolving Lender whose offer to make any Bid Loan has been accepted shall, prior to 10:00 a.m. on the date specified for the making of such Loan, make the amount of such Loan available to the Administrative Agent in immediately available funds, for the account of the Borrower. The amount so received by the Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to the Borrower on or before 11:00 a.m. on such date by depositing the same, in immediately available funds, in an account of the Borrower designated by the Borrower and maintained with the Administrative Agent.

## **Section 2.02 Borrowings, Conversions and Continuations of Loans.**

(a) **Notice of Borrowing.** Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice (i) with respect to amounts denominated Dollars, must be received by the Administrative Agent not later than 11:00 a.m. (x) with respect to Eurocurrency Rate Loans, three (3) Business Days prior to and (y) with respect to Base Rate Loans, on the requested date of any Borrowing, conversion or continuation and (ii) with respect to Eurocurrency Rate Loans denominated in an Alternative Currency, must be received by the Administrative Agent not later than 11:00 a.m. (London time), four (4) Business Days prior to the requested date of any Borrowing, conversion or continuation. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer. Except as provided in Sections 2.03(c) and 2.04(d), each Borrowing, conversion or continuation of Revolving Loans shall be in a principal amount of (i) with respect to Revolving Loans that are or are to be Eurocurrency Rate Loans (A) denominated in Dollars, \$3,000,000 or a whole multiple of \$100,000 in excess thereof, (B) denominated in an Alternative Currency, an amount in such Alternative Currency having a Dollar Equivalent of approximately \$3,000,000 or such amount plus an amount in such Alternative Currency having a Dollar Equivalent of a whole multiple of approximately \$100,000 in excess thereof or (ii) with respect to Revolving Loans that are or are to be Base Rate Loans, \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing and each conversion or continuation of Term Loans shall be in an amount equal to the principal amount of the respective Term Commitments. Each Loan Notice (whether telephonic or written) shall specify (A) the applicable Facility and whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (B) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Loans to be borrowed, converted or continued, (D) the Type of Loans to be borrowed or continued, or to which existing Loans are to be converted, (E) if applicable, the duration of the Interest Period with respect thereto and (F) if such Loans are Alternative Currency Tranche Revolving Loans, the Alternative Currency of such Loans (which shall be an Approved Currency). If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation (other than with respect to Alternative Currency Tranche Revolving Loans), then the applicable Loans shall be made as, or converted to, Base Rate Loans. If the Borrower fails to specify a currency in a Loan Notice requesting a Revolving Borrowing, then the Revolving Loans so requested shall be made in Dollars. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Loan Notice, but fails to specify an Interest Period, the Loan Notice will be deemed to have specified an Interest Period of one (1) month. No Alternative Currency Tranche Revolving Loan may be converted into or continued as an Alternative Currency Tranche Revolving Loan denominated in a different currency, but instead must be prepaid in the original currency of such Alternative Currency Tranche Revolving Loan and reborrowed in the other currency. Notwithstanding anything to the contrary herein, (x) a Swingline Loan may not be converted to a Eurocurrency Rate Loan and (y) Bid Loans may not be continued or converted.

(b) **Advances.** Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans or continuation of Revolving Loans denominated in an Alternative Currency, in each case as described in Section 2.02(a). In the case of a Borrowing denominated in Dollars, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Dollars in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. In the case of a Borrowing denominated in an Alternative Currency, each Alternative Currency Tranche Revolving Lender shall make the amount of its Loan available to the Administrative Agent in the applicable Alternative Currency in Same Day Funds at the Administrative Agent's Office not later than the Applicable Time specified by the Administrative Agent on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is an initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case

in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Loan Notice with respect to a Revolving Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Eurocurrency Rate Loans. Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the outstanding Eurocurrency Rate Loans (other than Eurocurrency Rate Loans denominated in an Alternative Currency) be converted immediately to Base Rate Loans. The Required Alternative Currency Tranche Revolving Lenders may demand that any or all of the then outstanding Eurocurrency Rate Loans denominated in an Alternative Currency be prepaid, or redenominated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) Notice of Interest Rates. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in KeyBank National Association's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) Interest Periods. After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than one Interest Period in effect in respect of each Term Facility. After giving effect to all Revolving Borrowings and Bid Loan Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than ten Interest Periods in effect in respect of the Revolving Loans and Bid Loans.

### **Section 2.03 Letters of Credit**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue U.S. Tranche Letters of Credit (denominated in Dollars) or Alternative Currency Tranche Letters of Credit (in one or more Alternative Currencies) for the account of the Borrower (which may be in support of obligations of the Borrower or in support of obligations of a Subsidiary), and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b) and (2) to honor drawings under the Letters of Credit; and (B) the U.S. Tranche Revolving Lenders severally agree to participate in U.S. Tranche Letters of Credit and the Alternative Currency Tranche Revolving Lenders severally agree to participate in Alternative Currency Tranche Letters of Credit, in each case issued for the account of the Borrower (which may be in support of obligations of the Borrower or in support of obligations of a Subsidiary) and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility, (B) the Revolving Exposure of any Revolving Lender shall not exceed such Lender's Revolving Commitment, (C) the U.S. Tranche Revolving Exposure of any U.S. Tranche Revolving Lender shall not exceed such Lender's U.S. Tranche Revolving Commitment, (D) the Alternative Currency Tranche Revolving Exposure of any Alternative Currency Tranche Revolving Lender shall not exceed such Lender's Alternative Currency Tranche Revolving Commitment and (E) the Outstanding Amount of all L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued

pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit if:

(A) the expiry date of such Letter of Credit would occur more than twelve (12) months after the date of issuance, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such Letter of Credit would occur after the Letter of Credit Expiration Date, except that a Letter of Credit may expire up to one year beyond the Maturity Date of the Revolving Facility so long as the Borrower Cash Collateralizes (as provided in Section 2.14) the L/C Obligations with respect to such Letter of Credit no later than 30 days prior to the Letter of Credit Expiration Date).

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$50,000;

(D) such Letter of Credit is to be denominated in a currency other than an Approved Currency;

(E) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Revolving Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to such Defaulting Lender arising from either such Letter of Credit or such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion;

(F) the L/C Issuer does not as of the issuance date of such Letter of Credit issue letters of credit in the requested currency; or

(G) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.



(vi) The L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article IX included the L/C Issuer with respect to such acts or omissions and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer. Such Letter of Credit Application may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof and the Approved Currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (which may be in support of obligations of the Borrower or in support of obligations of a Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer’s usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender’s Applicable Revolving Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon any drawing under any Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of a U.S. Tranche Letter of Credit, the Borrower shall

reimburse the L/C Issuer through the Administrative Agent in Dollars. In the case of an Alternative Currency Tranche Letter of Credit, the Borrower shall reimburse the L/C Issuer through the Administrative Agent in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the L/C Issuer and the Administrative Agent promptly following receipt of the notice of drawing that the Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under an Alternative Currency Tranche Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent of the Dollar Equivalent of the amount of such drawing promptly following the determination thereof. Not later than (x) 11:00 a.m. on the date of any payment by the L/C Issuer under a U.S. Tranche Letter of Credit to be reimbursed in Dollars and (y) the Applicable Time on the date of any payment by the L/C Issuer under an Alternative Currency Tranche Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in Dollars or in the applicable Alternative Currency, as the case may be. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each applicable Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (in the Approved Currency in which such Letter of Credit was issued) (the "Unreimbursed Amount"), and the amount of such Revolving Lender's Applicable Revolving Percentage thereof. In such event, in the case of (i) a U.S. Tranche Letter of Credit, the Borrower shall be deemed to have requested a U.S. Tranche Revolving Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the U.S. Tranche Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice) and (ii) an Alternative Currency Tranche Letter of Credit, the Borrower shall be deemed to have requested an Alternative Currency Tranche Revolving Borrowing of Eurocurrency Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Eurocurrency Rate Loans denominated in an Alternative Currency, but subject to the amount of the unutilized portion of the Alternative Currency Tranche Revolving Commitment and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available for the account of the L/C Issuer, in the Approved Currency in which the applicable Letter of Credit was issued, at the Administrative Agent's Office in an amount equal to its Applicable Revolving Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a U.S. Tranche Revolving Loan or an Alternative Currency Tranche Revolving Loan, as applicable, to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in the applicable Approved Currency.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section.

(iv) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall

be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be, as of the date of such Revolving Borrowing or L/C Borrowing. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer and distributed to the Revolving Lenders pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing and each Revolving Credit Loan made pursuant to Section 2.03(c)(ii) shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person,

whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any of its Subsidiaries.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties or any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against such beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any Lender, any of their respective Related Parties or any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any

direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves, as determined by a final nonappealable judgment of a court of competent jurisdiction, were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit (other than as a result of an order of a court of competent jurisdiction). In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a 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. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary thereof via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance, subject to Section 2.15, with its Applicable Revolving Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (A) due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (B) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee (i) with respect to each Letter of Credit, at a rate equal to 1/8 of 1% per annum times the face amount of such Letter of Credit, and payable upon the issuance thereof and (ii) with respect to any amendment of a Letter of Credit increasing the amount of such Letter of Credit, at a rate equal to 1/8 of 1% per annum times the amount of such increase, and payable upon the effectiveness of such amendment. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower

hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

#### **Section 2.04 Swingline Loans.**

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section, may in its sole discretion make loans in Dollars (each such loan, a "Swingline Loan"). Each Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Borrower, in Dollars, from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the Swingline Sublimit, notwithstanding the fact that such Swingline Loans, when aggregated with the Applicable Revolving Percentage of the Outstanding Amount of Revolving Loans, Bid Loans and L/C Obligations of the Lender acting as Swingline Lender, may exceed the amount of such Lender's Revolving Commitment; provided, however, that (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility at such time and (B) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Lender's Revolving Commitment, (ii) the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section, prepay under Section 2.05, and reborrow under this Section. Each Swingline Loan shall bear interest as provided in Section 2.08(a)(iv). Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Revolving Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures. Each Swingline Borrowing shall be made upon the Borrower's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swingline Lender and the Administrative Agent not later than 11:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$1,000,000 and if in excess thereof, in integral multiples of \$1,000,000, or, if less, the unused portion of the Swing Line Sublimit and (ii) the requested date of such Swingline Borrowing (which shall be a Business Day). Each such telephonic notice must be confirmed promptly by delivery to the Swingline Lender and the Administrative Agent of a written Swingline Loan Notice, appropriately completed and signed by a Responsible Officer. Promptly after receipt by the Swingline Lender of any telephonic Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of its Swingline Loan available to the Borrower.

#### (c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Borrower with a copy of the applicable Loan Notice promptly after delivering such Loan Notice to the Administrative

Agent. Each Revolving Lender shall make an amount equal to its Applicable Revolving Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds for the account of the Swingline Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be, as of the date of such Revolving Borrowing or funded participation. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal of or interest on any Swingline Loan and paid to the Revolving Lenders is required to be returned by the Swingline Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section to refinance such Revolving Lender's Applicable Revolving Percentage of any Swingline Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

#### **Section 2.05 Prepayments**

(a) Optional.

(i) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (2) on the date of prepayment of Base Rate Loans; and (B) any prepayment of any Loan shall be in a principal amount of \$3,000,000 or a whole multiple of \$1,000,000 in excess thereof; or, in each case, if less, the entire principal amount thereof then outstanding and (3) Bid Loans may not be voluntarily prepaid at any time without the prior written consent of the Lender or Lenders making such Bid Loans. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the prepayment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrower may, upon notice to the Swingline Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the date of such prepayment and (B) any such prepayment shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess hereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the prepayment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory.

(i) Outstandings. If for any reason at any time (A) the Total Revolving Outstandings at such time exceed the Revolving Facility as then in effect, (B) the Outstanding Amount of L/C Obligations at such time exceeds the Letter of Credit Sublimit as then in effect, (C) the Outstanding Amount of Swingline Loans at such time exceeds the Swingline Sublimit as then in effect, (D) the Outstanding Amount of Bid Loans at such time exceeds the Bid Loan Sublimit as then in effect, (E) the Outstanding Amount of all U.S. Tranche Revolving Loans at such time exceeds the U.S. Tranche Revolving Commitments as then in effect, or (F) the Outstanding Amount of all Alternative Currency Tranche Revolving Loans at such time exceeds the Alternative Currency Tranche Revolving Commitments as then in effect, the Borrower shall immediately prepay Loans and L/C Borrowings (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that, subject to the provisions of the last sentence of Section 2.14(a), the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(i) unless, after the prepayment in



full of the Revolving Loans, the Swingline Loans and the Bid Loans, the Total Revolving Outstandings exceed the Revolving Facility at such time.

(ii) Application of Payments. Except as otherwise provided in Section 2.15, prepayments in respect of the Revolving Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swingline Loans, second, shall be applied to the outstanding Revolving Loans and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any Defaulting Lender that has provided Cash Collateral) to reimburse the L/C Issuer or the Revolving Lenders, as applicable.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and then to Eurocurrency Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

#### **Section 2.06 Termination or Reduction of Commitments**

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Facility, or from time to time permanently reduce the Revolving Facility; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, (A) the Total Revolving Outstandings would exceed the Revolving Facility, (B) the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, (C) the Outstanding Amount of Swingline Loans would exceed the Swingline Sublimit, (D) the Outstanding Amount of Bid Loans would exceed the Bid Loan Sublimit, (E) the Outstanding Amount of all U.S. Tranche Revolving Loans at such time would exceed the U.S. Tranche Revolving Commitments as then in effect or (F) the Outstanding Amount of all Alternative Currency Tranche Revolving Loans at such time would exceed the Alternative Currency Tranche Revolving Commitments as then in effect.

(b) Mandatory.

(i) The aggregate U.S. Term Commitments shall be automatically and permanently reduced to zero on the date of the U.S. Term Borrowing and the aggregate Canadian Term Commitments shall be automatically and permanently reduced to zero on the date of the Canadian Term Borrowing.

(ii) If after giving effect to any reduction or termination of Revolving Commitments under this Section 2.06, the Letter of Credit Sublimit, the Swingline Sublimit, the U.S. Tranche Revolving Commitments or the Alternative Currency Tranche Revolving Commitments would exceed the Revolving Facility at such time, the Letter of Credit Sublimit, the Swingline Sublimit, the U.S. Tranche Revolving Commitments or the Alternative Currency Tranche Revolving Commitments, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Revolving Commitments, the Letter of Credit Sublimit, the Swingline Sublimit, the U.S. Tranche Revolving Commitments or the Alternative Currency Tranche Revolving Commitments under this Section 2.06. Upon any reduction of the Revolving Commitments, the Letter of Credit Sublimit, the Swingline Sublimit, the U.S. Tranche Revolving Commitments or the Alternative Currency Tranche Revolving Commitments, the Revolving Commitment, the Letter of Credit Sublimit, the Swingline Sublimit, the U.S. Tranche Revolving Commitment and the Alternative Currency Tranche Revolving Commitment of each Revolving Lender, as applicable, shall be reduced by such Lender's Applicable Revolving Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

**Section 2.07 Repayment of Loans.**

(a) Term Loans. The Borrower shall repay to (i) the U.S. Term Lenders the aggregate principal amount of all U.S. Term Loans outstanding on the Maturity Date for the U.S. Term Facility and (ii) the Canadian Term Lenders the aggregate principal amount of all Canadian Term Loans outstanding on the Maturity Date for the Canadian Term Facility.

(b) Revolving Loans. The Borrower shall repay to the Revolving Lenders on the Maturity Date for the Revolving Facility the aggregate principal amount of all Revolving Loans outstanding on such date.

(c) Bid Loans. All outstanding Bid Loans shall be paid in full on the maturity date thereof as provided in the applicable Bid Loan Quote Request but, in any event, not later than the Maturity Date for the Revolving Facility.

(d) Swingline Loans. The Borrower shall repay each Swingline Loan on the earlier to occur of (i) the date fifteen (15) Business Days after such Loan is made and (ii) the fifth Business Day prior to the Maturity Date for the Revolving Facility.

**Section 2.08 Interest and Default Rate.**

(a) Interest. Subject to the provisions of Section 2.08(b), (i) each Eurocurrency Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate for such Facility plus (in the case of a Eurocurrency Rate Loan of any Lender which is lent from a Lending Office in the United Kingdom or a Participating Member State) the Mandatory Cost; (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility; (iii) each Bid Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Absolute Rate quoted by the Lender or Lenders making such Bid Loan pursuant to Section 2.01(c) and (iv) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Facility.

(b) Default Rate.

(i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, outstanding Obligations (including Letter of Credit Fees) may accrue interest at a fluctuating rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payments. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due

and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Interest Act (Canada). For the purposes of the Interest Act (Canada) and exclusively with respect to the Canadian Term Facility, (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the “deemed year”) that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

#### **Section 2.09 Fees**

In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Facility Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a facility fee (the “Facility Fee”) equal to the Applicable Rate times the actual daily amount of the Revolving Facility (or, if the Revolving Facility has terminated, on the Outstanding Amount of all Revolving Loans, Bid Loans, Swingline Loans and L/C Obligations), regardless of usage, subject to adjustment as provided in Section 2.15. The Facility Fee shall accrue at all times during the Availability Period for the Revolving Facility (and thereafter so long as any Revolving Loans, Bid Loans, Swingline Loans or L/C Obligations remain outstanding), including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Facility (and, if applicable, thereafter on demand). The Facility Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Letter of Credit Fees. The Borrower shall pay Letter of Credit fees as set forth in Sections 2.03(h) and (i).

(c) Other Fees.

(i) The Borrower shall pay to the Administrative Agent for its own account such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders and/or their Affiliates such additional fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

#### **Section 2.10 Computation of Interest and Fees**

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Alternative Currency Tranche Revolving Loans as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which such Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which such Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

## **Section 2.11 Evidence of Debt.**

(a) Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note registered in the name of the Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. For the avoidance of doubt, the Loans may not be assigned or otherwise transferred except in accordance with Section 10.06.

(b) Maintenance of Records. In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **Section 2.12 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments of principal of and interest on any Loan shall be payable in the same currency as such Loan is denominated. All payments of fees pursuant to Section 2.09 shall be payable in Dollars. All payments in respect of Unreimbursed Amounts shall be payable in the currency provided in Section 2.03. All other payments herein shall be payable in the currency specified with respect to such payment or, if the currency is not specified, in Dollars. Except as otherwise expressly provided herein, (x) all payments by the Borrower in Dollars hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. (New York time) on the date specified herein and (y) all payments by the Borrower in any Alternative Currency hereunder shall be made to the Administrative Agent's Office for payments in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the date specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. (in the case of payments in Dollars) or the Applicable Time specified by the Administrative Agent (in the case of payments in an Alternative Currency) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to the definition of "Interest Period," and as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing,

the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) 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, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans or in the case of Alternative Currencies in accordance with such market practice, in each case, as applicable. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an 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 its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing as of the date of such 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 such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. 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 L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, 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 Appropriate Lenders or the L/C Issuer, as the case may be, receiving any such payment severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day Funds 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.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings and Bid Loans) shall be made from the Appropriate Lenders, each payment of fees under Sections 2.03(h) and (i) and Section 2.09(a) shall be made for account of the Appropriate Lenders, and each

termination or reduction of the amount of the Commitments shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (ii) each Borrowing (other than Swingline Borrowings and Bid Loans) shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Revolving Loans and Term Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrower (other than Swingline Borrowings and Bid Loans) shall be made for account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans (other than Swingline Borrowings and Bid Loans) by the Borrower shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

### **Section 2.13 Sharing of Payments by Lenders.**

(a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(1) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(2) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.14, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

(b) If a Lender shall effect payment of any principal of or interest or fee on Bid Loans made as part of the same Bid Loan Borrowing held by it under this Agreement through the exercise of any right of set-off, banker's lien, counterclaim or similar right, it shall promptly purchase from the other Lenders holding such Bid Loans participations in such Bid Loans held by the other Lenders holding such Bid Loans in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders holding such Bid Loans shall share the benefit of such payment pro rata in accordance with the unpaid amount of principal and interest or fee on Bid Loans of the same Bid Loan Borrowing held by each of them. To such end all such 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 in Bid Loans of the same

Bid Loan Borrowing held by 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 such Bid Loans in the amount of such participation.

(c) 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.

(d) The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

#### **Section 2.14 Cash Collateral.**

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrower shall be required to provide Cash Collateral pursuant to Section 2.05 or 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of clause (iii) above) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender). The Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). 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 or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, 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. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which such Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions

of the Loan Documents and (B) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

### **Section 2.15 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) 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 "Required Lenders" and Section 10.01.

(ii) 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 VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 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 the L/C Issuer or Swingline Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; 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 (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share and (2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations 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 Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(a)(v). 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 Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. Each Defaulting Lender shall be entitled to receive fees payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal amount of the Revolving Loans funded by it and (2) its Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its



Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any fee payable under Section 2.09(a) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) 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 L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the L/C Issuer and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's or Swingline Lender's Fronting Exposure to such Defaulting Lender and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Revolving Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (A) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time) and (B) such reallocation does not cause the Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (A) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (B) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender (provided that the Borrower's agreement shall not be required if an Event of Default has occurred and is continuing at the time of such agreement), 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 on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### **Section 2.16 Increase in Revolving Facility.**

(a) The Borrower may at its sole expense and effort and after consulting with the Administrative Agent, request: (i) one or more Lenders acceptable to the Administrative Agent to increase (in the sole and absolute discretion of each such Lender) the amount of their respective Revolving Commitments and/or (ii) one or more other lending institutions acceptable to the Administrative Agent (each, a "New Revolving Lender") to become "Revolving Lenders" and extend Revolving Commitments hereunder (each such existing Lender and each New Revolving Lender being referred to as a "Proposed Revolving Lender"). To request an increase pursuant to this Section 2.16 (the "Revolving Facility Increase"), the Borrower shall submit to the Administrative Agent a written increase request signed by the

Borrower and in form approved by the Administrative Agent (the “Revolving Increase Request”), which shall specify, as the case may be: (A) each such existing Lender and the amount of the proposed increase to its Revolving Commitment, or (B) the proposed Revolving Commitment for each New Revolving Lender. Promptly following receipt of the Revolving Increase Request, the Administrative Agent shall advise each Proposed Revolving Lender of the details thereof.

(b) If one or more Proposed Revolving Lenders shall have unconditionally agreed to such Revolving Increase Request in a writing delivered to the Borrower and the Administrative Agent at any time prior to the 30th day following the date of the delivery to such Proposed Revolving Lenders of the Revolving Increase Request (each such Proposed Revolving Lender being hereinafter referred to as an “Incremental Revolving Lender”), then: (x) each such Incremental Revolving Lender which shall then be an existing Lender shall have its Revolving Commitment increased by the amount set forth in the Revolving Increase Request and (y) each such Incremental Revolving Lender which shall then be a New Lender shall be and become a “Revolving Lender” hereunder having a Revolving Commitment equal to the amount set forth in such Revolving Increase Request, provided, however, that (1) immediately before and after giving effect thereto, no Default shall or would exist and the Borrower shall have delivered to the Administrative Agent a certificate signed by a Responsible Officer certifying that immediately before and after giving effect thereto, the representations and warranties of the Borrower contained in Article II, Article V and the other Loan Documents are true and correct (provided, for purposes of this Section 2.16(b), the representations and warranties contained in Section 5.09(a), other than the penultimate sentence thereof, shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and 6.01(b)), (2) each such Incremental Revolving Lender shall have executed and delivered to the Administrative Agent a supplement to this Agreement providing for its increased Revolving Commitment or its Revolving Commitment, as applicable, in form approved by the Administrative Agent, (3) immediately after giving effect thereto, the aggregate amount of the increase to the Revolving Facility established pursuant to this Section 2.16 and the Incremental U.S. Term Loan Commitments established pursuant to Section 2.17 shall not exceed \$1,000,000,000, (4) the increase of the Revolving Facility specified in the Revolving Increase Request shall be not less than \$25,000,000 or an integral multiple thereof, (5) the minimum Revolving Commitment extended by each Incremental Revolving Lender which is a New Revolving Lender shall be in an amount of not less than \$15,000,000 or an integral multiple of \$1,000,000 in excess thereof and (6) the minimum increase to the Revolving Commitment extended by each Incremental Revolving Lender which is an existing Lender shall be in an amount of not less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof. Any increase in the Revolving Facility shall not increase the Letter of Credit Commitment or Swing Line Commitment. Any Proposed Revolving Lender not responding to a Revolving Increase Request within 30 days following the date of the delivery to it of a Revolving Increase Request shall be deemed to have declined such Revolving Increase Request.

(c) Simultaneously with each Revolving Facility Increase under this Section 2.16, each Incremental Revolving Lender shall, to the extent necessary, purchase from each other existing Lender, and each other existing Lender shall sell to each Incremental Revolving Lender, in each case at par and without representation, warranty, or recourse (in accordance with and subject to the restrictions contained in Section 10.13), such outstanding principal amount of Revolving Loans of such other existing Lenders, together with all accrued and unpaid interest thereon, as will result, after giving effect to such transaction, in each Lender’s Applicable Revolving Percentage of outstanding Revolving Loans being equal to such Lender’s Applicable Revolving Percentage of the Revolving Facility, provided that each such assignor Lender shall have received (to the extent of the interests, rights and obligations assigned) payment then due and owing of the outstanding principal amount of its Revolving Loans, accrued interest thereon, accrued fees, commissions and all other amounts payable to it under the Loan Documents from the applicable assignee Lenders (to the extent of such outstanding principal and accrued interest, fees and commissions) or the Borrower (in the case of all other amounts).

(d) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

#### **Section 2.17 Incremental U.S. Term Loan Commitments.**

(a) The Borrower may at its sole expense and effort and after consulting with the Administrative Agent, at any time request: (i) one or more U.S. Term Lenders to establish (in the sole and absolute discretion of each

such U.S. Term Lender) additional U.S. Term Commitments and/or (ii) one or more other lending institutions acceptable to the Administrative Agent (each, a “New U.S. Term Lender”) to become “U.S. Term Lenders” and establish U.S. Term Commitments hereunder (each such existing U.S. Term Lender and each New U.S. Term Lender being referred to as a “Proposed U.S. Term Lender”). To request an extension of additional or new U.S. Term Commitments pursuant to this Section 2.17 (the “Incremental U.S. Term Commitment”), the Borrower shall submit to the Administrative Agent a written request signed by the Borrower and in form approved by the Administrative Agent (the “Incremental U.S. Term Loan Request”), which shall specify, as the case may be: (A) each such existing U.S. Term Lender and the amount of the proposed Incremental U.S. Term Commitment, or (B) the proposed U.S. Term Commitment for each New U.S. Term Lender. Promptly following receipt of the Incremental U.S. Term Loan Request, the Administrative Agent shall advise each Proposed U.S. Term Lender of the details thereof.

(b) If one or more Proposed U.S. Term Lenders shall have unconditionally agreed to such Incremental U.S. Term Loan Request in a writing delivered to the Borrower and the Administrative Agent at any time prior to the 30th day following the date of the delivery to such Proposed U.S. Term Lenders of the Incremental U.S. Term Loan Request (each such Proposed U.S. Term Lender being hereinafter referred to as an “Incremental U.S. Term Lender”), then: (x) each such Incremental U.S. Term Lender which shall then be an existing U.S. Term Lender shall have its U.S. Term Loan Commitment increased by the amount set forth in the Incremental U.S. Term Loan Request and (y) each such Incremental U.S. Term Lender which shall then be a New U.S. Term Lender shall be and become a “U.S. Term Lender” hereunder having a U.S. Term Loan Commitment equal to the amount set forth in such Incremental U.S. Term Loan Request, provided, however, that (1) immediately before and after giving effect thereto, no Default shall or would exist and the Borrower shall have delivered to the Administrative Agent a certificate signed by a Responsible Officer certifying that immediately before and after giving effect thereto, the representations and warranties of the Borrower contained in Article II, Article V and the other Loan Documents are true and correct (provided, for purposes of this Section 2.17(b), the representations and warranties contained in Section 5.09(a), other than the penultimate sentence thereof, shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and 6.01(b)), (2) each such Incremental U.S. Term Lender shall have executed and delivered to the Administrative Agent a supplement to this Agreement providing for its increased U.S. Term Commitment or its U.S. Term Commitment, as applicable, in form approved by the Administrative Agent, (3) immediately after giving effect thereto, the aggregate amount of the Incremental Revolving Commitments established pursuant to Section 2.16 and the Incremental U.S. Term Loan Commitments established pursuant to this Section 2.17 shall not exceed \$1,000,000,000, (4) the increase of the U.S. Term Facility specified in the Incremental U.S. Term Loan Request shall be not less than \$25,000,000 or an integral multiple thereof, (5) the minimum U.S. Term Commitment established by each Incremental U.S. Term Lender which is a New U.S. Term Lender shall be in an amount of not less than \$15,000,000 or an integral multiple of \$1,000,000 in excess thereof, (6) the minimum increase to the U.S. Term Commitment established by each Incremental U.S. Term Lender which is an existing U.S. Term Lender shall be in an amount of not less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof and (7) on the effective date of each Incremental U.S. Term Commitment, the Borrower shall borrow an amount equal to the full amount of such Incremental U.S. Term Commitment. If an Incremental U.S. Term Commitment is established in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date and the date of funding thereof and the Administrative Agent shall advise each Incremental U.S. Term Lender of the details thereof.

#### **Section 2.18 Incremental Canadian Term Loan Commitments.**

(a) The Borrower may at its sole expense and effort and after consulting with the Administrative Agent, at any time request: (i) one or more Canadian Term Lenders to establish (in the sole and absolute discretion of each such Canadian Term Lender) additional Canadian Term Commitments and/or (ii) one or more other lending institutions acceptable to the Administrative Agent (each, a “New Canadian Term Lender”) to become “Canadian Term Lenders” and establish Canadian Term Commitments hereunder (each such existing Canadian Term Lender and each New Canadian Term Lender being referred to as a “Proposed Canadian Term Lender”). To request an extension of additional or new Canadian Term Commitments pursuant to this Section 2.18 (the “Incremental Canadian Term Commitment”), the Borrower shall submit to the Administrative Agent a written request signed by the Borrower and in form approved by the Administrative Agent (the “Incremental Canadian Term Loan Request”), which shall specify, as the case may be: (A) each such existing Canadian Term Lender and the amount of the proposed Incremental Canadian Term Commitment, or (B) the proposed Canadian Term Commitment for each New Canadian Term Lender. Promptly

following receipt of the Incremental Canadian Term Loan Request, the Administrative Agent shall advise each Proposed Canadian Term Lender of the details thereof.

(b) If one or more Proposed Canadian Term Lenders shall have unconditionally agreed to such Incremental Canadian Term Loan Request in a writing delivered to the Borrower and the Administrative Agent at any time prior to the 30th day following the date of the delivery to such Proposed Canadian Term Lenders of the Incremental Canadian Term Loan Request (each such Proposed Canadian Term Lender being hereinafter referred to as an “Incremental Canadian Term Lender”), then: (x) each such Incremental Canadian Term Lender which shall then be an existing Canadian Term Lender shall have its Canadian Term Loan Commitment increased by the amount set forth in the Incremental Canadian Term Loan Request and (y) each such Incremental Canadian Term Lender which shall then be a New Canadian Term Lender shall be and become a “Canadian Term Lender” hereunder having a Canadian Term Loan Commitment equal to the amount set forth in such Incremental Canadian Term Loan Request, provided, however, that (1) immediately before and after giving effect thereto, no Default shall or would exist and the Borrower shall have delivered to the Administrative Agent a certificate signed by a Responsible Officer certifying that immediately before and after giving effect thereto, the representations and warranties of the Borrower contained in Article II, Article V and the other Loan Documents are true and correct (provided, for purposes of this Section 2.18(b), the representations and warranties contained in Section 5.09(a), other than the penultimate sentence thereof, shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and 6.01(b)), (2) each such Incremental Canadian Term Lender shall have executed and delivered to the Administrative Agent a supplement to this Agreement providing for its increased Canadian Term Commitment or its Canadian Term Commitment, as applicable, in form approved by the Administrative Agent, (3) immediately after giving effect thereto, the aggregate amount of the Incremental Canadian Term Loan Commitments established pursuant to this Section 2.18 shall not exceed CAD 250,000,000, (4) the increase of the Canadian Term Facility specified in the Incremental Canadian Term Loan Request shall be not less than CAD 25,000,000 or an integral multiple thereof, (5) the minimum Canadian Term Commitment established by each Incremental Canadian Term Lender which is a New Canadian Term Lender shall be in an amount of not less than CAD 5,000,000 or an integral multiple of CAD 1,000,000 in excess thereof, (6) the minimum increase to the Canadian Term Commitment established by each Incremental Canadian Term Lender which is an existing Canadian Term Lender shall be in an amount of not less than CAD 5,000,000 or an integral multiple of CAD 1,000,000 in excess thereof and (7) on the effective date of each Incremental Canadian Term Commitment, the Borrower shall borrow an amount equal to the full amount of such Incremental Canadian Term Commitment. If an Incremental Canadian Term Commitment is established in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date and the date of funding thereof and the Administrative Agent shall advise each Incremental Canadian Term Lender of the details thereof.

**Section 2.19 Extension of Maturity Date for Revolving Facility.**

Subject to the following provisions, the Borrower shall have the option to extend the Maturity Date for the Revolving Facility for two successive terms of six (6) months each. By written notice to the Administrative Agent delivered at least 30 days, but not more than 90 days, prior to the then current Maturity Date for the Revolving Facility, so long as no Default or Event of Default has occurred, the Borrower may request an extension of the then current Maturity Date for the Revolving Facility (which notice shall be accompanied by a Compliance Certificate). Promptly upon receipt of such written notice, the Administrative Agent shall deliver a copy thereof to each Revolving Lender and the then current Maturity Date for the Revolving Facility shall be deemed extended by six (6) months. Each time that the Maturity Date for the Revolving Facility is extended under this Section 2.19, the Borrower shall pay to the Administrative Agent for the ratable benefit of the Revolving Lenders on the Maturity Date for the Revolving Facility that is being extended, a non-refundable extension fee in an amount equal to 6.25 basis points multiplied by the Revolving Facility, as then in effect.

## ARTICLE III

### TAXES, YIELD PROTECTION AND ILLEGALITY

#### Section 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or the Borrower, then the Administrative Agent or the Borrower shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If the Borrower or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) the Borrower or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Borrower or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower 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.

(c) Tax Indemnifications.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. The Borrower shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii).

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (B) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or the Borrower 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 and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(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 Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D)) shall not be required if in such 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, in the event that the Borrower is a U.S. Person,

(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), executed originals of IRS Form W-9 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:

(1) 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, executed copies of IRS Form W-8BEN-E (or W-8BEN, 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-E (or W-8BEN, 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;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-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 H-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), executed copies (or originals, as required) 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 Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement. In addition, each Lender shall indemnify the Administrative Agent and the Borrower for any withholding Tax or other penalties imposed in connection with any “withholdable payment,” as defined in Section 1473 of the Code, made to a Foreign Lender that has failed to comply with the reporting requirements or otherwise qualify for an exemption under FATCA.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 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.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient 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 by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 giving rise to such refund had never been paid. This subsection shall not be construed to require the Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to, or to file for or otherwise pursue any refund on behalf of, the Borrower or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### **Section 3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurocurrency Rate, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, any Approved Currency in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on such Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

### **Section 3.03 Inability to Determine Rates.**

If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether denominated in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for



determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency) or in connection with an existing or proposed Base Rate Loan, or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended and (ii) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies under the appropriate Facility or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans under the appropriate Facility in the amount specified therein.

Notwithstanding the foregoing, if at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in this Section 3.03 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in this Section 3.03 have not arisen but the supervisor for the administrator of the Eurocurrency Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Eurocurrency Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurocurrency Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date a copy of such amendment is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. If such alternate rate of interest shall at any time be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

#### **Section 3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except (A) any reserve requirement contemplated by Section 3.04(f) and (B) the requirements of the Bank of England and the Financial Services Authority or the European Central Bank to the extent reflected in the Mandatory Cost, other than as set forth below) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(iii) result in the failure of the Mandatory Cost, as calculated hereunder, to represent the cost to any Lender of complying with the requirements of the Bank of England and/or the Financial Services Authority or the European Central Bank in relation to its making, funding or maintaining Eurocurrency Rate Loans; or

(iv) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurocurrency Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Mandatory Costs. If any Lender or the L/C Issuer incurs any Mandatory Costs attributable to the Obligations, then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such Mandatory Costs. Such amount shall be expressed as a percentage rate per annum and shall be payable on the full amount of the applicable Obligations.

(d) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(e) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

(f) Reserves on Eurocurrency Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided that the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

**Section 3.05 Compensation for Losses.**

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert into any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded. A certificate of a Lender setting forth in detail sufficient to enable the Borrower to verify the computation of the amount or amounts necessary to compensate such Lender as specified in this Section and delivered to the Borrower shall be conclusive absent manifest error.

**Section 3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower, such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 10.13.

**Section 3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

**ARTICLE IV**

**CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

**Section 4.01 Conditions of Initial Credit Extension.**

The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a Responsible Officer and a duly authorized officer of each Lender, (ii) for the account of each Lender requesting a Note, a Note payable to the order of each such requesting Lender, executed by a Responsible Officer and (iii) counterparts of any other Loan Document, executed by a Responsible Officer and a duly authorized officer of each other Person party thereto.

(b) Officer's Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer (in substantially the form of Exhibit G attached hereto) dated the Closing Date, certifying as to the Organization Documents of the Borrower (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of the Borrower, the good standing, existence or its equivalent of the Borrower and of the incumbency of the Responsible Officers.

(c) Legal Opinion of Counsel. The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Lenders and dated the Closing Date) from Gibson, Dunn & Crutcher, LLP, counsel to the Borrower, covering such matters relating to the Borrower and this Agreement as the Required Lenders shall reasonably request. The Borrower hereby requests such counsel to deliver such opinion.

(d) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the Financial Statements referred to in Section 5.09, each in form and substance satisfactory to each of them.

(e) Responsible Officer Closing Certificate. A certificate signed by a Responsible Officer certifying (i) that the conditions specified in Section 4.02 have been satisfied, (ii) the current Ratings and (iii) that, as of the date of the last financial statements delivered pursuant to the Existing Credit Agreement, the Borrower was in compliance with the financial covenants contained in Section 6.09.

(f) Existing Credit Agreement. The Existing Credit Agreement shall have been terminated (except as to any provisions thereof that survive such termination) and all amounts owing thereunder, if any, shall have been paid in full.

(g) KYC. The Borrower shall have delivered to the Administrative Agent and each Lender at least 3 Business Days prior to the Closing Date such reasonable documentation (including, if applicable, a certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230) and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Act, to the extent reasonably requested by the Administrative Agent or any Lender requested at least 10 Business Days prior to the Effective Date.

(h) Legal Matters. All legal matters incident to the initial Loans and if issued, the initial Letter of Credit, shall be satisfactory to counsel to the Administrative Agent.

(i) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to the Loans to be made on the Closing Date.

(j) Consents. The Administrative Agent shall have received evidence that all boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(k) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses, if any, owing pursuant to one or more written agreements including without limitation, this Agreement.

#### **Section 4.02 Conditions to all Credit Extensions.**

The obligation of each Lender and the L/C Issuer to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension (other than the representations in Section 5.09(c), which shall be made only as of the Closing Date), except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.09(a) and 5.09(b), shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and 6.01(b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent, the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

#### **Section 4.03 Determinations under Sections 4.01 and 4.02.**

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining whether the conditions precedent specified in Sections 4.01 and 4.02 have been satisfied, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required to be consented to, approved by, or acceptable to or satisfactory to a Lender, unless the Administrative Agent shall have received notice from such Lender prior to the Closing Date or the proposed date of such Credit Extension, as applicable, specifying its objection thereto.

### **ARTICLE V**

## **REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

### **Section 5.01 Organization.**

(a) Each of the Borrower and the Subsidiaries is duly organized and validly existing under the laws of its state of organization and has the power to own its assets and to transact the business in which it is presently engaged.

(b) Each of the Borrower and the Subsidiaries is in good standing in its state of organization and in each state in which the character of the properties owned or the business transacted requires qualification, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

### **Section 5.02 Power, Authority, Consents.**

The Borrower has the power to execute, deliver and perform the Loan Documents to be executed by it. The Borrower has the power to request extensions of credit hereunder and has taken all necessary action, corporate or otherwise, to authorize the extensions of credit hereunder on the terms and conditions of this Agreement. The Borrower has taken all necessary action, corporate or otherwise, to authorize the execution, delivery and performance of the Loan Documents to be executed by it. No consent or approval of any Person (including, without limitation, any stockholder of the Borrower), no consent or approval of any landlord or mortgagee, no waiver of any Lien or right of distraint or other similar right and no consent, license, certificate of need, approval, authorization or declaration of any governmental authority, bureau or agency, is or will be required in connection with the execution, delivery or performance by the Borrower of, the extensions of credit under, or the validity or enforceability of, the Loan Documents, except as set forth on Schedule 5.02 hereto, each of which either has been duly and validly obtained on or prior to the date hereof and is now in full force and effect, or is designated on Schedule 5.02 as waived by the Required Lenders.

### **Section 5.03 No Violation of Law or Agreements.**

The execution and delivery by the Borrower of each Loan Document to which it is a party, the performance by it thereunder and the extensions of credit hereunder, will not violate any provision of law and will not conflict with or result in a breach of any order, writ, injunction, ordinance, resolution, decree, or other similar document or instrument of any court or governmental authority, bureau or agency, domestic or foreign, or any certificate of incorporation or by-laws or other organizational document of the Borrower, or create (with or without the giving of notice or lapse of time, or both) a default under or breach of any agreement, bond, note or indenture to which the Borrower is a party, or by which the Borrower is bound or any of its properties or assets is affected, except for such defaults and breaches which in the aggregate could not have a Material Adverse Effect, or result in the imposition of any Lien of any nature whatsoever upon any of the properties or assets owned by or used in connection with the business of the Borrower.

### **Section 5.04 Due Execution, Validity, Enforceability.**

This Agreement and each other Loan Document to which the Borrower is a party has been duly executed and delivered by the Borrower and each constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights generally and except that the remedy of specific performance and other equitable remedies are subject to judicial discretion.

### **Section 5.05 Title to Properties.**

Each of the Borrower and the Subsidiaries has good and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary course of its business, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect.

**Section 5.06 Judgments, Actions, Proceedings.**

Except as set forth on Schedule 5.06 hereto, there are no actions, suits, proceedings (including, without limitation, any Environmental Proceeding), claims, investigations or disputes pending or, to the knowledge of the Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against or affecting the Borrower or any Subsidiary or against any of their properties or revenues that (a) affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) as to which there is a reasonable possibility of an adverse determination, and, if so adversely determined, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**Section 5.07 No Defaults, Compliance with Laws.**

Except as set forth on Schedule 5.07 hereto, none of the Borrower or any of the Subsidiaries is in default under any agreement, ordinance, resolution, decree, bond, note, indenture, order or judgment to which it is a party or by which it is bound, or any other agreement or other instrument by which any of the properties or assets owned by it or used in the conduct of its business is affected, which default could have a Material Adverse Effect. Each of the Borrower and the Subsidiaries has complied and is in compliance in all respects with all applicable laws, ordinances and regulations, resolutions, ordinances, decrees, executive orders, judgments and other similar documents and instruments of all courts and governmental authorities, bureaus and agencies, domestic and foreign, including, without limitation, all applicable provisions of the Americans with Disabilities Act (42 U.S.C. §12101-12213) and the regulations issued thereunder and all applicable ERISA and Environmental Laws, non-compliance with which could have a Material Adverse Effect.

**Section 5.08 Burdensome Documents.**

Except as set forth on Schedule 5.08 hereto, neither the Borrower nor any of the Subsidiaries is a party to or bound by, nor are any of the properties or assets owned by any of them used in the conduct of its businesses affected by, any agreement, ordinance, resolution, decree, bond, note, indenture, order or judgment, including, without limitation, any of the foregoing relating to any Environmental Liability, that materially and adversely affects their respective businesses, assets or conditions, financial or otherwise.

**Section 5.09 Financial Statements; Projections.**

(a) Each of the Financial Statements is complete and presents fairly the Consolidated financial position of the Borrower and its Subsidiaries as at its date and the Consolidated results of operations of the Borrower and its Subsidiaries for the fiscal year of the Borrower ended on such date, and has been prepared in accordance with GAAP. Neither the Borrower nor any of the Subsidiaries has any material obligation, liability or commitment, direct or contingent (including, without limitation, any Environmental Liability), that is not reflected in the Financial Statements. The Borrower's fiscal year is the twelve-month period ending on December 31 in each year.

(b) The projections have been prepared on the basis of the assumptions accompanying them and reflect as of the date thereof the Borrower's good faith projections, after reasonable analysis, of the matters set forth therein, based on such assumptions (it being understood that actual results may differ materially from projections).

(c) There has been no material adverse change in the financial position or operations of the Borrower or any of the Subsidiaries since the date of the latest balance sheet included in the Financial Statements (the "Latest Balance Sheet")

**Section 5.10 Tax Returns.**

Each of the Borrower and the Subsidiaries has filed all federal, state and local tax returns required to be filed by it and has not failed to pay any taxes, or interest and penalties relating thereto, on or before the due dates thereof, except where such failure to file or failure to pay could not, individually or in the aggregate, have a Material Adverse Effect. Except to the extent that reserves therefor are reflected in the Financial Statements: (i) there are no material

federal, state or local tax liabilities of the Borrower or any of the Subsidiaries, due or to become due for any tax year ended on or prior to the date of the Latest Balance Sheet relating to such entity, whether incurred in respect of or measured by the income of such entity, that are not properly reflected in the Latest Balance Sheet relating to such entity and (ii) there are no material claims pending or, to the knowledge of the Borrower, proposed or threatened against the Borrower or any of the Subsidiaries for past federal, state or local taxes, except those, if any, as to which proper reserves are reflected in the Financial Statements.

**Section 5.11 Intangible Assets.**

Each of the Borrower and the Subsidiaries possesses all patents, trademarks, service marks, trade names, and copyrights, and rights with respect to the foregoing, necessary to conduct its business as now conducted and as proposed to be conducted, without any conflict with the patents, trademarks, service marks, trade names, and copyrights and rights with respect to the foregoing, of any other Person.

**Section 5.12 Regulation U; Investment Company Act; EEA Financial Institution.**

The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying “margin stock”, as such term is defined in §221.3 of Regulation U of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II, Part 221. The Borrower is not an “investment company” within the meaning of the Investment Company Act of 1940. The Borrower is not an EEA Financial Institution.

**Section 5.13 Name Changes, Mergers, Acquisitions.**

Except as publicly disclosed, the Borrower has not within the six-year period immediately preceding the date of this Agreement changed its name, been the surviving entity of a merger or consolidation, or, except in the ordinary course of business, acquired all or substantially all of the assets of any Person.

**Section 5.14 Full Disclosure.**

Neither the Financial Statements nor any certificate, opinion, or any other statement made or furnished in writing to the Administrative Agent or any Lender by or on behalf of the Borrower in connection with this Agreement or the transactions contemplated herein or pursuant hereto, contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading, as of the date such statement was made. There is no fact known to the Borrower that has, or would in the now foreseeable future have, a Material Adverse Effect, which fact has not been set forth herein, in the Financial Statements, in filings with the SEC or in any certificate, opinion or other written statement so made or furnished to the Administrative Agent or the Lenders. Notwithstanding the foregoing, with respect to the projections, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that actual results may differ materially from projections).

**Section 5.15 Licenses and Approvals.**

(a) Each of the Borrower and the Subsidiaries has all necessary licenses, permits and governmental authorizations, including, without limitation, licenses, permits and authorizations arising under or relating to Environmental Laws, to own and operate its properties and to carry on its business as now conducted, the absence of which would have a Material Adverse Effect.

(b) To the best of the Borrower’s knowledge, no violation exists of any applicable law pertaining to the ownership or operation of any Health Care Facility of the Borrower or any Operator that would have a reasonable likelihood of leading to revocation of any license necessary for the operation of such Health Care Facility.



**Section 5.16 ERISA.**

(a) Except as set forth on Schedule 5.16 hereto, no Employee Benefit Plan is maintained or has ever been maintained by the Borrower or any ERISA Affiliate, nor has the Borrower or any ERISA Affiliate ever contributed to a Multiemployer Plan.

(b) There are no agreements which will provide payments to any officer, employee, shareholder or highly compensated individual which will be “parachute payments” under 280G of the Code that are nondeductible to the Borrower and which will be subject to tax under Section 4999 of the Code for which the Borrower will have a material withholding liability.

**Section 5.17 REIT Status.**

The Borrower meets all requirements to qualify as a REIT.

**Section 5.18 OFAC.**

The Borrower has implemented and maintains in effect policies and procedures designed to promote compliance by the Borrower, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions, and the Borrower and its Subsidiaries are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. Neither the Borrower nor any of its Subsidiaries is located, organized or residing in any Designated Jurisdiction. None of the Borrower, any of its Subsidiaries, or, to the knowledge of Borrower, any of their respective directors, officers or employees, (a) is currently the subject of any Sanctions, or (b) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. To the knowledge of Borrower, no Credit Extension, and none of the proceeds from any Credit Extension, have been used, directly or indirectly: (1) to lend, contribute or provide or have otherwise been made available to fund any activity or business in any Designated Jurisdiction, (2) to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or (3) in any other manner that will result, in each case, in any violation by any Person (including any Lender, any Arranger, the Administrative Agent, the L/C Issuer or the Swingline Lender) of any Sanctions or Anti-Corruption Laws. The Borrower has not, directly or, to its knowledge, indirectly violated the Act.

**Section 5.19 Solvency.**

As of the Closing Date after giving effect to each Extension of Credit, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

**Section 5.20 Beneficial Ownership.**

As of the Closing Date, the information included in any certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230 is true and correct in all respects.

**ARTICLE VI**

**AFFIRMATIVE COVENANTS**

The Borrower hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, the Borrower shall, and shall cause each of its Subsidiaries to:

**Section 6.01 Financial Statements.**

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) **Annual Financial Statements.** Annually, as soon as available, but in any event within 90 days after the last day of each of its fiscal years, a Consolidated balance sheet of the Borrower and its Subsidiaries as at such last day of the fiscal year, and Consolidated statements of income and retained earnings and statements of cash flow, for such fiscal year, each prepared in accordance with generally accepted accounting principles consistently applied, in reasonable detail, and certified without qualification by a nationally recognized independent public accounting firm or by any other certified public accounting firm satisfactory to the Administrative Agent as fairly presenting the financial position and results of operations of the Borrower and its Subsidiaries as at and for the year ending on its date and as having been prepared in accordance with GAAP; provided, however, the Borrower may satisfy its obligations to deliver the financial statements described in this Section 6.01(a) by furnishing to the Lenders a copy of its annual report on Form 10-K in respect of such fiscal year together with the financial statements required to be attached thereto, provided the Borrower is required to file such annual report on Form 10-K with the SEC and such filing is actually made.

(b) **Quarterly Financial Statements.** As soon as available, but in any event within 45 days after the end of each of the Borrower's fiscal quarters, a Consolidated balance sheet of the Borrower and the Subsidiaries as of the last day of such quarter and Consolidated statements of income and retained earnings and statements of cash flow, for such quarter, and on a comparative basis figures for the corresponding date or period of the immediately preceding fiscal year, all in reasonable detail, each such statement to be certified in a certificate of the chief financial officer of the Borrower as accurately presenting the financial position and the results of operations of the Borrower and its Subsidiaries as at its date and for such quarter and as having been prepared in accordance with GAAP (subject to year-end audit adjustments); provided, however, the Borrower may satisfy its obligations to deliver the financial statements described in this Section 6.01(b) by furnishing to the Lenders a copy of its quarterly report on Form 10-Q in respect of such fiscal quarter together with the financial statements required to be attached thereto, provided the Borrower is required to file such quarterly report on Form 10-Q with the SEC and such filing is actually made.

(c) **Compliance Information.** Promptly after a written request therefor, such other financial data or information evidencing compliance with the requirements of this Agreement, the Notes and the other Loan Documents, as any Lender may reasonably request from time to time.

(d) **Compliance Certificate.** At the same time as it delivers the financial statements required under the provisions of Sections 6.01(a) and 6.01(b), a duly completed Compliance Certificate signed by a Responsible Officer.

(e) **Business Plan and Projections.** Not later than February 15<sup>th</sup> in each year, copies of the Borrower's business plan and financial projections for the upcoming three (3) fiscal years (together with a copy in writing of the assumptions on which such business plan and projections were based), each certified by the Borrower's chief financial officer and illustrating the projected income statements, balance sheets and statements of changes in cash flow on a Consolidated basis.

(f) **Portfolio Information.** As soon as available but in any event not less than 45 days after the end of each fiscal quarter of the Borrower:

(i) (A) a copy of the quarterly "WELL Supplemental Information" posted on the Borrower's website (which includes financial information relating to the Borrower's portfolio), or (B) if such "WELL Supplemental Information" is not available, a report, with respect to the quarterly period immediately prior to the fiscal quarter for which such report is submitted, containing financial information with respect to the Borrower's portfolio in a form substantially similar to that set forth in the most recently posted "WELL Supplemental Information".

(ii) Such other information regarding the financial condition of the Operators as the Administrative Agent may from time to time reasonably request, subject to each of their agreement that all such information shall be and remain confidential and none of such information may be distributed to any other Person without the Borrower's prior consent.

(g) **Accountants' Reports.** Promptly upon receipt thereof, copies of all material reports submitted to the Borrower by its independent accountants in connection with any annual or interim audit of the books of the Borrower or its Subsidiaries made by such accountants which material reports are a necessary part of such annual or interim audit.

(h) **Copies of Documents.** Promptly upon their becoming available, copies of any: (i) financial statements, non-routine reports and notices (other than routine correspondence), any of which are of a material nature, requests for waivers and proxy statements, in each case, delivered by the Borrower or any of its Subsidiaries to any of their respective existing lending institutions or creditors; (ii) correspondence or notices received by the Borrower from any federal, state or local governmental authority that regulates the operations of the Borrower or any of its Subsidiaries, relating to an actual or threatened change or development that would be materially adverse to the Borrower or any Subsidiary; (iii) registration statements and any amendments and supplements thereto, and any regular and periodic reports, if any, filed by the Borrower or any of its Subsidiaries with any securities exchange or with the SEC or any governmental authority succeeding to any or all of the functions of the said Commission; and (iv) at the request of the Administrative Agent, any appraisals received by the Borrower or any of its Subsidiaries with respect to the properties or assets of the Borrower or its Subsidiaries during the term of this Agreement.

(i) **Notices of Defaults.** Promptly, notice of the occurrence of any Default or Event of Default, or any event that would constitute or cause a Material Adverse Effect.

(j) **ERISA Notices and Requests.**

(i) Concurrently with such filing, a copy of each Form 5500 that is filed with respect to each Plan with the IRS; and

(ii) Promptly, upon their becoming available, copies of: (i) all correspondence with the PBGC, the Secretary of Labor or any representative of the Internal Revenue Service with respect to any Plan, relating to an actual or threatened change or development that would be materially adverse to the Borrower; (ii) all actuarial valuations received by the Borrower with respect to any Plan; and (iii) any notices of Plan termination filed by any Plan Administrator (as those terms are used in ERISA) with the PBGC and of any notices from the PBGC to the Borrower with respect to the intent of the PBGC to institute involuntary termination proceedings.

(k) **Additional Information.** Such other material additional information regarding the business, affairs and condition of the Borrower as the Administrative Agent may from time to time request, including, without limitation, as soon as available but in any event not less than 45 days after the end of each fiscal quarter of the Borrower, schedules, in form and substance satisfactory to the Administrative Agent, with respect to the Borrower and its Subsidiaries on a Consolidated basis, of recorded liabilities, unfunded commitments, contingent liabilities, any off balance sheet financings including synthetic lease transactions and sale-leaseback arrangements and other similar material items, in each case, covering such quarter.

Documents required to be delivered pursuant to Section 6.01(a), (b) or (h) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 1.01(a); or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by fax transmission or other electronic mail transmission) of the posting of any such documents and shall provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance

by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (A) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (B) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or Equity Interests that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (1) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (2) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (3) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (4) the Administrative Agent and any Affiliate thereof and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

#### **Section 6.02 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or its Subsidiaries, as the case may be.

#### **Section 6.03 Inspections and Audits.**

Permit the Administrative Agent to make or cause to be made (prior to an Event of Default, at the Lenders' expense and after the occurrence of and during the continuance of an Event of Default, at the Borrower's expense), inspections and audits of any books, records and papers of the Borrower or any Subsidiary and to make extracts therefrom and copies thereof, or to make appraisals, inspections and examinations of any properties and facilities of the Borrower or any Subsidiary, on reasonable notice, at all such reasonable times and as often as any Lender may reasonably require, in order to assure that the Borrower is and will be in compliance with its obligations under the Loan Documents or to evaluate the investment in the then Aggregate Exposures. Notwithstanding the foregoing, the Borrower agrees that the Administrative Agent shall be permitted to conduct or cause to be conducted an annual field audit at the Borrower's expense.

#### **Section 6.04 Maintenance and Repairs.**

Cause to be maintained in good repair, working order and condition, subject to normal wear and tear, all material properties and assets from time to time owned by the Borrower or any Subsidiary and used in or necessary for the operation of its businesses, and make or cause to be made all reasonable repairs, replacements, additions and improvements thereto.

**Section 6.05 Continuance of Business.**

Do, or cause to be done, all things reasonably necessary to preserve and keep in full force and effect the corporate existence of the Borrower or any Subsidiary and all permits, rights and privileges necessary for the proper conduct of its business, and continue to engage in the same line of business and comply in all material respects with all applicable laws, regulations and orders.

**Section 6.06 Copies of Corporate Documents.**

Subject to the prohibitions set forth in Section 7.06 and except as publicly disclosed, promptly deliver to the Administrative Agent copies of any amendments or modifications to the certificate of incorporation (or other applicable organizational documents) and by-laws of the Borrower, certified with respect to the certificate of incorporation (or other organizational documents) by the Secretary of State of its state of incorporation and, with respect to the by-laws, by the secretary or assistant secretary of such corporation.

**Section 6.07 Perform Obligations.**

Pay and discharge all of the obligations and liabilities of the Borrower or any Subsidiary, including, without limitation, all taxes, assessments and governmental charges upon its income and properties when due, unless and to the extent only that such obligations, liabilities, taxes, assessments and governmental charges shall be contested in good faith and by appropriate proceedings and that, to the extent required by GAAP, proper and adequate book reserves relating thereto are established by the Borrower or any Subsidiary, and then only to the extent that a bond is filed in cases where the filing of a bond is necessary to avoid the creation of a Lien against any of its properties.

**Section 6.08 Notice of Litigation.**

Promptly notify the Administrative Agent (which shall promptly notify each of the Lenders) in writing of any litigation or legal proceeding, other than in the ordinary course of business or, whether or not in the ordinary course of business, involving amounts in excess of \$10,000,000, affecting the Borrower or any Subsidiary whether or not fully covered by insurance, and regardless of the subject matter thereof (excluding, however, any actions relating to workers' compensation claims or negligence claims relating to use of motor vehicles, if fully covered by insurance, subject to deductibles).

**Section 6.09 Financial Covenants.**

Have or maintain, with respect to the Borrower, on a Consolidated basis, as at the last day of each fiscal quarter of the Borrower:

(a) a Leverage Ratio of not more than 0.60 to 1.00; provided, however, from and after the consummation of a Significant Acquisition, so long as no Default or Event of Default shall then exist or would exist after giving effect to such Significant Acquisition, the Leverage Ratio may be increased to not more than 0.65 to 1.00 for the full fiscal quarter in which such Significant Acquisition is consummated and the three consecutive full fiscal quarters immediately succeeding such fiscal quarter.

(b) Consolidated Tangible Net Worth of not less than \$15,560,091,000.

(c) a Fixed Charge Coverage Ratio of not less than 1.50 to 1.00.

(d) an Unsecured Leverage Ratio of not more than 0.60 to 1.00; provided, however, from and after the consummation of a Significant Acquisition, so long as no Default or Event of Default shall then exist or would exist after giving effect to such Significant Acquisition, such ratio may be increased to not more than 0.65 to 1.00 for the full fiscal quarter in which such Significant Acquisition is consummated and the three consecutive full fiscal quarters immediately succeeding such fiscal quarter.

- (e) a Secured Debt Ratio of not more than 0.30 to 1.00.

**Section 6.10 Insurance.**

(a) (i) Maintain or cause to be maintained with responsible insurance companies reasonably acceptable to the Administrative Agent such insurance on the properties of the Borrower or any Subsidiary, in such amounts and against such risks as is customarily maintained by similar businesses and cause each Operator to do so; (ii) file with the Administrative Agent upon its request a detailed list 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 (iii) within 10 days after notice in writing from the Administrative Agent, obtain such additional insurance as the Administrative Agent may reasonably request; and

- (b) Carry all insurance available through the PBGC or any private insurance companies covering its obligations to the PBGC.

**Section 6.11 Notice of Certain Events.**

(a) Promptly notify the Administrative Agent in writing of the occurrence of any Reportable Event, as defined in Section 4043 of ERISA, if a notice of such Reportable Event is required under ERISA to be delivered to the PBGC within 30 days after the occurrence thereof, together with a description of such Reportable Event and a statement of the action the Borrower or the applicable ERISA Affiliate intends to take with respect thereto, together with a copy of the notice thereof given to the PBGC.

(b) Promptly notify the Administrative Agent in writing if the Borrower or an ERISA Affiliate receives an assessment of withdrawal liability in connection with a complete or partial withdrawal with respect to any Multiemployer Plan, together with a statement of the action that the Borrower or such ERISA Affiliate intends to take with respect thereto.

(c) Promptly notify the Administrative Agent in writing if the Borrower or any Subsidiary receives: (i) any notice of any violation or administrative or judicial complaint or order having been filed or about to be filed against the Borrower alleging material violations of any Environmental Law, or (ii) any notice from any governmental body or any other Person alleging that the Borrower or any Subsidiary is or may be subject to any material Environmental Liability; and promptly upon receipt thereof, provide the Administrative Agent with a copy of such notice together with a statement of the action the Borrower or Subsidiary intends to take with respect thereto.

(d) Promptly notify the Administrative Agent in writing of any change in the information provided in any certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230 that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certificate.

**Section 6.12 Comply with ERISA.**

Comply with all applicable provisions of ERISA and the Code now or hereafter in effect, the failure to comply with which would cause a Material Adverse Effect.

**Section 6.13 Environmental Compliance.**

Operate or cause to be operated all property owned, operated or leased by the Borrower and the Subsidiaries in compliance with all Environmental Laws, such that no Environmental Liability arises under any Environmental Laws, which would result in a Lien on any property of any of them.

**Section 6.14 Maintenance of REIT Status;  
Listing on National Securities Exchange.**

Maintain its status as a REIT, operate its business at all times so as to satisfy all requirements necessary to qualify and maintain the Borrower's qualification as a real estate investment trust under Sections 856 through 860 of the Code and continue to list the common stock of the Borrower for trading on a U.S. national securities exchange. Furthermore, the Borrower will maintain adequate records so as to comply with all record-keeping requirements relating to its qualification as a real estate investment trust as required by the Code and applicable regulations of the Department of the Treasury promulgated thereunder and will properly prepare and timely file with the Internal Revenue Service all returns and reports required thereby.

**Section 6.15 Anti-Corruption Laws and Sanctions.**

Conduct its business in compliance with applicable Anti-Corruption Laws and Sanctions and maintain policies and procedures designed to promote and achieve compliance with such Anti-Corruption Laws and Sanctions.

**Section 6.16 Use of Proceeds.**

The proceeds of the Loans hereunder may be used by the Borrower as follows: (a) for the repayment in full of the outstanding amounts owed under the Existing Credit Agreement, (b) to acquire, directly or indirectly, Health Care Facilities and real estate, whether developed or undeveloped, (c) to extend or acquire loans secured by Mortgages, (d) to finance Construction Investments or for capital improvements to a Health Care Facility or real estate previously financed or owned by the Borrower or a Subsidiary, (e) for investments that are not prohibited under Section 7.08, (f) for the repayment of other outstanding Indebtedness of the Borrower (other than under the 2018 Term Loan Agreement) and (g) for working capital and general corporate purposes.

**ARTICLE VII**

**NEGATIVE COVENANTS**

The Borrower hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, it shall not, nor shall it permit any Subsidiary to, directly or indirectly:

**Section 7.01 Indebtedness.**

Create, incur, permit, assume or suffer to exist or have outstanding any Indebtedness of the Borrower or any of its Subsidiaries, except:

(a) Indebtedness under the Loan Documents;

(b) other Indebtedness; provided that (i) at the time of the incurrence of such Indebtedness and after giving effect thereto (including any Liens associated therewith) no Event of Default has occurred and is continuing or would result therefrom and (ii) with respect to obligations of the Borrower in respect of Swap Contracts, such Swap Contracts shall be entered into in order to manage existing or anticipated risk and not for speculative purposes; and

(c) Indebtedness incurred to finance the Acquisition.

**Section 7.02 Liens.**

Create, or assume or permit to exist, any Lien on any of the properties or assets of the Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, except:

(a) Liens pursuant to any Loan Document;

(b) Liens securing Indebtedness permitted under Section 7.01;

(c) Liens for Taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person;

(e) pledges or deposits or other Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, or to secure statutory obligations, other than any Lien imposed by ERISA;

(f) Liens and rights of setoff of banks and securities intermediaries in respect of deposit accounts and securities accounts maintained in the ordinary course of business;

(g) the interests of lessees and lessors under leases or subleases of, and the interest of managers or operators with respect to, real or personal property made in the ordinary course of business;

(h) Liens on property where the Borrower or its Subsidiaries is insured against such Liens by title insurance;

(i) (x) Liens on property acquired by the Borrower or any of its Subsidiaries after the date hereof and which are in place at the time such properties are so acquired and not created in contemplation of such acquisition and (y) Liens on property of the Target existing on the date of consummation of the Acquisition and not created in contemplation of the Acquisition;

(j) Liens securing assessments or charges payable to a property owner association or similar entity, which assessments are not yet due and payable or are being contested in good faith by appropriate proceedings diligently conducted, and for which adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person;

(k) Liens securing assessment bonds, so long as the Borrower or its Subsidiaries are not in default under the terms thereof;

(l) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(m) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(n) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(g) or securing appeal or other surety bonds related to such judgments;

(o) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement;

(p) assignments to a reverse Section 1031 exchange trust;

(q) licenses of intellectual property granted in the ordinary course of business;



(r) Liens on assets of the Borrower or any of its Subsidiaries securing obligations under Swap Contracts; and

(s) Purchase money Liens on property acquired or held by the Borrower or its Subsidiaries in the ordinary course of business, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided that (i) any such Lien attaches to such property concurrently with or within 20 days after the acquisition thereof, (ii) such Lien attaches solely to the property so acquired in such transaction, (iii) the principal amount of the debt secured thereby does not exceed 100% of the cost of such property, (iv) such Indebtedness is otherwise not prohibited by Section 7.01(b) and (v) the aggregate amount of all such Indebtedness on a Consolidated basis for the Borrower and its Subsidiaries shall not at any time exceed \$20,000,000.00.

**Section 7.03 Intentionally Omitted.**

**Section 7.04 Mergers, Acquisitions.**

Merge or consolidate with any Person, or acquire all or substantially all of the assets or any of the capital stock or other equity interests of any Person, unless (a) immediately after giving effect thereto, the Borrower is the surviving entity or the merger or consolidation is a Merger with No Actual Change in Control, (b) no Default or Event of Default exists or will occur after giving effect thereto and (c) the approval of the stockholders of the Borrower is not required under Section 312.03(c) of the New York Stock Exchange's Listed Company Manual or any successor provision of such manual.

**Section 7.05 Distributions.**

Declare or pay any dividends or make any distribution of any kind on the Borrower's outstanding stock, or set aside any sum for any such purpose, except that:

(a) the Borrower may declare and make dividend payments or other distributions payable solely in its common stock;

(b) the Borrower may declare and pay cash dividends if, and only if at the time of such payment and after giving effect thereto, no Event of Default shall exist hereunder; and

(c) if a Default or an Event of Default exists or will occur as a result of the dividend payment, the Borrower may declare and pay dividends to the minimum extent necessary (taking into account any dividends or distributions otherwise made including under Section 7.05(b)) to generate the minimum deduction for dividends paid during each year that would be required to satisfy Section 857(a)(1) of the Code.

**Section 7.06 Changes in Structure.**

Amend, supplement or modify the certificate of incorporation or by-laws (or other applicable organizational documents) of the Borrower or any Subsidiary in a manner which would be reasonably likely to cause a Material Adverse Effect.

**Section 7.07 Disposition of Assets.**

Make any Disposition of all or substantially all of the Property held by the Borrower and its Subsidiaries, taken as a whole, or enter into any agreement to do so, unless at the time of the Disposition and after giving effect thereto, no Default or Event of Default exists and if such Disposition is among the Borrower and its Subsidiaries.

**Section 7.08 Investments.**

Make or allow:

(a) Investments in Development Property to exceed, in the aggregate at any one time outstanding, 35% of Consolidated Total Asset Value; or

(b) Investments in Joint Ventures to exceed, in the aggregate at any one time outstanding, 25% of Consolidated Total Asset Value. For purposes of this Section 7.08(b), the Borrower's aggregate Investment in Joint Ventures will be valued at book value as shown on the consolidated balance sheet of the Borrower, as determined in accordance with GAAP.

**Section 7.09 Fiscal Year.**

Change its fiscal year.

**Section 7.10 ERISA Obligations.**

Permit the establishment of any Employee Benefit Plan or amend any Employee Benefit Plan which establishment or amendment could result in liability to the Borrower or increase the obligation for post-retirement welfare benefits of the Borrower which liability or increase, individually or together with all similar liabilities and increases, has a Material Adverse Effect.

**Section 7.11 Use of Proceeds.**

Use the proceeds of any Borrowing or Letter of Credit (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 (ii) directly or indirectly: (A) to lend, contribute or provide or otherwise make available to fund any activity or business in any Designated Jurisdiction, (B) to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who at the time of such funding is the subject of any Sanctions, or (C) in any other manner that will result, in each case, in any violation by any Person (including any Lender, any Arranger, the Administrative Agent, the L/C Issuer or the Swingline Lender) of any Sanctions.

**Section 7.12 Transactions with Affiliates.**

Except as expressly permitted by this Agreement, directly or indirectly enter into any transaction of any kind with any Affiliate of the Borrower (other than a Subsidiary), whether or not in the ordinary course of business, except (i) transactions on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate or (ii) payments of compensation, perquisites and fringe benefits arising out of any employment or consulting relationship in the ordinary course of business, (iii) payments permitted by Section 7.05 and (iv) transactions between or among the Borrower and any wholly-owned Subsidiary.

**Section 7.13 Hazardous Material.**

Cause or permit: (i) any Hazardous Material to be placed, held, located released or disposed of on, in, under or at any real property or facility owned, leased or operated by Borrower or any Subsidiary or any part thereof, except for such Hazardous Materials that are necessary for the Borrower's or any Subsidiary's or any Operator's operation of its business thereon and then only to the extent such Hazardous Materials are used, stored, treated and disposed of in compliance with all applicable Environmental Laws or (ii) any real property or facility owned, leased or operated by Borrower or any Subsidiary or any part thereof to be used as a collection, storage, treatment or disposal site for any Hazardous Material. The Borrower and each Subsidiary acknowledges and agrees that the Administrative Agent and the Lenders shall have no liability or responsibility for either:

(A) damage, loss or injury to human health, the environment or natural resources caused by the presence, disposal, release or threatened release of Hazardous Materials on any part of any real property or facility owned, leased or operated by Borrower or any Subsidiary; or

(B) abatement and/or clean-up required under any applicable Environmental Laws for a release, threatened release or disposal of any Hazardous Materials located at any real property or facility owned, leased or operated by Borrower or any Subsidiary or used by or in connection with the Borrower's or any Subsidiary's or any Operator's business.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

#### **Section 8.01 Events of Default.**

Any of the following shall constitute an "Event of Default":

(a) Payments. Failure by the Borrower to make, in the currency required hereunder, (i) when and as required to be paid herein, any payment or mandatory prepayment of principal of any Loan or any reimbursement obligation in respect of any Letter of Credit or (ii) within three (3) Business Days after the same becomes due, interest on any Loan or any reimbursement obligation in respect of any Letter of Credit or (iii) to make any payment of any fee or any other amount payable hereunder; or

(b) Certain Covenants. Failure by the Borrower to perform or observe any of the agreements of the Borrower contained in Section 6.01(i), Section 6.09 or Article VII; or

(c) Other Covenants. Failure by the Borrower to perform or observe any other term, condition or covenant of this Agreement or of any of the other Loan Documents to which it is a party, which shall remain unremedied for a period of 30 days (or 60 days if such failure is susceptible of being remedied within 60 days and the Borrower or its Subsidiaries, as applicable, are diligently proceeding to remedy such failure) after notice thereof shall have been given to the Borrower by the Administrative Agent; or

(d) Cross Defaults. (i) The Borrower or any of its Subsidiaries (after giving effect to any notice or grace periods applicable thereto), with respect to any Recourse Indebtedness having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any such Recourse Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Recourse Indebtedness contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which failure to observe or perform or other event is to cause, or to permit the holder or holders of such Recourse Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Recourse Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Recourse Indebtedness to be made, prior to its stated maturity, provided that clauses (A) and (B) shall not apply to secured Recourse Indebtedness that becomes due and payable as a result of the voluntary sale or transfer of the property or assets securing such Recourse Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Recourse Indebtedness; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any of its Subsidiaries is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any of its Subsidiaries is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that clause (ii)(B) shall not apply to any early payment requirement or unwinding or termination with respect to any Swap Contract not arising out of a default by the Borrower

or any of its Subsidiaries to the extent that such Swap Termination Value owed has been paid in full by the Borrower or any of its Subsidiaries when due; or

(e) Representations and Warranties. Any representation or warranty made in writing or deemed made to the Lenders or the Administrative Agent in any of the Loan Documents or in connection with the making of the Loans, or any certificate, statement or report made or delivered in compliance with this Agreement, shall have been false or misleading in any material respect when made, deemed made or delivered; or

(f) Bankruptcy.

(i) The Borrower shall make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent, petition or apply to any tribunal for the appointment of a receiver, custodian, or any trustee for it or a substantial part of its assets, or shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or the Borrower shall take any corporate action to authorize any of the foregoing actions; or there shall have been filed any such petition or application, or any such proceeding shall have been commenced against it, that remains undismissed for a period of 60 days or more; or any order for relief shall be entered in any such proceeding; or the Borrower by any act or omission shall indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or the appointment of a custodian, receiver or any trustee for it or any substantial part of its properties, or shall suffer any custodianship, receivership or trusteeship to continue undischarged for a period of 30 days or more; or

(ii) The Borrower shall generally not pay its debts as such debts become due; or

(iii) The Borrower shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them or made or suffered a transfer of any of its property that may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall have suffered or permitted, while insolvent, any creditor to obtain a Lien upon any of its property through legal proceedings or distraint that is not vacated within 30 days from the date thereof; or

(g) Judgments. There is entered against the Borrower or any of its Subsidiaries (i) a final judgment or order that has not been discharged for the payment of money in an aggregate amount exceeding \$100,000,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have not been discharged and that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(h) ERISA.

(i) The termination of any Plan or the institution by the PBGC of proceedings for the involuntary termination of any Plan, in either case, by reason of, or that results or could result in, a "material accumulated funding deficiency" under Section 412 of the Code; or

(ii) Failure by the Borrower or any Subsidiary to make required contributions, in accordance with the applicable provisions of ERISA, to each of the Plans hereafter established or assumed by it; or

(i) Material Adverse Effect. There shall occur a Material Adverse Effect; or

(j) Ownership. (i) Any Person, or a group of related Persons, shall acquire, except in the case of a Merger with No Actual Change in Control, (A) beneficial ownership in excess of 35% of the outstanding stock of the Borrower or other voting interest having ordinary voting powers to elect a majority of the directors, managers or

trustees of the Borrower (irrespective of whether at such time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency), or (B) all or substantially all of the Investments of the Borrower, or (ii) a majority of the Board of Directors of the Borrower, at any time, shall be composed of Persons other than (A) Persons who were members of the Board of Directors on the date of this Agreement, or (B) Persons who subsequently become members of the Board of Directors and who either (1) are appointed or recommended for election with the affirmative vote of a majority of the directors in office as of the date of this Agreement, or (2) are appointed or recommended for election with the affirmative vote of a majority of the Board of Directors of the Borrower then in office; or

(k) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or the Borrower or any other Person contests in any manner the validity or enforceability of any material provision of any Loan Document; or the Borrower or any other Person denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any material provision of any Loan Document.

Without limiting the provisions of Article IX, if a Default or an Event of Default shall have occurred, then such Default or Event of Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by the requisite Appropriate Lenders (in their sole discretion) or the Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion)) as determined in accordance with Section 10.01.

#### **Section 8.02 Remedies upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

#### **Section 8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as

set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Obligations then due hereunder, any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.14; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## **ARTICLE IX**

### **ADMINISTRATIVE AGENT**

#### **Section 9.01 Appointment and Authority.**

Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes KeyBank National Association to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) 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 such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**Section 9.02 Rights as a Lender.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender 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 or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or, except as required hereby, consent of the Lenders with respect thereto.

**Section 9.03 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and its Related Parties:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Any such action taken or failure to act pursuant to the foregoing shall be binding on all Lenders. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

Neither the Administrative Agent nor any of its Related Parties has any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by any Loan Document, (v) the value or the sufficiency of any collateral, or (vi) the satisfaction of any condition set forth in

Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**Section 9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01 and in Section 4.02, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Closing Date or proposed date of a Credit Extension, as applicable, specifying its objections.

**Section 9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**Section 9.06 Resignation of Administrative Agent.**

(a) Notice. The Administrative Agent may at any time resign as Administrative Agent upon thirty (30) days' notice to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (provided no such consultation shall be required if an Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment prior to the effective date of the resignation that the Administrative Agent gives (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective.

(b) Effect of Resignation. With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral



security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent as of the Resignation Effective Date), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Administrative Agent was acting as Administrative Agent and (ii) after such resignation for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(c) L/C Issuer and Swingline Lender. Any resignation by KeyBank National Association as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swingline Lender. If KeyBank National Association resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If KeyBank National Association resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as applicable, (ii) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to KeyBank National Association to effectively assume the obligations of KeyBank National Association with respect to such Letters of Credit.

#### **Section 9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender, and the L/C Issuer, acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### **Section 9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Persons having any of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, an Arranger, a Lender or the L/C Issuer hereunder. Notwithstanding anything to the contrary contained in this Agreement, Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as an Arranger, may, without notice to the Borrower or any other party, assign its

rights and obligations under this Agreement to any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation's or any of its subsidiaries' investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement.

**Section 9.09 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and L/C Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the rights of any Lender or the L/C Issuer or to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

**ARTICLE X**

**MISCELLANEOUS**

**Section 10.01 Amendments, Etc.**

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document or change the form or currency of payment, without the written consent of each Lender entitled to such amount or directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(d) change (i) Section 8.03 or Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) Section 2.12(f) in a manner that would alter the pro rata application required thereby without the written consent of each Lender directly affected thereby;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Alternative Currency Tranche Revolving Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder or thereunder, without the written consent of each Lender;

(f) release the Borrower or permit the Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the written consent of each Lender; or

(g) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of the Required Lenders under such Facility;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) any fee letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (A) 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, or all Lenders or each affected Lender under a Facility, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (B) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersede the unanimous consent provisions set forth herein and (C) the Required Lenders shall determine whether or not to allow the Borrower to use Cash Collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

Notwithstanding anything to the contrary herein the Administrative Agent may, with notice to the Lenders and the prior written consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

**Section 10.02 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or other electronic mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission or other electronic mail transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including electronic mail address and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swingline Lender, the L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an electronic mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail address or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its electronic mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the L/C Issuer or any

other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender may change its address, facsimile number or telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number or telephone number or electronic mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices, Letter of Credit Applications and Swingline Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

### **Section 10.03 No Waiver; Cumulative Remedies; Enforcement.**

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

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 Borrower 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 Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) 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, (b) the L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower 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 (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding

proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**Section 10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials at, on, under, in, to or from any real property or facility currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any of the Borrower's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline

Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Borrower shall not assert, and the Borrower hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swingline Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### **Section 10.05 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **Section 10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each of the Lenders and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment, or grant of a security interest, subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer 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 assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, 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, in the case of any assignment in respect of the Revolving Facility or either Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this clause (ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to an Affiliate of the assigning Lender or an Approved Fund of the assigning Lender; 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 five (5) Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Facilities;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any unfunded Term Commitment or any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund of a Lender; and

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the a Revolving Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$5,000; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.



(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, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) 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 the 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 pro rata share of Loans previously requested but not funded by such Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (B) 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 Applicable 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 subsection (c) of this Section, 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 3.01, 3.04, 3.05 and 10.04 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's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations 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. 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 the Borrower and the Administrative Agent, sell participations to any Person (other than a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline 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 Lenders

and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participations.

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 a Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law 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 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 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) Certain Pledges. Any Lender may at any time pledge or assign, or grant a security interest in, all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment, or grant of a security interest, to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender; provided that no such pledge or assignment, or grant of a security interest, shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee or grantee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time KeyBank National Association assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, KeyBank National Association may, (i) upon thirty (30) days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder, in each case, who agrees to act in such capacity; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of KeyBank National Association as L/C Issuer or Swingline Lender, as the case may be. If KeyBank National Association resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If KeyBank National Association resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder

with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of, and acceptance by, a successor L/C Issuer and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to KeyBank National Association to effectively assume the obligations of KeyBank National Association with respect to such Letters of Credit whereupon such substitute letters of credit or other arrangements shall be deemed to be, and the Letters of Credit issued by the retiring L/C Issuer shall cease to be, Letters of Credit hereunder.

**Section 10.07 Treatment of Certain Information; Confidentiality.**

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Related Parties and service providers (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), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties or service providers (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16, 2.17 or 2.18 or (B) any actual or prospective party (or its Related Parties and service providers) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (viii) with the consent of the Borrower or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary 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.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (i) the Information may include material non-public information concerning the Borrower or any of its Subsidiaries, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

(c) Press Releases. The Borrower and its Affiliates agree that they will not in the future issue any press releases using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the other Loan Documents without the prior written consent of the Administrative Agent or such Lender, not to be unreasonably withheld, unless (and only to the extent that) the Borrower or such Affiliate is required to do so under law and then, in any event the Borrower or such Affiliate will consult with such Person before issuing such press release; provided that the Borrower may issue any such press release without the prior written consent

of the Administrative Agent or such Lender if such press release contains substantially similar information as the information contained in a press release previously approved by the Administrative Agent or such Lender, including, but not limited to, the press release to be issued announcing the execution and delivery of this Agreement.

(d) Customary Advertising Material. The Administrative Agent and the Lenders agree that they will not use the name, product photographs, logo or trademark of the Borrower for any advertising material relating to the transactions contemplated hereby without the prior written consent of the Borrower, not to be unreasonably withheld.

**Section 10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 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 L/C Issuer and the Lenders. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 10.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**Section 10.10 Counterparts; Integration; Effectiveness.**

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting

the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or electronic mail transmission shall be promptly followed by such manually executed counterpart.

**Section 10.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**Section 10.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**Section 10.13 Replacement of Lenders.**

If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**Section 10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER AT LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS, 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, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**Section 10.15 Waiver of Jury Trial.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON

CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 10.16 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent and its Affiliates and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Borrower or any of its Affiliates, or any other Person and (ii) neither the Administrative Agent, any of its Affiliates nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and its Affiliates and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any of its Affiliates nor any Lender has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, any of its Affiliates or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**Section 10.17 Electronic Execution of Assignments and Certain Other Documents.**

The words "delivery", "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) 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, physical delivery thereof or the use of a paper-based recordkeeping system, 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 in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided further without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.

**Section 10.18 Automatic Alternative Currency Conversion.**

If an Automatic Alternative Currency Conversion Trigger shall occur, the Outstanding Amount of all Revolving Loans denominated in an Alternative Currency and the Outstanding Amount of all Letters of Credit denominated in an Alternative Currency shall, automatically and with no further action required, be converted into the Dollar Equivalent of such amounts, determined by the Administrative Agent or the L/C Issuer, as the case may be, on the basis of the Spot Rate determined on the Automatic Alternative Currency Conversion Date, and on and after such date all amounts

accruing and owed to the Lenders in respect of the Outstanding Amount of such Revolving Loans and such Letters of Credit shall accrue and be payable in Dollars at the rate otherwise applicable hereunder.

**Section 10.19 Judgment Currency.**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent, the L/C Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, the L/C Issuer or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent, the L/C Issuer or such Lender in such currency, the Administrative Agent, the L/C Issuer or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law). All of the Borrower's obligations under this Section 10.19 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

**Section 10.20 USA Patriot Act Notice.**

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower agrees to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

**Section 10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;



(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

#### **Section 10.22 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 and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any of its Subsidiaries, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments,

(ii) the 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 with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, 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 Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, 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 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 subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in subclause (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 and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any of its Subsidiaries, that:

(i) none of the Administrative Agent and the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this

Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent and the Arrangers or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

(c) The Administrative Agent and each of the Arrangers hereby informs each Lender that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees or administrative agent, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

### **Section 10.23 Termination of Existing Credit Agreement.**

On the Closing Date, the Existing Credit Agreement is hereby terminated except for such provisions, if any, that are specified in the Existing Credit Agreement as surviving the termination thereof, which provisions shall as so specified, survive and remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWER:**

**WELLTOWER INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KEYBANK NATIONAL ASSOCIATION, as Administrative Agent, as Swingline Lender, as the  
LC Issuer and as a Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEUTSCHE BANK AG NEW YORK  
BRANCH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**ROYAL BANK OF CANADA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[LENDER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATEMENT REGARDING COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS (UNAUDITED)**

(dollars in thousands)	Year Ended December 31,					Nine Months Ended September 30,	
	2013	2014	2015	2016	2017	2017	2018
<b>Earnings:</b>							
Pretax income from continuing operations before adjustment for income or loss from equity investees <sup>(1)</sup>	\$ 102,245	\$ 384,213	\$ 636,117	\$ 709,253	\$ 299,616	\$ 360,628	\$ 339,398
Fixed charges	460,918	485,762	498,253	536,607	487,752	359,613	381,027
Capitalized interest	(6,700)	(7,150)	(8,670)	(16,943)	(13,489)	(10,033)	(6,357)
Amortized premiums, discounts and capitalized expenses related to indebtedness	4,142	2,427	2,586	1,681	10,359	7,825	7,553
Noncontrolling interest in pre-tax income of subsidiaries that have not incurred fixed charges	6,770	(147)	(4,799)	(4,267)	(17,839)	(7,735)	(13,539)
<b>Earnings</b>	<b>\$ 567,375</b>	<b>\$ 865,105</b>	<b>\$ 1,123,487</b>	<b>\$ 1,226,331</b>	<b>\$ 766,399</b>	<b>\$ 710,298</b>	<b>\$ 708,082</b>
<b>Fixed charges:</b>							
Interest expense <sup>(1)</sup>	\$ 458,360	\$ 481,039	\$ 492,169	\$ 521,345	\$ 484,622	\$ 357,405	\$ 382,223
Capitalized interest	6,700	7,150	8,670	16,943	13,489	10,033	6,357
Amortized premiums, discounts and capitalized expenses related to indebtedness	(4,142)	(2,427)	(2,586)	(1,681)	(10,359)	(7,825)	(7,553)
<b>Fixed charges</b>	<b>\$ 460,918</b>	<b>\$ 485,762</b>	<b>\$ 498,253</b>	<b>\$ 536,607</b>	<b>\$ 487,752</b>	<b>\$ 359,613</b>	<b>\$ 381,027</b>
Consolidated ratio of earnings to fixed charges	1.23	1.78	2.25	2.29	1.57	1.98	1.86
<b>Earnings:</b>							
Pretax income from continuing operations before adjustment for income or loss from equity investees <sup>(1)</sup>	\$ 102,245	\$ 384,213	\$ 636,117	\$ 709,253	\$ 299,616	\$ 360,628	\$ 339,398
Fixed charges	460,918	485,762	498,253	536,607	487,752	359,613	381,027
Capitalized interest	(6,700)	(7,150)	(8,670)	(16,943)	(13,489)	(10,033)	(6,357)
Amortized premiums, discounts and capitalized expenses related to indebtedness	4,142	2,427	2,586	1,681	10,359	7,825	7,553
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<b>Earnings</b>	<b>\$ 567,375</b>	<b>\$ 865,105</b>	<b>\$ 1,123,487</b>	<b>\$ 1,226,331</b>	<b>\$ 766,399</b>	<b>\$ 710,298</b>	<b>\$ 708,082</b>
<b>Fixed charges:</b>							
Interest expense <sup>(1)</sup>	\$ 458,360	\$ 481,039	\$ 492,169	\$ 521,345	\$ 484,622	\$ 357,405	\$ 382,223
Capitalized interest	6,700	7,150	8,670	16,943	13,489	10,033	6,357
Amortized premiums, discounts and capitalized expenses related to indebtedness	(4,142)	(2,427)	(2,586)	(1,681)	(10,359)	(7,825)	(7,553)
Fixed charges	460,918	485,762	498,253	536,607	487,752	359,613	381,027
Preferred stock dividends	66,336	65,408	65,406	65,406	49,410	37,734	35,028
<b>Combined fixed charges and preferred stock dividends</b>	<b>\$ 527,254</b>	<b>\$ 551,170</b>	<b>\$ 563,659</b>	<b>\$ 602,013</b>	<b>\$ 537,162</b>	<b>\$ 397,347</b>	<b>\$ 416,055</b>
Consolidated ratio of earnings to combined fixed charges and preferred stock dividends	1.08	1.57	1.99	2.04	1.43	1.79	1.70

(1) We have reclassified the income and expenses attributable to the properties sold prior to or held for sale at January 1, 2014 to discontinued operations.

## CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, **Thomas J. DeRosa**, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Welltower Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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 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: October 30, 2018

/s/ THOMAS J. DEROSA

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Thomas J. DeRosa,  
Chief Executive Officer

## CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, **John A. Goodey**, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Welltower Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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 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: October 30, 2018

/s/ JOHN A. GOODEY

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John A. Goodey,  
Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350**

I, Thomas J. DeRosa, the Chief Executive Officer of Welltower Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350), that (i) the Quarterly Report on Form 10-Q for the Company for the quarter ended September 30, 2018 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ THOMAS J. DEROSA

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Thomas J. DeRosa,  
Chief Executive Officer  
Date: October 30, 2018

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350**

I, John A. Goodey, the Chief Financial Officer of Welltower Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350), that (i) the Quarterly Report on Form 10-Q for the Company for the quarter ended June 30, 2018 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ JOHN A. GOODEY

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John A. Goodey,  
Chief Financial Officer  
Date: October 30, 2018

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.