

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, 2011

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 1-11316

OMEGA HEALTHCARE  
INVESTORS, INC.

(Exact name of Registrant as specified in its charter)

Maryland

(State of incorporation)

38-3041398

(IRS Employer  
Identification No.)

200 International Circle, Suite 3500, Hunt Valley, MD 21030

(Address of principal executive offices)

(410) 427-1700

(Telephone number, including area code)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T 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, or non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one:)

Large accelerated filer   
company

Accelerated filer

Non-accelerated filer

Smaller reporting

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes

No

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of October 28, 2011.

Common Stock, \$.10 par value  
(Class)

103,166,383  
(Number of shares)

OMEGA HEALTHCARE INVESTORS, INC.  
FORM 10-Q  
September 30, 2011

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**PART I – FINANCIAL INFORMATION**

**Item 1 - Financial Statements**

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except per share amounts)

	September 30, 2011	December 31, 2010
	(Unaudited)	
<b>ASSETS</b>		
Real estate properties		
Land and buildings	\$ 2,341,012	\$ 2,366,856
Less accumulated depreciation	(445,272)	(380,995)
Real estate properties – net	1,895,740	1,985,861
Mortgage notes receivable – net	119,076	108,557
	2,014,816	2,094,418
Other investments – net	30,394	28,735
	2,045,210	2,123,153
Assets held for sale – net	811	670
Total investments	2,046,021	2,123,823
Cash and cash equivalents	10,730	6,921
Restricted cash	19,835	22,399
Accounts receivable – net	96,615	92,819
Other assets	58,189	57,172
Operating assets for owned and operated properties	275	873
Total assets	\$ 2,231,665	\$ 2,304,007
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Revolving line of credit	\$ 45,000	\$ —
Secured borrowings	198,526	201,296
Unsecured borrowings – net	975,384	975,669
Accrued expenses and other liabilities	114,438	121,859
Operating liabilities for owned and operated properties	472	1,117
Total liabilities	1,333,820	1,299,941
Stockholders' equity:		
Preferred stock issued and outstanding – 4,340 shares Series D with an aggregate liquidation preference of \$108,488 as of December 31, 2010	—	108,488
Common stock \$.10 par value authorized – 200,000 shares issued, and outstanding – 103,346 shares as of September 30, 2011 and 99,233 as of December 31, 2010	10,335	9,923
Common stock – additional paid-in-capital	1,468,598	1,376,131
Cumulative net earnings	614,137	580,824
Cumulative dividends paid	(1,195,225)	(1,071,300)
Total stockholders' equity	897,845	1,004,066
Total liabilities and stockholders' equity	\$ 2,231,665	\$ 2,304,007

See notes to consolidated financial statements.

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**Unaudited**  
(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
<b>Revenue</b>				
Rental income	\$ 68,622	\$ 66,299	\$ 203,446	\$ 165,028
Mortgage interest income	3,617	2,576	10,548	7,709
Other investment income – net	383	746	1,641	3,282
Miscellaneous	196	103	265	3,852
Nursing home revenues of owned and operated assets	-	-	-	7,336
Total operating revenues	<u>72,818</u>	<u>69,724</u>	<u>215,900</u>	<u>187,207</u>
<b>Expenses</b>				
Depreciation and amortization	24,871	27,742	74,848	58,880
General and administrative	4,393	4,376	14,549	11,758
Acquisition costs	-	78	45	1,490
Impairment on real estate properties	-	-	24,971	155
Provisions for uncollectible mortgages, notes and accounts receivable	-	-	4,139	-
Nursing home expenses of owned and operated assets	148	480	603	7,849
Total operating expenses	<u>29,412</u>	<u>32,676</u>	<u>119,155</u>	<u>80,132</u>
<b>Income before other income and expense</b>	<b>43,406</b>	<b>37,048</b>	<b>96,745</b>	<b>107,075</b>
<b>Other income (expense):</b>				
Interest income	12	11	35	88
Interest expense	(20,101)	(19,070)	(60,173)	(47,350)
Interest – amortization of deferred financing costs	(629)	(978)	(2,026)	(2,881)
Interest – refinancing costs	(3,055)	-	(3,071)	(3,461)
Total other expense	<u>(23,773)</u>	<u>(20,037)</u>	<u>(65,235)</u>	<u>(53,604)</u>
<b>Income before gain (loss) on assets sold</b>	<b>19,633</b>	<b>17,011</b>	<b>31,510</b>	<b>53,471</b>
Gain (loss) on assets sold – net	1,803	(4)	1,803	(4)
<b>Net income</b>	<b>21,436</b>	<b>17,007</b>	<b>33,313</b>	<b>53,467</b>
Preferred stock dividends	-	(2,271)	(1,691)	(6,814)
Preferred stock redemption	-	-	(3,456)	-
<b>Net income available to common stockholders</b>	<b>\$ 21,436</b>	<b>\$ 14,736</b>	<b>\$ 28,166</b>	<b>\$ 46,653</b>
<b>Income per common share available to common stockholders:</b>				
<b>Basic:</b>				
Net income	\$ 0.21	\$ 0.15	\$ 0.28	\$ 0.50
<b>Diluted:</b>				
Net income	\$ 0.21	\$ 0.15	\$ 0.28	\$ 0.50
Dividends declared and paid per common share	\$ 0.40	\$ 0.36	\$ 1.15	\$ 1.00
Weighted-average shares outstanding, basic	<u>103,180</u>	<u>95,698</u>	<u>101,722</u>	<u>92,523</u>
Weighted-average shares outstanding, diluted	<u>103,231</u>	<u>95,987</u>	<u>101,772</u>	<u>92,700</u>
<b>Components of other comprehensive income:</b>				
Net income	\$ 21,436	\$ 17,007	\$ 33,313	\$ 53,467
Total comprehensive income	<u>\$ 21,436</u>	<u>\$ 17,007</u>	<u>\$ 33,313</u>	<u>\$ 53,467</u>

See notes to consolidated financial statements.

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
**Unaudited**  
**(in thousands, except per share amounts)**

	Preferred Stock	Common Stock Par Value	Additional Paid-in Capital	Cumulative Net Earnings	Cumulative Dividends	Total
Balance at December 31, 2010 (99,233 common shares)	\$ 108,488	\$ 9,923	\$ 1,376,131	\$ 580,824	\$ (1,071,300)	\$ 1,004,066
Issuance of common stock:						
Grant of restricted stock (13 shares at \$22.00 per share)	—	1	(1)	—	—	—
Amortization of restricted stock	—	—	4,478	—	—	4,478
Vesting of restricted stock (grants 68 shares)	—	7	(1,261)	—	—	(1,254)
Dividend reinvestment plan (2,608 shares at \$21.10 per share)	—	261	54,656	—	—	54,917
Grant of stock as payment of directors fees (6 shares at an average of \$20.17 per share)	—	1	112	—	—	113
Equity Shelf Program (1,419 shares at \$22.61 per share, net of issuance costs)	—	142	31,095	—	—	31,237
Preferred stock redemption	(108,488)	—	3,388	—	(3,456)	(108,556)
Net income	—	—	—	33,313	—	33,313
Common dividends (\$1.15 per share).	—	—	—	—	(117,264)	(117,264)
Preferred dividends (Series D of \$0.74 per share)	—	—	—	—	(3,205)	(3,205)
Balance at September 30, 2011 (103,346 common shares)	\$ —	\$ 10,335	\$ 1,468,598	\$ 614,137	\$ (1,195,225)	\$ 897,845

See notes to consolidated financial statements.

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
Unaudited (in thousands)

	Nine Months Ended	
	September 30,	
	2011	2010
<b>Cash flows from operating activities</b>		
Net income	\$ 33,313	\$ 53,467
Adjustment to reconcile net income to cash provided by operating activities:		
Depreciation and amortization	74,848	58,880
Impairment on real estate properties	24,971	155
Provisions for uncollectible mortgages, notes, and accounts receivable	4,139	—
Amortization of deferred financing and refinancing costs	5,097	6,342
Restricted stock amortization expense	4,518	1,756
(Gain) loss on assets sold – net	(1,803)	4
Effective yield receivable on mortgage notes	(932)	—
Amortization of in-place leases	(4,640)	(1,852)
Gain on sale of securities	—	(789)
Other	(112)	(113)
Change in operating assets and liabilities – net of amounts assumed/acquired:		
Accounts receivable, net	355	(2,033)
Straight-line rent	(9,896)	(6,928)
Lease inducement	2,538	(261)
Other operating assets and liabilities	(3,331)	(1,105)
Operating assets and liabilities for owned and operated properties	(47)	2,921
Net cash provided by operating activities	<u>129,018</u>	<u>110,444</u>
<b>Cash flows from investing activities</b>		
Acquisition of real estate – net of liabilities assumed and escrows acquired	(98)	(343,180)
Placement of mortgage loans	(10,461)	(2,372)
Proceeds from sale of real estate investments	4,150	81
Capital improvements and funding of other investments	(12,012)	(25,658)
Proceeds from other investments	3,186	18,720
Investments in other investments	(4,845)	(16,436)
Collection of mortgage principal – net	54	60
Net cash used in investing activities	<u>(20,026)</u>	<u>(368,785)</u>
<b>Cash flows from financing activities</b>		
Proceeds from credit facility borrowings	289,000	314,000
Payments on credit facility borrowings	(244,000)	(265,100)
Receipts of other long-term borrowings	—	196,556
Payments of other long-term borrowings	(1,836)	(59,882)
Payments of financing related costs	(4,236)	(9,231)
Receipts from dividend reinvestment plan	54,917	43,069
Net proceeds from issuance of common stock	31,237	136,934
Payments from exercised options and restricted stock – net	(1,254)	89
Dividends paid	(120,455)	(99,072)
Redemption of preferred stock	(108,556)	—
Net cash (used in) provided by financing activities	<u>(105,183)</u>	<u>257,363</u>
Increase (decrease) in cash and cash equivalents	3,809	(978)
Cash and cash equivalents at beginning of period	6,921	2,170
Cash and cash equivalents at end of period	<u>\$ 10,730</u>	<u>\$ 1,192</u>
Interest paid during the period, net of amounts capitalized	<u>\$ 55,882</u>	<u>\$ 41,764</u>
<b>Non-cash investing activities</b>		
Assumed debt obligations	\$ —	\$ 202,015
Non-cash settlement of mortgage obligations	—	(12,395)
Non-cash acquisition of real estate properties	—	12,395
Stock consideration issued for acquisition	—	19,693
Net non-cash investing activities	<u>\$ —</u>	<u>\$ 221,708</u>

See notes to consolidated financial statements.

**OMEGA HEALTHCARE INVESTORS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
Unaudited  
September 30, 2011

**NOTE 1 – BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES**

**Business Overview**

Omega Healthcare Investors, Inc. (“Omega” or the “Company”) has one reportable segment consisting of investments in healthcare-related real estate properties. Our core business is to provide financing and capital to the long-term healthcare industry with a particular focus on skilled nursing facilities (“SNFs”) located in the United States. Our core portfolio consists of long-term leases and mortgage agreements. All of our leases are “triple-net” leases, which require the tenants to pay all property-related expenses. Our mortgage revenue derives from fixed-rate mortgage loans, which are secured by first mortgage liens on the underlying real estate and personal property of the mortgagor.

**Basis of Presentation**

The accompanying unaudited consolidated financial statements for Omega have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) regarding interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by U.S. generally accepted accounting principles (“GAAP”) for complete financial statements. In our opinion, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. We have evaluated all subsequent events through the date of the filing of this Form 10-Q. These unaudited consolidated financial statements should be read in conjunction with the financial statements and the footnotes thereto included in our latest Annual Report on Form 10-K.

Our consolidated financial statements include the accounts of (i) Omega, (ii) all direct and indirect wholly owned subsidiaries of Omega, and (iii) TC Healthcare (“TC Healthcare”), an entity and interim operator created to operate the 15 facilities we assumed as a result of the bankruptcy of one of our former tenants/operators. Thirteen of these facilities were transitioned from TC Healthcare to a new tenant/operator on September 1, 2008. The two remaining facilities were transitioned to the new tenant/operator on June 1, 2010 upon approval by state regulators of the operating license transfer, and as of such date, TC Healthcare no longer operates these facilities. All inter-company accounts and transactions have been eliminated in consolidation of the financial statements.

**Accounts Receivable**

Accounts receivable includes: contractual receivables, straight-line rent receivables and lease inducements, net of an estimated provision for losses related to uncollectible and disputed accounts. Contractual receivables relate to the amounts currently owed to us under the terms of the lease agreement. Straight-line receivables relate to the difference between the rental revenue recognized on a straight-line basis and the amounts currently due to us according to the contractual agreement. Lease inducements result from value provided by us to the lessee at the inception or renewal of the lease and will be amortized as a reduction of rental revenue over the non cancellable lease term. On a quarterly basis, we review the collection of our contractual payments and determine the appropriateness of our allowance for uncollectible contractual rents. In the case of a lease recognized on a straight-line basis or existence of lease inducements, we generally provide an allowance for straight-line accounts receivable or the lease inducements when certain conditions or indicators of adverse collectability are present.

A summary of our net receivables by type is as follows:

	<b>September 30, 2011</b>	<b>December 31, 2010</b>
	(in thousands)	
Contractual receivables	\$ 7,291	\$ 5,354
Straight-line receivables	71,927	62,423
Lease inducements	23,519	29,026
Allowance	(6,122)	(3,984)
Accounts receivable – net	<u>\$ 96,615</u>	<u>\$ 92,819</u>

During the second quarter, we entered into a master transition agreement (“2011 MTA”) with one of our current lessee/operators and a third party lessee/operator to transition the facilities from the current operator to the new operator. The 2011 MTA closing is subject to receipt of healthcare regulatory approvals from several states for the operating license transfer from the current operator to the new operator. Upon closing of the 2011 MTA, the current lease will be terminated and the new operator will enter into a new twelve-year master lease for the facilities. As a result of the 2011 MTA, during the second quarter of 2011, we evaluated the recoverability of the straight-line rent and lease inducements associated with the current lease and have recorded a \$4.1 million provision for uncollectible accounts associated with straight-line receivables and lease inducements.

We continuously evaluate the payment history and financial strength of our operators and have historically established allowance reserves for straight-line rent adjustments for operators that do not meet our requirements. We consider factors such as payment history and the operator’s financial condition as well as current and future anticipated operating trends when evaluating whether to establish allowance reserves.

## **NOTE 2 – PROPERTIES AND INVESTMENTS**

In the ordinary course of our business activities, we periodically evaluate investment opportunities and extend credit to customers. We also regularly engage in lease and/or loan extensions and modifications. Additionally, we actively monitor and manage our investment portfolio with the objectives of improving credit quality and increasing investment returns. In connection with our portfolio management, we may engage in various collection and foreclosure activities.

If we acquire real estate pursuant to a foreclosure or bankruptcy proceeding, the assets will initially be included on the consolidated balance sheet at the lower of cost or estimated fair value (see Note 3 – Owned and Operated Assets).

### **Leased Property**

Our leased real estate properties, represented by 369 SNFs, 10 assisted living facilities (“ALFs”) and five specialty facilities at September 30, 2011, are leased under provisions of single or master leases with initial terms typically ranging from 5 to 15 years, plus renewal options. Substantially all of our leases contain provisions for specified annual increases over the rents of the prior year and are generally computed in one of three methods depending on specific provisions of each lease as follows: (i) a specific annual percentage increase over the prior year’s rent, generally 2.5%; (ii) an increase based on the change in pre-determined formulas from year to year (i.e., such as increases in the Consumer Price Index (“CPI”)); or (iii) specific dollar increases over prior years. Under the terms of the leases, the lessee is responsible for all maintenance, repairs, taxes and insurance on the leased properties.



## Connecticut Properties

In January 2011, at our request, a complaint was filed by the State of Connecticut, Commissioner of Social Services (the "State") against the licensees/operators of four Connecticut SNFs, seeking the appointment of a receiver. The facilities were leased and operated by affiliates of FC/SCH Capital, LLC and were managed by Genesis Healthcare, and had approximately 472 licensed beds as of March 31, 2011. The Superior Court, Judicial District of Hartford, Connecticut (the "Court") appointed a receiver.

The receiver is responsible for (i) operating the facilities and funding all operational expenses incurred after the appointment of the receiver and (ii) for providing the Court with recommendations regarding the facilities. In March 2011, the receiver moved to close all four SNFs and we objected. At the hearing held on April 21, 2011, we stated our position that the receiver failed to comply with the statutory requirements prior to recommending the facilities' closure. In addition, alternative operators expressed interest in operating several of the facilities. On April 27, 2011, the Court granted the receiver's motion and ordered the facilities closed.

We timely filed our notice of appeal, taking the position that the Court's Order (the "Order") is final and appealable, and erroneous. Following our notice of appeal, we negotiated a stipulation with the State and the receiver which afforded it significant concessions. Those concessions included: (a) an agreed recognition of us as a secured lienholder with a priority claim, (b) an accelerated timeframe for the (i) allocation by the receiver of collected funds between pre- and post-receivership periods, and (ii) disbursement to us of pre-receivership funds collected, and (c) an agreement by the State that it would forego its right to seek recoupment of pre-receivership funds as reimbursement for post-receivership advances. In exchange for these concessions (among others), we withdrew our appeal.

As a result of these developments, during the three months ended March 31, 2011, we recorded an impairment charge of \$24.4 million to reduce the carrying values of the Connecticut SNFs to their estimated fair values. We estimated the fair value of these facilities based on the facilities' potential sales value assuming that the facilities would not be used as skilled nursing facilities. As of November 1, 2011, all of the residents of the four facilities have been relocated and the receiver has surrendered possession of all of the facilities to us. We are actively marketing the facilities for sale and/or lease (for purposes other than the provision of skilled nursing care).

### **143 Facility CapitalSource Acquisitions (December 2009 and June 2010)**

In November 2009, we entered into a securities purchase agreement (the "CapitalSource Purchase Agreement") with CapitalSource Inc. ("CapitalSource") and several of its affiliates, pursuant to which we agreed to purchase CapitalSource subsidiaries owning 80 long term care facilities, plus an option to purchase CapitalSource subsidiaries owning an additional 63 facilities (the "Option"), for approximately \$858 million. We accounted for these acquisitions as business combinations.

The transactions closed in three phases: (i) on December 22, 2009, we purchased CapitalSource entities owning 40 facilities for approximately \$271 million and an option to purchase CapitalSource entities owning 63 additional facilities for \$25 million; (ii) on June 9, 2010, we completed our purchase of the 63 CapitalSource facilities pursuant to the option for an aggregate purchase price of approximately \$293 million in cash, plus the \$25 million purchase option deposit, representing a total purchase price of \$318 million; and (iii) on June 29, 2010, we purchased CapitalSource entities owning 40 facilities for approximately \$271 million and paid approximately \$15 million for escrow accounts transferred to us at closing.

As of December 31, 2010, we completed our purchase price allocation for all three of these transactions. The allocation included the fair value adjustment for above-market debt assumed in the transactions as well as above and below-market in-place leases assumed. For the nine months ended September 30, 2011, we amortized approximately \$1.1 million of above-market adjustments related to the assumed debt and approximately \$4.6 million of net below market in-place leases assumed from these transactions.

The facilities acquired from CapitalSource on June 9, 2010 and June 29, 2010 are included in our results of operations from the date of acquisition. The following unaudited pro forma results of operations reflect each of the CapitalSource transactions as if they occurred on January 1, 2010. In the opinion of management, all significant necessary adjustments to reflect the effect of the acquisition have been made. The following pro forma information is not indicative of future operations.

	<b>Pro Forma</b>			
	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2011</b>	<b>2010</b>	<b>2011</b>	<b>2010</b>
	(in thousands, except per share amount, unaudited)			
Revenues	\$ 72,818	\$ 69,724	\$ 215,900	\$ 218,964
Net income available to common stockholders	\$ 21,436	\$ 14,736	\$ 28,166	\$ 53,552
Earnings per share – diluted:				
Net income available to common stockholders – as reported	\$ 0.21	\$ 0.15	\$ 0.28	\$ 0.50
Net income available to common stockholders – pro forma	\$ 0.21	\$ 0.15	\$ 0.28	\$ 0.57

#### **Assets Sold or Held for Sale**

##### *Assets Sold*

On September 30, 2011, we sold a SNF in North Carolina for approximately \$4.2 million resulting in a gain of approximately \$1.8 million.

##### *Held for Sale*

At September 30, 2011, we had two SNFs classified as held-for-sale with an aggregate net book value of approximately \$0.8 million.

#### **Mortgage Notes Receivable**

On July 18, 2011, we entered into a first mortgage loan with Nexion Health, Inc. (“Nexion”) in the amount of \$5.0 million. The mortgage loan matures on July 17, 2012 and carries an interest rate of 10% per year.

Our mortgage notes receivable relate to 15 long-term care facilities and one construction mortgage on a facility currently under construction. The mortgage notes are secured by first mortgage liens on the borrowers’ underlying real estate and personal property. The mortgage notes receivable relate to facilities located in five (5) states, which are operated by five (5) independent healthcare operating companies. We monitor compliance with mortgages and when necessary have initiated collection, foreclosure and other proceedings with respect to certain outstanding loans. As of September 30, 2011, none of our mortgages were in default or in foreclosure proceedings. Where appropriate, the mortgage properties are generally cross-collateralized with the master lease agreement.

Mortgage interest income is recognized as earned over the terms of the related mortgage notes, using the effective yield method. Allowances are provided against earned revenues from mortgage interest when collection of amounts due becomes questionable or when negotiations for restructurings of troubled operators lead to lower expectations regarding ultimate collection. When collection is uncertain, mortgage interest income on impaired mortgage loans is recognized as received after taking into account application of security deposits.

### NOTE 3 – OWNED AND OPERATED ASSETS

In November 2007, affiliates of Haven Healthcare (“Haven”), one of our former operators/lessees/mortgagors, operated under Chapter 11 bankruptcy protection. Commencing in February 2008, the assets of the Haven facilities were marketed for sale via an auction process to be conducted through proceedings established by the bankruptcy court. The auction process failed to produce a qualified buyer. As a result, and pursuant to our rights as ordered by the bankruptcy court, Haven moved the bankruptcy court to authorize us to credit bid certain of the indebtedness that it owed to us in exchange for taking ownership of and transitioning certain of its assets to a new entity in which we have a substantial ownership interest, all of which was approved by the bankruptcy court on July 4, 2008. Effective July 7, 2008, we took ownership and/or possession of 15 facilities previously operated by Haven. TC Healthcare, a new entity and an interim operator, in which we have a substantial economic interest, began operating these facilities on our behalf through an independent contractor.

On August 6, 2008, we entered into a Master Transaction Agreement (“2008 MTA”) with affiliates of FC/SCH whereby FC/SCH agreed (subject to certain closing conditions, including the receipt of licensure) to lease 14 SNFs and one ALF facility under a master lease. These facilities were formerly leased to Haven.

Effective September 1, 2008, we completed the operational transfer of 12 SNFs and one ALF to affiliates of FC/SCH, in accordance with the terms of the 2008 MTA. These 13 facilities are located in Connecticut (5), Rhode Island (4), New Hampshire (3) and Massachusetts (1). As part of the transaction, Genesis has entered into a long-term management agreement with FC/SCH to oversee the day-to-day operations of each of these facilities. The two remaining facilities in Vermont, which were operated by TC Healthcare until May 31, 2010, were transferred to FC/SCH upon licensure from the state of Vermont. As a result of the transition of the operations to FC/SCH, we no longer operate any owned and operated facilities, effective June 1, 2010. Our consolidated financial statements include the results of operations of Vermont facilities from July 7, 2008 to May 31, 2010.

Nursing home revenues and expenses, included in our consolidated financial statements that relate to such owned and operated assets are set forth in the tables below.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
	(in thousands)			
Nursing home revenues	\$ —	\$ —	\$ —	\$ 7,336
Nursing home expenses	148	480	603	7,849
Loss from nursing home operations	\$ (148)	\$ (480)	\$ (603)	\$ (513)

#### **NOTE 4 – CONCENTRATION OF RISK**

As of September 30, 2011, our portfolio of real estate investments consisted of 401 healthcare facilities, located in 35 states and operated by 49 third-party operators. Our gross investment in these facilities, net of impairments and before reserve for uncollectible loans, totaled approximately \$2.5 billion at September 30, 2011, with approximately 99% of our real estate investments related to long-term care facilities. This portfolio is made up of 369 SNFs, 10 ALFs, five specialty facilities, fixed rate mortgages on 15 SNFs, and two SNFs that are held-for-sale. At September 30, 2011, we also held miscellaneous investments of approximately \$30.4 million, consisting primarily of secured loans to third-party operators of our facilities. Included in the \$30.4 million miscellaneous investments is a working capital note with an operator that is secured by the operator's accounts receivables. We have classified the note as impaired but believe that the collateral supporting the working capital note is in excess of the balance and therefore, no reserve is recorded. As part of the 2011 MTA, the new third party lessee/operator will assume approximately \$15 million of the working capital note as well as the accounts receivables supporting the note related to the 12 facilities that are expected to be transitioned to the new operator. We are in the process of working with the Connecticut receiver to collect the Connecticut receivables that support the remaining portion of the note.

At September 30, 2011, we had two investments with operators and/or managers that exceeded 10% of our total investment: (i) CommuniCare Health Services ("CommuniCare") (13%) and (ii) Airamid Health Management, LLC through its subsidiaries and management relationships, ("Airamid") (11%). No other operator and/or manager represented more than 10% of our investments for the nine month period ended September 30, 2011. The two states in which we had our highest concentration of investments were Florida (24%) and Ohio (15%) at September 30, 2011.

For the three-month period ended September 30, 2011, our revenues from operations totaled \$72.8 million, of which approximately \$9.7 million was from CommuniCare (13%) and \$8.4 million was from Sun Healthcare ("Sun") (12%). No other operator generated more than 10% of our revenues from operations for the three-month period ended September 30, 2011.

For the nine-month period ended September 30, 2011, our revenues from operations totaled \$215.9 million, of which approximately \$28.9 million was from CommuniCare (13%) and \$25.1 million was from Sun (12%). No other operator generated more than 10% of our revenues from operations for the nine-month period ended September 30, 2011.

Sun is subject to the reporting requirements of the SEC and is required to file with the SEC annual reports containing audited financial information and quarterly reports containing unaudited interim financial information. Sun's filings with the SEC can be found at the SEC's website at [www.sec.gov](http://www.sec.gov). We are providing this data for information purposes only, and we undertake no responsibility for Sun's filings.

#### **NOTE 5 – DIVIDENDS**

##### **Common Dividends**

On October 13, 2011, the Board of Directors declared a common stock dividend of \$0.40 per share to be paid November 15, 2011 to common stockholders of record on October 31, 2011.

On July 14, 2011, the Board of Directors declared a common stock dividend of \$0.40 per share, increasing the quarterly common dividend by \$0.02, or 5.3%, per share over the prior quarter, that was paid August 15, 2011 to common stockholders of record on August 1, 2011.

On April 14, 2011, the Board of Directors declared a common stock dividend of \$0.38 per share, increasing the quarterly common dividend by \$0.01 per share over the prior quarter, that was paid May 16, 2011 to common stockholders of record on April 29, 2011.

On January 14, 2011, the Board of Directors declared a common stock dividend of \$0.37 per share that was paid February 15, 2011 to common stockholders of record on January 31, 2011.

### Series D Preferred Dividends

On January 14, 2011, the Board of Directors declared a regular quarterly dividend of approximately \$0.52344 per preferred share on the Series D Preferred Stock that was paid February 15, 2011 to preferred stockholders of record on January 31, 2011.

### Redemption of Series D Preferred Stock

On March 7, 2011, pursuant to authorization from our Board of Directors, we redeemed all of the outstanding shares of our 8.375% Series D Cumulative Redeemable Preferred Stock at a redemption price of \$25 per share plus \$0.21519 per share in accrued and unpaid dividends up to and including the redemption date, for an aggregate redemption price of \$25.21519 per share. Dividends on the shares of Series D Preferred Stock ceased to accrue on and after the redemption date, after which the Series D Preferred Stock ceased to be outstanding.

We borrowed approximately \$103 million under our previous 2010 Credit Facility to fund the redemption price. In connection with the redemption of the Series D Preferred Stock, we wrote-off \$3.4 million of preferred stock issuance costs that reduced first quarter 2011 net income attributable to common stockholders by approximately \$0.03 per common share.

### NOTE 6 – TAXES

So long as we qualify as a real estate investment trust (“REIT”) under the Internal Revenue Code (the “Code”), we generally will not be subject to federal income taxes on the REIT taxable income that we distribute to stockholders, subject to certain exceptions. On a quarterly and annual basis, we test our compliance within the REIT taxation rules to ensure that we were in compliance with the rules.

Subject to the limitation under the REIT asset test rules, we are permitted to own up to 100% of the stock of one or more taxable REIT subsidiaries (“TRSs”). Currently, we have one TRS that is taxable as a corporation and that pays federal, state and local income tax on its net income at the applicable corporate rates. As of September 30, 2011, the TRS had a net operating loss carry-forward of \$1.1 million. The loss carry-forward is fully reserved with a valuation allowance as we concluded it was more-likely-than-not that the deferred tax asset would not be realized.

### NOTE 7 – STOCK-BASED COMPENSATION

The following is a summary of our stock-based compensation expense for the three- and nine- month periods ended September 30, 2011 and 2010, respectively:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
	(in thousands)			
Stock-based compensation expense	\$ 1,520	\$ 450	\$ 4,518	\$ 1,756

### 2011 Stock Awards

Effective January 2011, we granted 428,503 shares of restricted stock and 496,977 performance restricted stock units (“PRSUs”) to six employees.

### **Restricted Stock Awards**

The restricted stock awards vest 100% on December 31, 2013, subject to continued employment on the vesting date and subject to certain exceptions for certain qualifying terminations of employment or a change in control of the Company. As of September 30, 2011, no shares of restricted stock have vested under these restricted stock awards.

### **Performance Restricted Stock Units**

We awarded three types of PRSUs to the six employees: (i) 124,244 annual total shareholder return ("TSR") PRSUs, (ii) 279,550 multi-year TSR PRSUs and (iii) 93,183 multi-year relative TSR PRSUs.

#### *Annual TSR PRSUs*

The number of shares earned under the annual PRSUs depends generally on the level of achievement of TSR for the year-ended December 31, 2011. The annual PRSUs vest on December 31, 2011, subject to continued employment on the vesting date and subject to certain exceptions for certain qualifying terminations of employment or a change in control of the Company.

#### *Multi-year TSR PRSUs*

The number of shares earned under the multi-year TSR PRSUs depends generally on the level of achievement of TSR for the three-years ended December 31, 2013. The multi-year TSR PRSUs vest 25% on the last day of each calendar quarter in 2014, subject to continued employment on the vesting date and subject to certain exceptions for certain qualifying terminations of employment or a change in control of the Company.

#### *Multi-year Relative TSR PRSUs*

The number of shares earned under the multi-year relative TSR PRSUs depends generally on the level of achievement of TSR relative to other real estate investment trust in the MSCI U.S. REIT Index for the three-years ended December 31, 2013. The multi-year relative TSR PRSUs vest 25% on the last day of each calendar quarter in 2014, subject to continued employment on the vesting date and subject to certain exceptions for certain qualifying terminations of employment or a change in control of the Company.

The PRSU awards have varying degrees of performance requirements to achieve vesting, and each PRSU award represents the right to a variable number of shares of common stock and related dividend equivalents based on dividends paid to stockholders during the applicable performance period.

As of September 30, 2011, none of these PRSUs are vested or earned.

The following table summarizes our total unrecognized compensation cost as of September 30, 2011 associated with outstanding restricted stock and PRSU awards to employees:

	Shares/ Units	Grant Date Average Fair Value Per Unit/ Share	Total Compensation Cost (in millions)	Weighted Average Period of Expense Recognition (in months)	Unrecognized Compensation Cost (in millions)
Restricted stock	428,503	\$ 22.44	\$ 9.6	36	\$ 7.2
2011 Annual PRSUs	124,244	\$ 11.04	1.4	12	0.3
Multi-year TSR PRSUs	279,550	\$ 11.06	3.1	44	2.5
Multi-year relative TSR PRSUs	93,183	\$ 12.26	1.1	44	0.9
<b>Total</b>	<b>925,480</b>	<b>\$ 16.45</b>	<b>\$ 15.2</b>		<b>\$ 10.9</b>

We used a Monte Carlo model to estimate the fair value and for PRSUs granted to the employees in January 2011.

#### Director Grants

As of September 30, 2011, we had 29,799 shares of restricted stock outstanding to directors. The directors' restricted shares are scheduled to vest over the next three years. As of September 30, 2011, the unrecognized compensation cost associated with the directors is approximately \$0.3 million.

### NOTE 8 – FINANCING ACTIVITIES AND BORROWING ARRANGEMENTS

#### Secured and Unsecured Borrowings

The following is a summary of our long-term borrowings:

	Maturity	Current Rate	September 30, 2011	December 31, 2010
(in thousands)				
Secured borrowings:				
HUD Berkadia mortgages <sup>(1)</sup>	2036 - 2040	6.61%	\$ 64,933	\$ 66,128
HUD Capital Funding mortgages	2040 - 2045	4.85%	133,593	135,168
<b>Total secured borrowings</b>			<b>198,526</b>	<b>201,296</b>
Unsecured borrowings:				
Revolving lines of credit	2015	2.72%	\$ 45,000	\$ —
2016 Notes	2016	7.0%	175,000	175,000
2020 Notes	2020	7.5%	200,000	200,000
2022 Notes	2022	6.75%	575,000	575,000
Subordinated debt	2021	9.0%	21,264	21,403
			971,264	971,403
Premium – net			4,120	4,266
<b>Total unsecured borrowings</b>			<b>1,020,384</b>	<b>975,669</b>
<b>Totals – net</b>			<b>\$ 1,218,910</b>	<b>\$ 1,176,965</b>

(1) Reflects the weighted average interest rate on the mortgages.

## **Bank Credit Agreements**

At September 30, 2011, we had \$45.0 million outstanding under our new \$475 million unsecured revolving credit facility (the "2011 Credit Facility"), and no letters of credit outstanding, leaving availability of \$430.0 million.

On August 16, 2011, we entered into our new 2011 Credit Facility and concurrently terminated our previous \$320 million senior secured revolving credit facility (the "2010 Credit Facility"). The 2011 Credit Facility matures in four years, on August 17, 2015. The 2011 Credit Facility includes an "accordion feature" that permits us to expand our borrowing capacity to \$600 million. For the three month period ended September 30, 2011, we recorded a non-cash charge of approximately \$3.1 million relating to the write-off of deferred financing costs associated with the termination of the 2010 Credit Facility.

The 2011 Credit Facility is priced at LIBOR plus an applicable percentage (ranging from 225 basis points to 300 basis points) based on our consolidated leverage. In the event the Company achieves at least two investment grade ratings from Standard & Poor's, Moody's and/or Fitch Ratings, the 2011 Credit Facility will be priced at LIBOR plus an applicable percentage ranging from 150 basis points to 210 basis points (including a facility fee). The Company's applicable percentage above LIBOR was 250 basis points at September 30, 2011 under the 2011 Credit Facility. The 2011 Credit Facility will be used for acquisitions and general corporate purposes.

The 2011 Credit Facility contains customary affirmative and negative covenants, including, without limitation, limitations on indebtedness; limitations on investments; limitations on liens; limitations on mergers and consolidations; limitations on sales of assets; limitations on transactions with affiliates; limitations on negative pledges; limitations on prepayment of debt; limitations on use of proceeds; limitations on changes in lines of business; limitations on repurchases of the Company's capital stock if a default or event of default occurs; and maintenance of REIT status. In addition, the 2011 Credit Facility contains financial covenants including, without limitation, those relating to maximum total leverage, maximum secured leverage, maximum unsecured leverage, minimum fixed charge coverage, minimum consolidated tangible net worth, minimum unsecured debt yield, minimum unsecured interest coverage and maximum distributions. As of September 30, 2011, we were in compliance with all affirmative and negative covenants, including financial covenants.

## **\$100 Million Stock Repurchase Program**

On August 30, 2011, Omega's Board of Directors authorized the repurchase of up to \$100 million of its outstanding common stock from time to time over the next 12 months.

We are authorized to repurchase shares of our common stock in open market and privately negotiated transactions at the times, and in the manner and amounts, as determined by Omega's management and in accordance with the pricing guidelines approved by our Board of Directors and applicable law. The timing and amount of stock repurchases will depend on a variety of factors, including market conditions and corporate and regulatory considerations. We have no obligation to repurchase any amount of our common stock, and such repurchases, if any, may be discontinued at any time. We expect to fund stock repurchases under the program with borrowings under the 2011 Credit Facility.

On September 30, 2011, the Company entered open market transactions to repurchase 183,310 shares of its common stock at an average price of \$15.96 per share. This repurchase of these common shares settled in the ordinary course on October 5, 2011, subsequent to the end of the third quarter of 2011.



### \$140 Million Equity Shelf Program

For the three months ended September 30, 2011, no shares of our common stock were issued through our \$140 million Equity Shelf Program (the "2010 ESP"). For the nine months ended September 30, 2011, 1.4 million shares of our common stock were issued through the 2010 ESP for net proceeds of approximately \$31.4 million, net of \$0.6 million of commissions.

### \$575 Million 6.75% Senior Notes Exchange Offer

On June 2, 2011, we commenced an offer to exchange \$575 million of our 6.75% Senior Notes due 2022 that have been registered under the Securities Act of 1933 for \$575 million of our outstanding 6.75% Senior Notes due 2022, which were issued in October and November 2010 in two separate private placements.

All \$575 million outstanding aggregate principal amount of the initial notes were validly tendered and not withdrawn prior to the expiration of the exchange offer, and were exchanged for exchange notes as of July 14, 2011, pursuant to the terms of the exchange offer. The exchange notes are identical in all material respects to the initial notes, except that the issuance of the exchange notes was registered under the Securities Act of 1933 and the provisions of the initial notes relating to transfer restrictions, registration rights and additional interest relating to registrations delays do not apply to the exchange notes.

### NOTE 9 – FINANCIAL INSTRUMENTS

At September 30, 2011 and December 31, 2010, the carrying amounts and fair values of our financial instruments were as follows:

	<u>2011</u>		<u>2010</u>	
	<u>Carrying Amount</u>	<u>Fair Value</u>	<u>Carrying Amount</u>	<u>Fair Value</u>
	(in thousands)			
<b>Assets:</b>				
Cash and cash equivalents	\$ 10,730	\$ 10,730	\$ 6,921	\$ 6,921
Restricted cash	19,835	19,835	22,399	22,399
Mortgage notes receivable – net	119,076	120,608	108,557	109,610
Other investments – net	30,394	29,361	28,735	25,317
<b>Totals</b>	<b>\$ 180,035</b>	<b>\$ 180,534</b>	<b>\$ 166,612</b>	<b>\$ 164,247</b>
<b>Liabilities:</b>				
Revolving lines of credit	\$ 45,000	\$ 45,000	\$ —	\$ —
7.00% Notes due 2016 – net	174,337	182,233	174,221	187,079
7.50% Notes due 2020 – net	197,116	198,939	196,857	212,837
6.75% Notes due 2022 – net	582,667	565,710	583,188	576,019
HUD debt	198,526	205,408	201,296	214,643
Subordinated debt	21,264	22,371	21,403	23,248
<b>Totals</b>	<b>\$ 1,218,910</b>	<b>\$ 1,219,661</b>	<b>\$ 1,176,965</b>	<b>\$ 1,213,826</b>

Fair value estimates are subjective in nature and are dependent on a number of important assumptions, including estimates of future cash flows, risks, discount rates and relevant comparable market information associated with each financial instrument (see Note 2 – Summary of Significant Accounting Policies in our 2010 Annual Report on Form 10-K). The use of different market assumptions and estimation methodologies may have a material effect on the reported estimated fair value amounts.

The following methods and assumptions were used in estimating fair value disclosures for financial instruments.

- Cash and cash equivalents and restricted cash: The carrying amount of cash and cash equivalents and restricted cash reported in the balance sheet approximates fair value because of the short maturity of these instruments (i.e., less than 90 days).
- Mortgage notes receivable: The fair values of the mortgage notes receivables are estimated using a discounted cash flow analysis, using interest rates being offered for similar loans to borrowers with similar credit ratings.
- Other investments: Other investments are primarily comprised of: (i) notes receivable and (ii) an investment in redeemable non-convertible preferred security of an unconsolidated business accounted for using the cost method of accounting. The fair values of notes receivable are estimated using a discounted cash flow analysis, using interest rates being offered for similar loans to borrowers with similar credit ratings. The fair value of the investment in the unconsolidated business is estimated using quoted market value and considers the terms of the underlying arrangement.
- Revolving lines of credit: The fair value of our borrowings under variable rate agreements are estimated using an expected present value technique based on expected cash flows discounted using the current market rates.
- Senior notes and other long-term borrowings: The fair value of our borrowings under fixed rate agreements are estimated based on open market trading activity provided by a third party.

#### **NOTE 10 – LITIGATION**

We are subject to various legal proceedings, claims and other actions arising out of the normal course of business. While any legal proceeding or claim has an element of uncertainty, management believes that the outcome of each lawsuit, claim or legal proceeding that is pending or threatened, or all of them combined, will not have a material adverse effect on our consolidated financial position or results of operations.

#### **NOTE 11 – EARNINGS PER SHARE**

The computation of basic earnings per share (“EPS”) is computed by dividing net income available to common stockholders by the weighted-average number of shares of common stock outstanding during the relevant period. Diluted EPS is computed using the treasury stock method, which is net income divided by the total weighted-average number of common outstanding shares plus the effect of dilutive common equivalent shares during the respective period. Dilutive common shares reflect the assumed issuance of additional common shares pursuant to certain of our share-based compensation plans, including stock options, restricted stock and performance restricted stock units.

The following tables set forth the computation of basic and diluted earnings per share:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
	(in thousands, except per share amounts)			
<b>Numerator:</b>				
Net income	\$ 21,436	\$ 17,007	\$ 33,313	\$ 53,467
Preferred stock dividends	—	(2,271)	(1,691)	(6,814)
Preferred stock redemption	—	—	(3,456)	—
Numerator for net income available to common per share - basic and diluted	\$ 21,436	\$ 14,736	\$ 28,166	\$ 46,653
<b>Denominator:</b>				
Denominator for basic earnings per share	103,180	95,698	101,722	92,523
<b>Effect of dilutive securities:</b>				
Restricted stock	38	281	38	168
Stock option incremental shares	—	—	—	3
Deferred stock	13	8	12	6
Denominator for diluted earnings per share	103,231	95,987	101,772	92,700
<b>Earnings per share – basic:</b>				
Net income – basic	\$ 0.21	\$ 0.15	\$ 0.28	\$ 0.50
<b>Earnings per share – diluted:</b>				
Net income – diluted	\$ 0.21	\$ 0.15	\$ 0.28	\$ 0.50

#### NOTE 12 – CONSOLIDATING FINANCIAL STATEMENTS

As of September 30, 2011, we had outstanding (i) \$175 million 7% Senior Notes due 2016, (ii) \$200 million 7.5% Senior Notes due 2020 and (iii) \$575 million 6.75% Senior Notes due 2022, which we collectively refer to as the Senior Notes. The Senior Notes are fully and unconditionally guaranteed, jointly and severally, by each of our subsidiaries that guarantee other indebtedness of Omega or any of the subsidiary guarantors. Any subsidiary that we properly designate as an “unrestricted subsidiary” under the indentures governing the Senior Notes will not provide guarantees of the Senior Notes. As of and prior to March 31, 2010, the non-subsidary guarantors were minor and insignificant. On June 29, 2010, we designated as “unrestricted subsidiaries” the 39 subsidiaries acquired from CapitalSource on such date (see Note 2). For the nine months ended September 30, 2011, the operating cash flow of the non-guarantor subsidiaries approximated net income of the non-guarantor subsidiaries, adjusted for depreciation and amortization expense. For the nine-month period ended September 30, 2011, the non-guarantor subsidiaries have not engaged in investing or financing activities other than the principal payment of \$1.8 million for the HUD mortgages on the facilities owned by the non-guarantor subsidiaries. All of the subsidiary guarantors of our outstanding senior notes are 100 percent owned by Omega.

The following summarized condensed consolidating financial information segregates the financial information of the non-guarantor subsidiaries from the financial information of Omega Healthcare Investors, Inc. and the subsidiary guarantors under the senior notes. The results and financial position of acquired entities are included from the dates of their respective acquisitions.

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATING BALANCE SHEETS**  
**Unaudited**  
(in thousands, except per share amounts)

September 30, 2011

	Issuer & Subsidiary Guarantors	Non – Guarantor Subsidiaries	Elimination Company	Consolidated
Land and buildings	\$ 2,027,666	\$ 313,346	\$ —	\$ 2,341,012
Less accumulated depreciation	(425,775)	(19,497)	—	(445,272)
Real estate properties – net	1,601,891	293,849	—	1,895,740
Mortgage notes receivable – net	119,076	—	—	119,076
	1,720,967	293,849	—	2,014,816
Other investments – net	30,394	—	—	30,394
	1,751,361	293,849	—	2,045,210
Assets held for sale – net	811	—	—	811
Total investments	1,752,172	293,849	—	2,046,021
Cash and cash equivalents	10,730	—	—	10,730
Restricted cash	6,705	13,130	—	19,835
Accounts receivable – net	93,948	2,667	—	96,615
Investment in affiliates	76,213	—	(76,213)	—
Other assets	34,912	23,277	—	58,189
Operating assets for owned and operated properties	275	—	—	275
Total assets	\$ 1,974,955	\$ 332,923	(76,213)	\$ 2,231,665
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Revolving line of credit	\$ 45,000	\$ —	\$ —	\$ 45,000
Secured borrowings	—	198,526	—	198,526
Unsecured borrowings – net	954,120	21,264	—	975,384
Accrued expenses and other liabilities	77,518	36,920	—	114,438
Intercompany payable	—	68,411	(68,411)	—
Operating liabilities for owned and operated properties	472	—	—	472
Total liabilities	1,077,110	325,121	(68,411)	1,333,820
Stockholders' equity:				
Common stock	10,335	—	—	10,335
Common stock – additional paid-in-capital	1,468,598	—	—	1,468,598
Cumulative net earnings	614,137	7,802	(7,802)	614,137
Cumulative dividends paid	(1,195,225)	—	—	(1,195,225)
Total stockholders' equity	897,845	7,802	(7,802)	897,845
Total liabilities and stockholders' equity	\$ 1,974,955	\$ 332,923	(76,213)	\$ 2,231,665

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATING BALANCE SHEETS**  
(in thousands, except per share amounts)

December 31, 2010

	Issuer & Subsidiary Guarantors	Non – Guarantor Subsidiaries	Elimination Company	Consolidated
Land and buildings	\$ 2,053,510	\$ 313,346	\$ —	\$ 2,366,856
Less accumulated depreciation	(372,925)	(8,070)	—	(380,995)
Real estate properties – net	1,680,585	305,276	—	1,985,861
Mortgage notes receivable – net	108,557	—	—	108,557
	1,789,142	305,276	—	2,094,418
Other investments – net	28,735	—	—	28,735
	1,817,877	305,276	—	2,123,153
Assets held for sale – net	670	—	—	670
Total investments	1,818,547	305,276	—	2,123,823
Cash and cash equivalents	6,921	—	—	6,921
Restricted cash	9,279	13,120	—	22,399
Accounts receivable – net	91,729	1,090	—	92,819
Investment in affiliates	81,334	—	(81,334)	—
Other assets	36,653	20,519	—	57,172
Operating assets for owned and operated properties	873	—	—	873
Total assets	\$ 2,045,336	\$ 340,005	(81,334)	\$ 2,304,007
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Revolving line of credit	\$ —	\$ —	\$ —	\$ —
Secured borrowings	—	201,296	—	201,296
Unsecured borrowings – net	954,266	21,403	—	975,669
Accrued expenses and other liabilities	85,887	35,972	—	121,859
Intercompany payable	—	78,806	(78,806)	—
Operating liabilities for owned and operated properties	1,117	—	—	1,117
Total liabilities	1,041,270	337,477	(78,806)	1,299,941
Stockholders' equity:				
Preferred stock	108,488	—	—	108,488
Common stock	9,923	—	—	9,923
Common stock – additional paid-in-capital	1,376,131	—	—	1,376,131
Cumulative net earnings	580,824	2,528	(2,528)	580,824
Cumulative dividends paid	(1,071,300)	—	—	(1,071,300)
Total stockholders' equity	1,004,066	2,528	(2,528)	1,004,066
Total liabilities and stockholders' equity	\$ 2,045,336	\$ 340,005	\$ (81,334)	\$ 2,304,007

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATING STATEMENTS OF OPERATIONS**  
Unaudited  
(in thousands, except per share amounts)

	Three Months Ended September 30, 2011				Nine Months Ended September 30, 2011			
	Issuer & Subsidiary Guarantors	Non – Guarantor Subsidiaries	Elimination Company	Consolidated	Issuer & Subsidiary Guarantors	Non – Guarantor Subsidiaries	Elimination Company	Consolidated
<b>Revenue</b>								
Rental income	\$ 60,333	\$ 8,289	\$ -	\$ 68,622	\$ 178,289	\$ 25,157	\$ -	\$ 203,446
Mortgage interest income	3,617	-	-	3,617	10,548	-	-	10,548
Other investment income – net	383	-	-	383	1,641	-	-	1,641
Miscellaneous	196	-	-	196	265	-	-	265
<b>Total operating revenues</b>	<b>64,529</b>	<b>8,289</b>	<b>-</b>	<b>72,818</b>	<b>190,743</b>	<b>25,157</b>	<b>-</b>	<b>215,900</b>
<b>Expenses</b>								
Depreciation and amortization	21,000	3,871	-	24,871	63,421	11,427	-	74,848
General and administrative	4,329	64	-	4,393	14,324	225	-	14,549
Acquisition costs	-	-	-	-	45	-	-	45
Impairment loss on real estate properties	-	-	-	-	24,971	-	-	24,971
Provisions for uncollectible accounts receivable	-	-	-	-	4,139	-	-	4,139
Nursing home expenses of owned and operated assets	148	-	-	148	603	-	-	603
<b>Total operating expenses</b>	<b>25,477</b>	<b>3,935</b>	<b>-</b>	<b>29,412</b>	<b>107,503</b>	<b>11,652</b>	<b>-</b>	<b>119,155</b>
<b>Income before other income and expense</b>	<b>39,052</b>	<b>4,354</b>	<b>-</b>	<b>43,406</b>	<b>83,240</b>	<b>13,505</b>	<b>-</b>	<b>96,745</b>
<b>Other income (expense):</b>								
Interest income	6	6	-	12	15	20	-	35
Interest expense	(17,374)	(2,727)	-	(20,101)	(51,922)	(8,251)	-	(60,173)
Interest – amortization of deferred financing costs	(629)	-	-	(629)	(2,026)	-	-	(2,026)
Interest – refinancing costs	(3,055)	-	-	(3,055)	(3,071)	-	-	(3,071)
Equity in earnings	1,633	-	(1,633)	-	5,274	-	(5,274)	-
<b>Total other expense</b>	<b>(19,419)</b>	<b>(2,721)</b>	<b>(1,633)</b>	<b>(23,773)</b>	<b>(51,730)</b>	<b>(8,231)</b>	<b>(5,274)</b>	<b>(65,235)</b>
<b>Income before gain on assets sold</b>	<b>19,633</b>	<b>1,633</b>	<b>(1,633)</b>	<b>19,633</b>	<b>31,510</b>	<b>5,274</b>	<b>(5,274)</b>	<b>31,510</b>
Gain on assets sold - net	1,803	-	-	1,803	1,803	-	-	1,803
<b>Net income</b>	<b>21,436</b>	<b>1,633</b>	<b>(1,633)</b>	<b>21,436</b>	<b>33,313</b>	<b>5,274</b>	<b>(5,274)</b>	<b>33,313</b>
Preferred stock dividends	-	-	-	-	(1,691)	-	-	(1,691)
Preferred stock redemption	-	-	-	-	(3,456)	-	-	(3,456)
<b>Net income available to common stockholders</b>	<b>\$ 21,436</b>	<b>\$ 1,633</b>	<b>\$ (1,633)</b>	<b>\$ 21,436</b>	<b>\$ 28,166</b>	<b>\$ 5,274</b>	<b>\$ (5,274)</b>	<b>\$ 28,166</b>

**OMEGA HEALTHCARE INVESTORS, INC.**  
**CONSOLIDATING STATEMENTS OF INCOME**  
Unaudited  
(in thousands, except per share amounts)

	Three Months Ended September 30, 2010				Nine Months Ended September 30, 2010			
	Issuer & Subsidiary Guarantors	Non – Guarantor Subsidiaries	Elimination Company	Consolidated	Issuer & Subsidiary Guarantors	Non – Guarantor Subsidiaries	Elimination Company	Consolidated
<b>Revenue</b>								
Rental income	\$ 57,992	\$ 8,307	\$ -	\$ 66,299	\$ 156,569	\$ 8,459	\$ -	\$ 165,028
Mortgage interest income	2,576	-	-	2,576	7,709	-	-	7,709
Other investment income – net	746	-	-	746	3,282	-	-	3,282
Miscellaneous	103	-	-	103	3,852	-	-	3,852
Nursing home revenues of owned and operated assets	-	-	-	-	7,336	-	-	7,336
<b>Total operating revenues</b>	<b>61,417</b>	<b>8,307</b>	<b>-</b>	<b>69,724</b>	<b>178,748</b>	<b>8,459</b>	<b>-</b>	<b>187,207</b>
<b>Expenses</b>								
Depreciation and amortization	23,772	3,970	-	27,742	54,836	4,044	-	58,880
General and administrative	4,146	230	-	4,376	11,525	233	-	11,758
Acquisition costs	78	-	-	78	1,490	-	-	1,490
Impairment loss on real estate properties	-	-	-	-	155	-	-	155
Nursing home expenses of owned and operated assets	480	-	-	480	7,849	-	-	7,849
<b>Total operating expenses</b>	<b>28,476</b>	<b>4,200</b>	<b>-</b>	<b>32,676</b>	<b>75,855</b>	<b>4,277</b>	<b>-</b>	<b>80,132</b>
<b>Income before other income and expense</b>	<b>32,941</b>	<b>4,107</b>	<b>-</b>	<b>37,048</b>	<b>102,893</b>	<b>4,182</b>	<b>-</b>	<b>107,075</b>
<b>Other income (expense):</b>								
Interest income	8	3	-	11	84	4	-	88
Interest expense	(16,154)	(2,916)	-	(19,070)	(44,370)	(2,980)	-	(47,350)
Interest – amortization of deferred financing costs	(978)	-	-	(978)	(2,881)	-	-	(2,881)
Interest – refinancing costs	-	-	-	-	(3,461)	-	-	(3,461)
Equity in earnings	1,194	-	(1,194)	-	1,206	-	(1,206)	-
<b>Total other expense</b>	<b>(15,930)</b>	<b>(2,913)</b>	<b>(1,194)</b>	<b>(20,037)</b>	<b>(49,422)</b>	<b>(2,976)</b>	<b>(1,206)</b>	<b>(53,604)</b>
<b>Income before gain (loss) on assets sold</b>	<b>17,011</b>	<b>1,194</b>	<b>(1,194)</b>	<b>17,011</b>	<b>53,471</b>	<b>1,206</b>	<b>(1,206)</b>	<b>53,471</b>
Loss on assets sold – net	(4)	-	-	(4)	(4)	-	-	(4)
<b>Net income</b>	<b>17,007</b>	<b>1,194</b>	<b>(1,194)</b>	<b>17,007</b>	<b>53,467</b>	<b>1,206</b>	<b>(1,206)</b>	<b>53,467</b>
Preferred stock dividends	(2,271)	-	-	(2,271)	(6,814)	-	-	(6,814)
<b>Net income available to common stockholders</b>	<b>\$ 14,736</b>	<b>\$ 1,194</b>	<b>\$ (1,194)</b>	<b>\$ 14,736</b>	<b>\$ 46,653</b>	<b>\$ 1,206</b>	<b>\$ (1,206)</b>	<b>\$ 46,653</b>

## **NOTE 13 – SUBSEQUENT EVENTS**

On October 31, 2011, we completed approximately \$69 million of combined new investments with affiliates of Persimmon Ventures, LLC (“Persimmon”) a new operator to us.

### *Purchase / Lease Back Transaction*

Effective October 31, 2011, we purchased three SNFs located in Maryland (2) and West Virginia (1), totaling 511 beds for a total investment of \$44 million, consisting of \$ 14 million in cash and the assumption of \$30 million, 4.87% (weighted-average) indebtedness guaranteed by the U.S. Department of Housing and Urban Development (“HUD”) maturing between March 2036 and August 2040.

In addition to the purchase / leaseback transaction described above, we have held back an additional \$17 million of cash in anticipation of taking title to a third Maryland facility within the next several months. The actual purchase and leaseback is subject to, amongst other things, the completion of a major renovation project.

### *Mortgage Transaction*

Also on October 31, 2011, and simultaneous with the close of the above purchase / leaseback transaction, we entered into a first mortgage loan with Persimmon in the amount of \$25 million (the “Persimmon Loan”), secured by a lien on three SNFs, totaling 352 beds, all located in Maryland. The Persimmon Loan will be cross defaulted with the above related leases.

The overall combined transaction, including the aforementioned third Maryland leased facility, totals \$86 million, consisting of \$56 million in cash and \$30 million in assumed HUD indebtedness, with a combined initial annual yield of approximately 10%. The combined transaction includes 7 facilities located in 2 states with 938 beds.



## Item 2 – Management’s Discussion and Analysis of Financial Condition and Results of Operations

### Forward-looking Statements, Reimbursement Issues and Other Factors Affecting Future Results

*The following discussion should be read in conjunction with the financial statements and notes thereto appearing elsewhere in this document. This document contains forward-looking statements within the meaning of the federal securities laws. These statements relate to our expectations, beliefs, intentions, plans, objectives, goals, strategies, future events, performance and underlying assumptions and other statements other than statements of historical facts. In some cases, you can identify forward-looking statements by the use of forward-looking terminology including, but not limited to, terms such as “may,” “will,” “anticipates,” “expects,” “believes,” “intends,” “should” or comparable terms or the negative thereof. These statements are based on information available on the date of this filing and only speak as to the date hereof and no obligation to update such forward-looking statements should be assumed. Our actual results may differ materially from those reflected in the forward-looking statements contained herein as a result of a variety of factors, including, among other things:*

- (i) those items discussed under “Risk Factors” in Item 1A to our annual report on Form 10-K for the year ended December 31, 2010, in Part II, Item 1A to our Quarterly Reports on Form 10-Q for the three months ending March 31, 2011 and June 30, 2011, and in Part II, Item 1A of this report;
- (ii) uncertainties relating to the business operations of the operators of our assets, including those relating to reimbursement by third-party payors, regulatory matters and occupancy levels;
- (iii) the ability of any operators in bankruptcy to reject unexpired lease obligations, modify the terms of our mortgages and impede our ability to collect unpaid rent or interest during the process of a bankruptcy proceeding and retain security deposits for the debtors’ obligations;
- (iv) our ability to sell closed or foreclosed assets on a timely basis and on terms that allow us to realize the carrying value of these assets;
- (v) our ability to negotiate appropriate modifications to the terms of our credit facilities;
- (vi) our ability to manage, re-lease or sell any owned and operated facilities;
- (vii) the availability and cost of capital;
- (viii) changes in our credit ratings and the ratings of our debt securities;
- (ix) competition in the financing of healthcare facilities;
- (x) regulatory and other changes in the healthcare sector;
- (xi) the effect of economic and market conditions generally and, particularly, in the healthcare industry;
- (xii) changes in the financial position of our operators;
- (xiii) changes in interest rates;
- (xiv) the amount and yield of any additional investments;
- (xv) changes in tax laws and regulations affecting real estate investment trusts; and
- (xvi) our ability to maintain our status as a real estate investment trust.

### Overview

We have one reportable segment consisting of investments in healthcare related real estate properties. Our core business is to provide financing and capital to the long-term healthcare industry with a particular focus on skilled nursing facilities (“SNFs”) located in the United States. Our core portfolio consists of long-term leases and mortgage agreements. All of our leases are “triple-net” leases, which require the tenants to pay all property-related expenses. Our mortgage revenue derives from fixed-rate mortgage loans, which are secured by first mortgage liens on the underlying real estate and personal property of the mortgagor.

On November 17, 2009, we entered into a purchase agreement with CapitalSource, Inc. (“CapitalSource”) pursuant to which we agreed to purchase certain CapitalSource subsidiaries owning 80 long-term care facilities and an option to purchase certain other CapitalSource subsidiaries owning an additional 63 long-term care facilities. Our acquisition of the CapitalSource subsidiaries pursuant to the terms of the purchase agreement was conducted in three separate closings: (i) on December 22, 2009, we acquired CapitalSource subsidiaries owning 40 long-term care facilities and an option to acquire an additional 63, for an aggregate purchase price of approximately \$296 million; (ii) on June 9, 2010, we exercised our option to acquire CapitalSource subsidiaries owning 63 long-term care facilities for an aggregate purchase price of approximately \$293 million; and (iii) on June 29, 2010, we acquired CapitalSource subsidiaries owning 40 long-term care facilities for an aggregate purchase price of approximately \$271 million.

We have identified a recent trend of reductions of expenditures under Medicare and Medicaid programs at the federal and state levels, resulting in a reduction of reimbursement rates and levels to our operators under both the Medicare and Medicaid programs. Current market and economic conditions may have a significant impact on state budgets and health care spending. These deficits, exacerbated by the potential for increased enrollment in Medicaid due to rising unemployment levels and declining family incomes, could cause states to further reduce state expenditures under their respective state Medicaid programs by lowering reimbursement rates.

We currently believe that our operator coverage ratios are strong and that our operators can absorb moderate reimbursement rate reductions under Medicaid and Medicare and still meet their obligations to us. However, significant limits on the scope of services reimbursed and on reimbursement rates and fees could have a material adverse effect on an operator's results of operations and financial condition, which could adversely affect the operator's ability to meet its obligations to us.

Our portfolio of investments at September 30, 2011, consisted of 401 healthcare facilities (including two facilities held for sale), located in 35 states and operated by 49 third-party operators. Our gross investment in these facilities totaled approximately \$2.5 billion at September 30, 2011, with 99% of our real estate investments related to long-term healthcare facilities. This portfolio is made up of (i) 369 SNFs, (ii) 10 assisted living facilities ("ALFs"), (iii) five specialty facilities, (iv) fixed rate mortgages on 15 SNFs and (v) two SNFs that are held for sale. At September 30, 2011, we also held other investments of approximately \$30.4 million, consisting primarily of secured loans to third-party operators of our facilities.

Our consolidated financial statements include the accounts of (i) Omega, (ii) all direct and indirect wholly owned subsidiaries of Omega and (iii) TC Healthcare, an entity and interim operator created to operate the 15 facilities we assumed as a result of the bankruptcy of one of our former tenants/operators. We consolidate the financial results of TC Healthcare into our financial statements based on the applicable consolidation accounting literature. We include the operating results, assets and liabilities of these facilities for the period of time that TC Healthcare was responsible for the operations of the facilities. Thirteen of these facilities were transitioned from TC Healthcare to a new tenant/operator on September 1, 2008. The two remaining facilities were transitioned to the new tenant/operator on June 1, 2010 upon approval by state regulators of the operating license transfer. The operating revenues and expenses and related operating assets and liabilities of the two facilities are shown on a gross basis in our Consolidated Statements of Operations and Consolidated Balance Sheets, respectively. TC Healthcare is responsible for the collection of the accounts receivable earned and the liabilities incurred prior to the date of the transition to the new tenant/operator. All inter-company accounts and transactions have been eliminated in consolidation of the financial statements.

## **Taxation**

We have elected to be taxed as a Real Estate Investment Trust ("REIT"), under Sections 856 through 860 of the Internal Revenue Code (the "Code"), beginning with our taxable year ended December 31, 1992. We believe that we have been organized and operated in such a manner as to qualify for taxation as a REIT. We intend to continue to operate in a manner that will maintain our qualification as a REIT, but no assurance can be given that we have operated or will be able to continue to operate in a manner so as to qualify or remain qualified as a REIT. Under the Code, we generally are not subject to federal income tax on taxable income distributed to stockholders if certain distribution, income, asset and stockholder tests are met, including a requirement that we must generally distribute at least 90% of our annual taxable income, excluding any net capital gain, to stockholders. If we fail to qualify as a REIT in any taxable year, we may be subject to federal income taxes on our taxable income for that year and for the four years following the year during which qualification is lost, unless the Internal Revenue Service grants us relief under certain statutory provisions. Such an event could materially adversely affect our net income and net cash available for distribution to our stockholders. For further information, see "Taxation" in Item 1 of our annual report on Form 10-K for the year ended December 31, 2010.

## Recent Developments Regarding Government Regulation and Reimbursement

**Healthcare Reform.** The Patient Protection and Affordable Care Act and accompanying Healthcare and Education Affordability and Reconciliation Act of 2010 (the "Healthcare Reform Law") were signed into law in March 2010. This legislation represents the most comprehensive change to healthcare benefits since the inception of the Medicare program in 1965 and will affect reimbursement for governmental programs, private insurance and employee welfare benefit plans in various ways. Some changes under the Healthcare Reform Law have already occurred, such as changes to pre-existing condition requirements and coverage of dependents. Other changes, including taxes on so-called "Cadillac" health plans, will be implemented over time. There has already been significant rule making and regulations under the Healthcare Reform Law, and we expect significant additional rules and regulations.

The attorneys general for several states, as well as other individuals and organizations, have challenged the constitutionality of certain provisions of the Healthcare Reform Law, including the requirement that each individual carry health insurance. A number of the lawsuits have been ruled on by federal appeals courts, but those rulings were not consistent. Several parties have appealed to the U.S. Supreme Court. We cannot predict whether the Supreme Court will agree to hear these cases or how it will rule. Further, various Congressional leaders have indicated a desire to revisit some or all of the health care reform law during 2011 and 2012. While the U.S. Senate voted against repealing the entire Healthcare Reform Law, a number of bills and budget proposals seek to repeal, change or defund certain provisions of the law. For example, the 2011 budget eliminates two programs funded under the health care reform law: the Consumer Operated and Oriented Plan (CO-OP) and the Free Choice Voucher programs). Further, a number of states have passed legislation intended to block various requirements of the Healthcare Reform Law. Because of these challenges, we cannot predict whether any or all of the legislation will be implemented as enacted, overturned, repealed or modified.

Given the multitude of factors involved in the Healthcare Reform Law and the substantial requirements for regulation thereunder, we cannot predict the impact of the Healthcare Reform Law on our operators or their ability to meet their obligations to us. The Healthcare Reform Law could result in decreases in payments to our operators or otherwise adversely affect the financial condition of our operators, thereby negatively impacting our financial condition. We cannot predict whether our operators will have the ability to modify certain aspects of their operations to lessen the impact of any increased costs or other adverse effects resulting from changes in governmental programs, private insurance and/or employee welfare benefit plans. The impact of the Healthcare Reform Law on each of our operators will vary depending on payor mix, resident conditions and a variety of other factors. In addition to the provisions relating to reimbursement, other provisions of the Healthcare Reform Law may impact our operators as employers (e.g., requirements related to providing health insurance for employees), which could negatively impact the financial condition of our operators. We anticipate that many of the provisions in the Healthcare Reform Law may be subject to further clarification and modification during the rule making process.

**Reimbursement.** The federal government and many state governments are currently focusing on reducing expenditures under Medicare and Medicaid programs, resulting in significant cost-cutting at both the federal and state levels. These cost-cutting measures, together with the implementation of changes in reimbursement rates under the Healthcare Reform Law, could result in a significant reduction of reimbursement rates to our operators under both the Medicare and Medicaid programs. We currently believe that our operator coverage ratios are adequate and that our operators can absorb moderate reimbursement rate reductions and still meet their obligations to us. However, significant limits on the scopes of services reimbursed and on reimbursement rates could have a material adverse effect on our operators' results of operations and financial condition, which could adversely affect our operators' ability to meet their obligations to us.

In August 2011, the Budget Control Act of 2011 was enacted into law to increase the federal debt ceiling. The law included spending cuts of nearly \$1 trillion over the next 10 years. The law further created a Congressional committee that is tasked with recommending a plan that would reduce the federal deficit by another \$1.5 trillion over 10 years. Any such plan may include spending cuts and tax increases. The committee must recommend a plan to Congress by the end of November 2011, and Congress must act on the recommendations by the end of December 2011. In the event that the Committee is deadlocked, Congress does not pass the legislation or the President vetoes it, automatic spending cuts will become effective, including a likely 2% cut to Medicare providers. Changes to Medicare and Medicaid can be considered by the committee, but Medicaid is not subject to the automatic spending cuts. The committee has full legislative power and thus can recommend both spending changes and structural changes to Medicare and Medicaid. If funding for Medicare and/or Medicaid is reduced, it could have a material adverse effect on our operators' results of operations and financial condition, which could adversely affect our operators' ability to meet their obligations to us.

**Medicaid.** State budgetary concerns coupled with the implementation of rules under the Healthcare Reform Law, may result in significant changes in healthcare spending at the state level.

Many states are currently focusing on the reduction of expenditures under their state Medicaid programs, which may result in a reduction in reimbursement rates for our operators. The need to control Medicaid expenditures may be exacerbated by the potential for increased enrollment in Medicaid due to unemployment and declines in family incomes. In addition, Medicaid enrollment may significantly increase in the near future, as the Healthcare Reform Law allows states to increase the number of people who are eligible for Medicaid beginning in 2010 and simplifies enrollment in this program. Since our operators' profit margins on Medicaid patients are generally relatively low, more than modest reductions in Medicaid reimbursement and an increase in the number of Medicaid patients could adversely affect our operators' results of operations and financial conditions, which in turn could negatively impact us.

The American Reinvestment and Recovery Act of 2009 ("ARRA") and subsequent legislation provide additional federal Medicaid funding for states' Medicaid expenditures between October 1, 2008 and June 30, 2011. During this period, the share of Medicaid costs that were paid for by the federal government went up, and each state's share went down. Now that this additional funding has expired, we cannot predict whether the states will have sufficient funds for their Medicaid programs. Many states are concerned that the lack of funds will have a negative impact on their budgets.

**Medicare.** In 2009, the CMS finalized a revised case-mix classification system, the RUG-IV, and planned implementation for fiscal year 2010. However, the Healthcare Reform Law delayed implementation of RUG-IV to October 1, 2011. The Medicare and Medicaid Extenders Act of 2010 repealed the delay in implementation under the Healthcare Reform Law and provided that RUG-IV would be implemented immediately and applied retroactively to October 1, 2010. According to CMS, this change in case-mix classification methodology resulted in a significant increase in Medicare expenditures for FY 2011. In response to this increase, on July 29, 2011, CMS announced the final rule for SNF funding for fiscal year 2012. The final rule includes a recalibration of the case-mix indexes that form the RUG-IV and will result in a reduction of aggregate Medicare reimbursement to SNFs of \$4.47 billion or 12.6%. However, the reduction is partially offset by an update that reflects a 2.7% increase in the prices of a "market basket" of goods and services reduced by a 1.0% multi-factor productivity adjustment mandated by the Healthcare Reform Law. The combination of the recalibration and the update will yield a net reduction of aggregate Medicare reimbursement to SNFs of \$3.87 billion or 11.1%. We believe that the implementation of RUG-IV in 2010 had a positive effect on the cash flow and rent coverage ratios of our operators. This funding cut will reduce operator coverage ratios, however, we currently believe that our operator coverage ratios are adequate and that our operators can absorb the fiscal year 2012 reimbursement rate reductions and still meet their obligations to us.

The Medicare Payment Advisory Commission (MedPAC) recommended that Congress make no increases to Medicare payment rates for skilled nursing facilities for fiscal year 2012.

The Medicare Improvements for Patients and Providers Act of 2008 (the "MIPPA") became law on July 15, 2008, and made a variety of changes to Medicare, some of which may affect SNFs. For instance, the MIPPA extended the therapy cap exceptions process through December 31, 2009. The Healthcare Reform Law extended the therapy cap exceptions process through December 31, 2010, and the Medicare and Medicaid Extenders Act of 2010 further extended the therapy cap exceptions process through December 31, 2011. The therapy caps limit the physical therapy, speech-language therapy and occupational therapy services that a Medicare beneficiary can receive during a calendar year. These caps do not apply to therapy services covered under Medicare Part A for SNFs, although the caps apply in most other instances involving patients in SNFs or long-term care facilities who receive therapy services covered under Medicare Part B. Congress implemented a temporary therapy cap exceptions process, which permits medically necessary therapy services to exceed the payment limits. Expiration of the therapy cap exceptions process in the future could have a material adverse effect on our operators' financial condition and operations, which could adversely impact their ability to meet their obligations to us.

**Quality of Care Initiatives.** The CMS has implemented a number of initiatives focused on the quality of care provided by nursing homes that could affect our operators. For instance, in December 2008, the CMS released quality ratings for all of the nursing homes that participate in Medicare or Medicaid. Facility rankings, ranging from five stars ("much above average") to one star ("much below average") are updated on a monthly basis. The Healthcare Reform Law includes a requirement that the Government Accountability Office conduct a study of this ranking system, the results of which cannot be predicted. In the event any of our operators does not maintain or receive the same or superior ranking as its competitors, patients could choose alternate facilities, which could adversely impact our operators' revenues. In addition, the reporting of such information could lead to future reimbursement policies that reward or penalize facilities on the basis of the reported quality of care parameters.

**Office of the Inspector General Activities.** The Office of Inspector General's (the "OIG") Work Plan for fiscal year 2012, which describes projects that the OIG plans to address during the fiscal year, includes a number of projects related to nursing homes. While we cannot predict the results of the OIG's activities, the projects could result in further scrutiny and/or oversight of nursing homes.

**Fraud and Abuse Laws and Regulations.** There are various civil and criminal federal and state laws governing a wide array of referrals, relationships and arrangements and prohibiting fraud by healthcare providers. Many of these complex laws raise issues that have not been clearly interpreted. Governments are devoting increasing attention and resources to anti-fraud initiatives against healthcare providers. The federal anti-kickback statute is a criminal statute that prohibits the knowing and willful offer, payment, solicitation or receipt of any remuneration in return for, to induce or to arrange for the referral of individuals for any item or service payable by a federal or state healthcare program. There is also a civil analogue. States also have enacted similar statutes covering Medicaid payments and some states have broader statutes. Some enforcement efforts have targeted relationships between SNFs and ancillary providers, relationships between SNFs and referral sources for SNFs and relationships between SNFs and facilities for which the SNFs serve as referral sources. The federal self-referral law, commonly known as the "Stark Law," is a civil statute that prohibits certain referrals by physicians to entities providing "designated health services" if these physicians have financial relationships with the entities. Some of the services provided in SNFs are classified as designated health services. There are also criminal provisions that prohibit filing false claims or making false statements to receive payment or certification under Medicare and Medicaid, as well as failing to refund overpayments or improper payments. Violation of the anti-kickback statute or Stark Law may form the basis for a False Claims Act violation. In addition, the federal False Claims Act allows a private individual with knowledge of fraud to bring a claim on behalf of the federal government and earn a percentage of the federal government's recovery. Because of these incentives, these so-called "whistleblower" suits have become more frequent. The violation of any of these laws or regulations by an operator may result in the imposition of fines or other penalties, including exclusion from Medicare, Medicaid and all other federal and state healthcare programs. Such fines or penalties could jeopardize that operator's ability to make lease or mortgage payments to us or to continue operating its facility.

**Privacy Laws.** Our operators are subject to federal, state and local laws and regulations designed to protect confidentiality and security of patient health information, including the privacy and security provisions in the federal Health Insurance Portability and Accountability Act of 1996 and the corresponding regulations promulgated thereunder (“HIPAA”). HIPAA was amended by the American Recovery and Reinvestment Act of 2009, known as the Stimulus Bill. The amendment increases penalties for HIPAA violations, imposes stricter requirements on healthcare providers, expands the scope of enforcement and, in most cases requires notification if there is a breach of an individual’s protected health information, including public announcements if the breach affects a significant number of individuals. As a result, our operators are required to expend the requisite resources to secure the health information in their possession. Operators found in violation of HIPAA may face large penalties. Compliance with public notification requirements in the event of a breach could cause reputational harm to an operator’s business. Such penalties and damaged reputations could adversely affect an operator’s ability to pay its obligations to us.

**Licensing, Certification and Other Laws and Regulations.** Our operators and facilities are subject to regulatory and licensing requirements of federal, state and local authorities and are periodically surveyed by these authorities. Failure to obtain licensure or loss or suspension of licensure would prevent a facility from operating and result in ineligibility for reimbursement until the necessary licenses are obtained or reinstated. In such event, our revenues from these facilities could be reduced or eliminated for an extended period of time or permanently.

In addition, licensing and Medicare and Medicaid laws require operators of nursing homes and ALFs to comply with extensive standards governing operations. Federal and state agencies administering those laws regularly inspect such facilities and investigate complaints. Our operators and their managers receive notices of observed violations and deficiencies from time to time, and sanctions have been imposed from time to time on facilities operated by them. If our operators are unable to cure deficiencies, which have been identified or which are identified in the future, sanctions, including possible loss of license and/or right to receive reimbursement, may be imposed. If imposed, such sanctions may adversely affect our operators’ revenues and their ability to meet their obligations to us.

Additional federal, state and local laws and regulations affect how our operators conduct their operations, including federal and state laws and regulations protecting the confidentiality and security of patient health information, laws protecting consumers against deceptive practices, and laws generally affecting our operators’ management of property and equipment and the conduct of their operations (including laws and regulations involving fire, health and safety; quality of services, including care and food service; residents’ rights, including abuse and neglect laws; and the health standards set by the federal Occupational Safety and Health Administration). We are unable to predict the effect that potential changes in these requirements could have on the revenues of our operators, and their ability to meet their obligations to us.

#### **Critical Accounting Policies and Estimates**

Our financial statements are prepared in accordance with generally accepted accounting principles in the United States of America (“GAAP”), and a summary of our significant accounting policies is included in Note 2 – Summary of Significant Accounting Policies to our Annual Report on Form 10-K for the year ended December 31, 2010. Our preparation of the financial statements requires us to make estimates and assumptions about future events that affect the amounts reported in our financial statements and accompanying footnotes. Future events and their effects cannot be determined with absolute certainty. Therefore, the determination of estimates requires the exercise of judgment. Actual results inevitably will differ from those estimates, and such difference may be material to the consolidated financial statements. We have described our most critical accounting policies in our 2010 Annual Report on Form 10-K in Item 7, Management’s Discussion and Analysis of Financial Condition and Results of Operations.

## Results of Operations

The following is our discussion of the consolidated results of operations, financial position and liquidity and capital resources, which should be read in conjunction with our unaudited consolidated financial statements and accompanying notes.

### **Three Months Ended September 30, 2011 and 2010**

#### *Operating Revenues*

Our operating revenues for the three months ended September 30, 2011, totaled \$72.8 million, an increase of \$3.1 million over the same period in 2010. The \$3.1 million increase was primarily the result of additional rental income of \$2.3 million due to lease amendments and extensions and additional mortgage income of approximately \$1.0 million due to (i) two new construction-to-permanent mortgage loans that we entered into with an operator in August 2010; (ii) a \$15.9 million first mortgage loan that we entered into with an operator in December 2010 and (iii) a \$5.0 million first mortgage loan that we entered into with an operator in September 2011.

#### *Operating Expenses*

Operating expenses for the three months ended September 30, 2011, totaled \$29.4 million, a decrease of approximately \$3.3 million over the same period in 2010. The decrease was primarily due to (i) a decrease in depreciation and amortization expense of \$2.9 million primarily associated with the impairment of the Connecticut Properties; (ii) a decrease of \$1.1 million in general and administrative expense and (iii) a decrease of \$0.3 million related to expense related to our owned and operated assets, offset by the increase of \$1.1 million related to 2011 equity compensation program.

#### *Other Income (Expense)*

For the three months ended September 30, 2011, total other expenses were \$23.8 million, an increase of approximately \$3.7 million over the same period in 2010. The increase in interest expense of approximately \$1.0 million was primarily due to an increase in borrowings outstanding, including debt assumed or incurred to finance the CapitalSource acquisitions. In addition, an increase of \$3.1 million in interest refinancing costs related to the write-off of deferred cost associated with the termination of the \$320 million revolving senior secured credit facility (the "2010 Credit Facility"), offset by a \$0.3 million reduction in deferred financing costs.

### **Nine Months Ended September 30, 2011 and 2010**

#### *Operating Revenues*

Our operating revenues for the nine months ended September 30, 2011, totaled \$215.9 million, an increase of \$28.7 million over the same period in 2010. The \$28.7 million increase related primarily to an increase in rental income of approximately \$38.4 million due to the CapitalSource acquisitions that occurred in June 2010 (approximately \$2.8 million resulted from in-place lease intangibles amortization) and additional rents related to our capital renovation and improvement program. In addition, the increase in mortgage income of approximately \$2.8 million is primarily due to (i) two new construction-to-permanent mortgage loans that we entered into with an operator in August 2010; (ii) a \$15.9 million first mortgage loan that we entered into with an operator in December 2010; and (iii) a \$5.0 million first mortgage loan that we entered into with an operator in September 2011. Offsetting the above-noted increases are (i) a decrease of \$7.3 million in owned and operated assets due to the deconsolidation of owned and operated facilities effective June 1, 2010; (ii) a decrease of \$3.6 million in miscellaneous income resulting from a February 2010 legal settlement with one of our prior operators for breach of contract due to failure to pay rent; and (iii) a decrease of \$1.6 million in other investment income primarily as a result of the sale of two mortgage backed certificates that were retired during the second quarter of 2010.

### *Operating Expenses*

Operating expenses for the nine months ended September 30, 2011, totaled \$119.2 million, an increase of approximately \$39.0 million over the same period in 2010. The increase was primarily due to (i) an increase in depreciation and amortization expense of \$16.0 million primarily associated with the CapitalSource acquisitions that occurred in June 2010 and additional depreciation associated with our capital renovation and improvement program; (ii) a \$25.0 million provision for impairment on real estate assets recorded in the first quarter of 2011 primarily related to our Connecticut properties (see Portfolio and Recent Developments – Connecticut Properties below); (iii) a \$4.1 million provision for uncollectible accounts receivable; (iv) an increase of \$2.8 million in general and administrative expense primarily related to the 2011 equity compensation program, offset by (v) the reduction of \$7.2 million in owned and operated assets primarily due to the deconsolidation of owned and operated facilities effective June 1, 2010 and (vi) a decrease of \$1.4 million in acquisition cost related to the expenses incurred in connection with the CapitalSource acquisitions.

### *Other Income (Expense)*

For the nine months ended September 30, 2011, total other expenses were \$65.2 million, an increase of approximately \$11.6 million over the same period in 2010. The increase in interest expense of approximately \$12.8 million was primarily due to an increase in borrowings outstanding, including debt assumed or incurred to finance the CapitalSource acquisitions. This was offset by (i) a decrease of \$0.4 million in interest refinancing costs primarily related to the write-off of \$3.1 million during the third quarter of 2011 associated with the termination of the \$320 million 2010 Credit Facility compared to the write-off a \$3.5 million during the second quarter of 2010 associated with the termination of the \$200 million 2009 Credit Facility and (ii) a decrease of \$0.9 million in amortization of deferred financing costs related to: (a) the termination of the \$200 million 2009 Credit Facility, (b) the \$100 million GECC term loan payoff in October 2010 and (c) the redemption of our outstanding \$310 million senior notes in December 2010.

### *Preferred Stock Redemption*

In connection with the March 7, 2011 redemption of the Series D Preferred Stock, we recorded a charge of \$3.5 million primarily related to the write-off of issuance costs.

### **Funds From Operations**

Our funds from operations available to common stockholders (“FFO”), for the three months ended September 30, 2011, was \$44.5 million, compared to \$42.5 million, for the same period in 2010.

We calculate and report FFO in accordance with the definition and interpretive guidelines issued by the National Association of Real Estate Investment Trusts (“NAREIT”), and, consequently, FFO is defined as net income available to common stockholders, adjusted for the effects of asset dispositions and certain non-cash items, primarily depreciation and amortization. We believe that FFO is an important supplemental measure of our operating performance. Because the historical cost accounting convention used for real estate assets requires depreciation (except on land), such accounting presentation implies that the value of real estate assets diminishes predictably over time, while real estate values instead have historically risen or fallen with market conditions. The term FFO was designed by the real estate industry to address this issue. FFO herein is not necessarily comparable to FFO of other REITs that do not use the same definition or implementation guidelines or interpret the standards differently from us.



FFO is a non-GAAP financial measure. We use FFO as one of several criteria to measure operating performance of our business. We further believe that by excluding the effect of depreciation, amortization and gains or losses from sales of real estate, all of which are based on historical costs and which may be of limited relevance in evaluating current performance, FFO can facilitate comparisons of operating performance between periods and between other REITs. We offer this measure to assist the users of our financial statements in evaluating our financial performance under GAAP, and FFO should not be considered a measure of liquidity, an alternative to net income or an indicator of any other performance measure determined in accordance with GAAP. Investors and potential investors in our securities should not rely on this measure as a substitute for any GAAP measure, including net income.

The following table presents our FFO results the three- and nine- months ended September 30, 2011 and 2010:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
	(in thousands)			
Net income available to common stockholders	\$ 21,436	\$ 14,736	\$ 28,166	\$ 46,653
Deduct gain/add back loss from real estate dispositions	(1,803)	4	(1,803)	4
Sub-total	19,633	14,740	26,363	46,657
Elimination of non-cash items included in net income:				
Depreciation and amortization	24,871	27,742	74,848	58,880
Funds from operations available to common stockholders	\$ 44,504	\$ 42,482	\$ 101,211	\$ 105,537

### Portfolio and Recent Developments

#### 143 Facility CapitalSource Acquisitions

In November 2009, we entered into a securities purchase agreement (the "CapitalSource Purchase Agreement") with CapitalSource and several of its affiliates, pursuant to which we agreed to purchase CapitalSource subsidiaries owning 80 long term care facilities, plus an option to purchase CapitalSource subsidiaries owning an additional 63 facilities, for approximately \$858 million. We accounted for these acquisitions as business combinations.

The transactions closed in three phases: (i) on December 22, 2009, we purchased CapitalSource entities owning 40 facilities for approximately \$271 million and an option to purchase CapitalSource entities owning 63 additional facilities for \$25 million; (ii) on June 9, 2010, we completed our purchase of the 63 CapitalSource facilities pursuant to the option for an aggregate purchase price of approximately \$293 million in cash, plus the \$25 million purchase option deposit, representing a total purchase price of \$318 million; and (iii) on June 29, 2010, we purchased CapitalSource entities owning 40 facilities for approximately \$271 million and paid approximately \$15 million for escrow accounts transferred to us at closing.

As of December 31, 2010, we completed our purchase price allocation for all of these transactions. The allocation included fair value adjustment for above-market debt assumed in the transactions as well as above and below-market in-place leases assumed. For the nine months ended September 30, 2011, we amortized approximately \$1.1 million of above-market adjustments related to the assumed debt and approximately \$4.6 million of net below market in-place leases assumed from these transactions.

### *Connecticut Properties*

In January 2011, upon our request, a complaint was filed by the State of Connecticut, Commissioner of Social Services (the "State") against the licensees/operators of four Connecticut SNFs, seeking the appointment of a receiver. The Superior Court, Judicial District of Hartford, Connecticut (the "Court") appointed a receiver.

The receiver is responsible for (i) operating the facilities and funding all operational expenses incurred after the appointment of the receiver and (ii) for providing the Court with recommendations regarding the facilities. In March 2011, the receiver moved to close all four SNFs and we objected. At the hearing held on April 21, 2011, we stated our position that the receiver failed to comply with the statutory requirements prior to recommending the facilities' closure. In addition, alternative operators expressed interest in operating several of the facilities. On April 27, 2011, the Court granted the receiver's motion and ordered the facilities closed.

We timely filed our notice of appeal, taking the position that the Court's Order (the "Order") is final and appealable, and erroneous. Following our notice of appeal, we negotiated a stipulation with the State and the receiver which afforded it significant concessions. Those concessions included: (a) an agreed recognition of us as a secured lienholder with a priority claim, (b) an accelerated timeframe for the (i) allocation by the receiver of collected funds between pre- and post-receivership periods, and (ii) disbursement to us of pre-receivership funds collected, and (c) an agreement by the State that it would forego its right to seek recoupment of pre-receivership funds as reimbursement for post-receivership advances. In exchange for these concessions (among others), we withdrew our appeal.

As a result of these developments, during the three months ended March 31, 2011, we recorded an impairment charge of \$24.4 million to reduce the carrying values of the Connecticut SNFs to their estimated fair values. We estimated the fair value of these facilities based on the facilities' potential sales value assuming that the facilities would not be used as skilled nursing facilities. As of November 1, 2011, all of the residents of the four facilities have been relocated and the receiver has surrendered possession of all of the facilities to us. We are actively marketing the facilities for sale and/or lease (for purposes other than the provision of skilled nursing care).

### *FC/SCH Facilities*

During the second quarter, we entered into a master transition agreement ("2011 MTA") with one of our current lessee/operators and a third party lessee/operator to transition the facilities from the current operator to the new operator. The 2011 MTA closing is subject to receipt of healthcare regulatory approvals from several states for the operating license transfer from the current operator to the new operator. Upon closing of the 2011 MTA, the current lease will be terminated and the new operator will enter into a new twelve-year master lease for the facilities. As a result of the 2011 MTA, during the second quarter of 2011, we evaluated the recoverability of the straight-line rent and lease inducements associated with the current lease and have recorded a \$4.1 million provision for uncollectible accounts associated with straight-line receivables and lease inducements.

### *Nexion Health, Inc.*

On July 18, 2011, we entered into a first mortgage loan with Nexion Health Management in the amount of \$5.0 million. The mortgage loan matures on July 18, 2012 and carries an interest rate of 10% per year.

## Assets Sold

On September 30, 2011, we sold a SNF in North Carolina for approximately \$4.2 million resulting in a gain of approximately \$1.8 million.

## Liquidity and Capital Resources

At September 30, 2011, we had total assets of \$2.2 billion, stockholders' equity of \$0.9 billion and debt of \$1.2 billion, representing approximately 57.6% of total capitalization.

The following table shows the amounts due in connection with the contractual obligations described below as of September 30, 2011.

	<b>Payments due by period</b>				
	<b>Total</b>	<b>Less than 1 year</b>	<b>1-3 years</b>	<b>3-5 years</b>	<b>More than 5 years</b>
	(in thousands)				
Debt <sup>(1)</sup>	\$ 1,194,054	\$ 2,566	\$ 5,566	\$ 226,200	\$ 959,722
Interest payments on long-term debt	830,053	78,629	156,825	148,689	445,910
Operating lease obligations <sup>(2)</sup>	2,473	302	628	663	880
Total	\$ 2,026,580	\$ 81,497	\$ 163,019	\$ 375,552	\$ 1,406,512

- (1) The \$1.2 billion of debt outstanding includes \$45 million in borrowings under the \$475 million revolving senior secured credit facility (the "2011 Credit Facility") due in August 2015, \$175 million aggregate principal amount of 7% Senior Notes due January 2016, \$200 million aggregate principal amount of 7.5% Senior Notes due February 2020, \$575 million aggregate principal amount of 6.75% Senior Notes due October 2022, \$20 million of 9.0% subordinated debt maturing in December 2021, \$52 million of HUD debt at a 6.61% weighted average annual interest rate maturing between January 2036 and May 2040, and \$127 million of HUD Debt at a 4.85% annual interest rate and maturing between January 2040 and January 2045.
- (2) Relates primarily to the lease at the corporate headquarters.

## Financing Activities and Borrowing Arrangements

### Bank Credit Agreements

At September 30, 2011, we had \$45.0 million outstanding under our new \$475 million unsecured revolving credit facility (the "2011 Credit Facility"), and no letters of credit outstanding, leaving availability of \$430.0 million.

On August 16, 2011, we entered into our new 2011 Credit Facility and concurrently terminated our previous \$320 million senior secured revolving credit facility (the "2010 Credit Facility"). The 2011 Credit Facility matures in four years, on August 17, 2015. The 2011 Credit Facility includes an "accordion feature" that permits us to expand our borrowing capacity to \$600 million. For the three month period ending September 30, 2011, we recorded a non-cash charge of approximately \$3.1 million relating to the write-off of deferred financing costs associated with the termination of the 2010 Credit Facility.

The 2011 Credit Facility is priced at LIBOR plus an applicable percentage (ranging from 225 basis points to 300 basis points) based on our consolidated leverage. In the event the Company achieves at least two investment grade ratings from Standard & Poor's, Moody's and/or Fitch Ratings, the 2011 Credit Facility will be priced at LIBOR plus an applicable percentage ranging from 150 basis points to 210 basis points (including a facility fee). The Company's applicable percentage above LIBOR was 250 basis points at September 30, 2011 under the 2011 Credit Facility. The 2011 Credit Facility will be used for acquisitions and general corporate purposes.

The 2011 Credit Facility contains customary affirmative and negative covenants, including, without limitation, limitations on indebtedness; limitations on investments; limitations on liens; limitations on mergers and consolidations; limitations on sales of assets; limitations on transactions with affiliates; limitations on negative pledges; limitations on prepayment of debt; limitations on use of proceeds; limitations on changes in lines of business; limitations on repurchases of the Company's capital stock if a default or event of default occurs; and maintenance of REIT status. In addition, the 2011 Credit Facility contains financial covenants including, without limitation, those relating to maximum total leverage, maximum secured leverage, maximum unsecured leverage, minimum fixed charge coverage, minimum consolidated tangible net worth, minimum unsecured debt yield, minimum unsecured interest coverage and maximum distributions. As of September 30, 2011, we were in compliance with all affirmative and negative covenants, including financial covenants.

#### *\$100 Million Stock Repurchase Program*

On August 30, 2011, Omega's Board of Directors has authorized the repurchase of up to \$100 million of its outstanding common stock, from time to time over the next 12 months.

We are authorized to repurchase shares of our common stock in open market and privately negotiated transactions at the times, and in the manner and amounts, as determined by Omega's management and in accordance with the pricing guidelines approved by our Board of Directors and applicable law. The timing and amount of stock repurchases will depend on a variety of factors, including market conditions and corporate and regulatory considerations. We have no obligation to repurchase any amount of our common stock, and such repurchases, if any, may be discontinued at any time. We expect to fund stock repurchases under the program with borrowings under Omega's 2011 Credit Facility.

On September 30, 2011, the Company entered open market transactions to repurchase 183,310 shares of its common stock at an average price of \$15.96 per share. This repurchase of these common shares settled in the ordinary course on October 5, 2011, subsequent to the end of the third quarter of 2011.

#### *\$575 Million 6.75% Senior Notes Exchange Offer*

On June 2, 2011, we commenced an offer to exchange \$575 million of our 6.75% Senior Notes due 2022 that have been registered under the Securities Act of 1933 for \$575 million of our outstanding 6.75% Senior Notes due 2022, which were issued in October and November 2010 in two separate private placements.

All \$575 million outstanding aggregate principal amount of the initial notes were validly tendered and not withdrawn prior to the expiration of the exchange offer, and were exchanged for exchange notes as of July 14, 2011, pursuant to the terms of the exchange offer. The exchange notes are identical in all material respects to the initial notes, except that the issuance of the exchange notes was registered under the Securities Act of 1933 and the provisions of the initial notes relating to transfer restrictions, registration rights and additional interest relating to registrations delays do not apply to the exchange notes.

#### *\$140 Million Equity Shelf Program*

For the three months ended September 30, 2011, no shares of our common stock were issued through our \$140 million Equity Shelf Program (the "2010 ESP"). For the nine months ended September 30, 2011, 1.4 million shares of our common stock were issued through the 2010 ESP for net proceeds of \$31.4 million, net of \$0.6 million of commissions.

### *Redemption of Series D Preferred Stock*

On March 7, 2011, pursuant to authorization from our Board of Directors, we redeemed all of the outstanding shares of our 8.375% Series D Cumulative Redeemable Preferred Stock at a redemption price of \$25 per share plus \$0.21519 per share in accrued and unpaid dividends up to and including the redemption date, for an aggregate redemption price of \$25.21519 per share. Dividends on the shares of Series D Preferred Stock ceased to accrue on and after the redemption date, after which the Series D Preferred Stock ceased to be outstanding.

We borrowed approximately \$103 million under our previous 2010 Credit Facility to fund the redemption price. In connection with the redemption of the Series D Preferred Stock, we wrote-off \$3.4 million of preferred stock issuance costs that reduced first quarter 2011 net income attributable to common stockholders by approximately \$0.03 per common share.

### **Dividends**

In order to qualify as a REIT, we are required to distribute dividends (other than capital gain dividends) to our stockholders in an amount at least equal to (A) the sum of (i) 90% of our "REIT taxable income" (computed without regard to the dividends paid deduction and our net capital gain), and (ii) 90% of the net income (after tax), if any, from foreclosure property, minus (B) the sum of certain items of non-cash income. In addition, if we dispose of any built-in gain asset during a recognition period, we will be required to distribute at least 90% of the built-in gain (after tax), if any, recognized on the disposition of such asset. Such distributions must be paid in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration. In addition, such distributions are required to be made pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that such class is entitled to such a preference. To the extent that we do not distribute all of our net capital gain or do distribute at least 90%, but less than 100% of our "REIT taxable income" as adjusted, we will be subject to tax thereon at regular ordinary and capital gain corporate tax rates.

In addition, our 2011 Credit Facility has certain financial covenants that limit the distribution of dividends paid during a fiscal quarter to no more than 95% of our aggregate cumulative FFO as defined in the credit agreement, unless a greater distribution is required to maintain REIT status. Solely for purposes of the credit agreement, FFO is defined as net income (or loss) plus depreciation and amortization, adjusted to exclude gains or losses resulting from: (i) restructuring our debt; (ii) sales of property; (iii) sales or redemptions of preferred stock; (iv) revenue or expenses related to owned and operated assets; (v) cash litigation charges up to \$10.0 million over the term of the credit agreement; (vi) non-cash charges associated with the write-down of accounts due to straight-line rent; (vii) other non-cash charges for accounts and notes receivable up to \$20.0 million over the term of the credit agreement; (viii) certain non-cash compensation related expenses; (ix) non-cash real property impairment charges; (x) non-cash charges associated with the sale or settlement of derivative instruments; and (xi) charges related to acquisition deal-related costs.

For the three- and nine- months ended September 30, 2011, we paid total dividends of \$41.4 million and \$120.5 million, respectively.

On October 13, 2011, the Board of Directors declared a common stock dividend of \$0.40 per share to be paid November 15, 2011 to common stockholders of record on October 31, 2011.

### **Liquidity**

We believe our liquidity and various sources of available capital, including cash from operations, our existing availability under our 2011 Credit Facility and expected proceeds from mortgage payoffs are adequate to finance operations, meet recurring debt service requirements and fund future investments through the next twelve months.

We regularly review our liquidity needs, the adequacy of cash flow from operations, and other expected liquidity sources to meet these needs. We believe our principal short-term liquidity needs are to fund:

- normal recurring expenses;
- debt service payments;
- common stock dividends; and
- growth through acquisitions of additional properties.

The primary source of liquidity is our cash flows from operations. Operating cash flows have historically been determined by: (i) the number of facilities we lease or have mortgages on; (ii) rental and mortgage rates; (iii) our debt service obligations; and (iv) general and administrative expenses. The timing, source and amount of cash flows provided by financing activities and used in investing activities are sensitive to the capital markets environment, especially to changes in interest rates. Changes in the capital markets environment may impact the availability of cost-effective capital and affect our plans for acquisition and disposition activity.

Cash and cash equivalents totaled \$10.7 million as of September 30, 2011, an increase of \$3.8 million as compared to the balance at December 31, 2010. The following is a discussion of changes in cash and cash equivalents due to operating, investing and financing activities, which are presented in our Consolidated Statements of Cash Flows.

*Operating Activities* – Net cash flow from operating activities generated \$129.0 million for the nine months ended September 30, 2011, as compared to \$110.4 million for the same period in 2010, an increase of \$18.6 million. The increase is primarily due to the rental revenue from the June 2010 acquisition of 103 facilities from CapitalSource and the placement of additional mortgages, offset by additional interest associated with financing the acquisition and new mortgages and increased general and administrative costs associated with the acquisition.

*Investing Activities* – Net cash flow from investing activities was an outflow of \$20.0 million for the nine months ended September 30, 2011, as compared to an outflow of \$368.8 million for the same period in 2010. The decrease in cash outflow from investing activities relates primarily to the change in acquisition activities. During the nine months ended September 30, 2010, we acquired \$343.2 million real estate facilities and invested \$25.7 million in capital improvement projects. During the nine months ended September 30, 2011, we acquired land for \$0.1 million, placed a mortgage loan for \$5.0 million, invested \$5.5 million related to two construction-to-permanent mortgage loans with one of our operators and invested \$12.0 million in capital improvement projects. In addition, we received a net proceeds of \$4.2 million for the sale of real estate.

*Financing Activities* – Net cash flow from financing activities was an outflow of \$105.2 million for the nine months ended September 30, 2011 as compared to an inflow of \$257.4 million for the same period in 2010. The \$362.5 million change in financing activities was primarily due to the change in acquisition activity. In 2010, we raised debt and issued equity to fund acquisitions that occurred in June 2010. In addition to the changes in financing activity associated with financing our 2010 acquisitions, in 2011 we redeemed our preferred stock through the use of our prior 2010 Credit Facility; (ii) paid approximately \$21.4 million in additional dividends as a result of more shares outstanding; and (iii) increased our dividends per share in 2011 compared to 2010.

### **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. We do not enter into derivatives or other financial instruments for trading or speculative purposes, but we seek to mitigate the effects of fluctuations in interest rates by matching the term of new investments with new long-term fixed rate borrowing to the extent possible.

The interest rate charged on our 2011 Credit Facility can vary based on the interest rate option we choose to utilize. The interest rates per annum applicable to the 2011 Credit Facility are the reserve adjusted LIBOR Rate (the "Eurodollar Rate" or "Eurodollar"), plus the applicable margin (as defined below) or, at our option, the base rate, which will be the highest of (i) the rate of interest publicly announced by the administrative agent as its prime rate in effect, (ii) the federal funds effective rate from time to time plus 0.50% and (iii) the Eurodollar Rate determined on such day for a Eurodollar Loan with an interest period of one month plus 1.0%, in each case, plus the applicable margin (as defined below). The applicable margin with respect to the 2011 Credit Facility is determined in accordance with a performance grid based on our consolidated leverage ratio. The applicable margin may range from 3.0% to 2.25% in the case of Eurodollar advances, and from 2.0% to 1.25% in the case of base rate advances. Letter of credit fees may range from 3.0% to 2.25% per annum, based on the same performance grid. As of September 30, 2011, the total amount of debt outstanding on the 2011 Credit Facility was \$45 million, which is subject to interest rate fluctuations.

For additional information, refer to Item 7A as presented in our annual report on Form 10-K for the year ended December 31, 2010.

#### **Item 4 – Controls and Procedures**

Disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) are controls and other procedures that are designed to provide reasonable assurance that the information that we are required to disclose in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

In connection with the preparation of this Form 10-Q, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2011. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of September 30, 2011.

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the period covered by this report identified in connection with the evaluation of our disclosure controls and procedures described above 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

See Note 10 – Litigation to the Consolidated Financial Statements in Item 1 hereto, which is hereby incorporated by reference in response to this item.

### Item 1A – Risk Factors

We filed our Annual Report on Form 10-K for the year ended December 31, 2010, with the Securities and Exchange Commission on February 28, 2011, which sets forth our risk factors in Item 1A therein, as supplemented in Part II, Item 1A to our Quarterly Reports on Form 10-Q for the three months ended March 31, 2011 and June 30, 2011. We have not experienced any material changes from the risk factors previously described therein.

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

#### Issuer Purchases of Equity Securities in the Third Quarter of Fiscal 2011

Period	Common Stock			
	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>(1)</sup>	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs <sup>(1)</sup>
July 1, 2011 – July 31, 2011	-	\$ -	-	\$ -
August 1, 2011 – August 31, 2011	-	-	-	100,000,000
September 1, 2011 – September 30, 2011 <sup>(2)</sup>	183,310	15.96	183,310	97,073,932
Total	183,310	\$ 15.96	183,310	\$ 97,073,932

(1) On August 30, 2011, the Company announced that its Board of Directors had authorized the Company to repurchase up to \$100,000,000 shares of its common stock over the subsequent twelve months.

(2) On September 30, 2011, the Company entered open market transactions to repurchase 183,310 shares of common stock at an average price of \$15.96 per share. This repurchase settled in the ordinary course on October 5, 2011, subsequent to the end of the third quarter of 2011.



**Item 6 – Exhibits**

Exhibit No.	
10.1	Credit Agreement, dated as of August 16, 2011, among Omega Healthcare Investors, Inc., certain subsidiaries of Omega Healthcare Investors, Inc. identified therein as guarantors, the lenders named therein and Bank of America, N.A. Pursuant to a confidential treatment request, portions of this exhibit have been furnished separately to the Securities and Exchange Commission.
10.2	Seventh Amendment to Second Consolidated amended and Rested master Lease dated as of September 7, 2011, by and among OHI Asset III (PA) Trust as lessor and certain affiliated entities of Communicare Health Service as lessees.
31.1	Rule 13a-14(a)/15d-14(a) Certification of the Chief Executive Officer.
31.2	Rule 13a-14(a)/15d-14(a) Certification of the Chief Financial Officer.
32.1	Section 1350 Certification of the Chief Executive Officer.
32.2	Section 1350 Certification of the Chief Financial Officer.
101.INS	XBRL Instance Document.*
101.SCH	XBRL Taxonomy Extension Schema Document.*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.*

\*In accordance with Rule 406T of Regulation S-T, this XBRL-related information shall be deemed to be “furnished” and not “filed.”

**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.

OMEGA HEALTHCARE INVESTORS, INC.  
Registrant

Date: November 7, 2011

By: /S/ C. TAYLOR PICKETT  
C. Taylor Pickett  
Chief Executive Officer

Date: November 7, 2011

By: /S/ ROBERT O. STEPHENSON  
Robert O. Stephenson  
Chief Financial Officer

EXPLANATORY NOTE: “\*” INDICATES THE PORTION OF THIS EXHIBIT THAT HAS BEEN OMITTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

Execution Version  
Published CUSIP Number: 68209GAA8

CREDIT AGREEMENT

Dated as of August 16, 2011

among

OMEGA HEALTHCARE INVESTORS, INC.,  
as Borrower

CERTAIN SUBSIDIARIES OF THE BORROWER  
REFERRED TO HEREIN AS GUARANTORS,

THE LENDERS PARTY HERETO,

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swing Line Lender and L/C Issuer,

DEUTSCHE BANK SECURITIES INC.,  
as Syndication Agent,

UBS SECURITIES LLC,  
CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,  
and  
RBS CITIZENS, N.A. d/b/a CHARTER ONE,  
as Documentation Agents,

and

JEFFERIES GROUP, INC.,  
ROYAL BANK OF CANADA,  
and  
SUNTRUST BANK,  
as Managing Agents,

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,  
as Joint Lead Arranger and Sole Book Manager

and

DEUTSCHE BANK SECURITIES INC.,  
as Joint Lead Arranger

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## CREDIT AGREEMENT

This **CREDIT AGREEMENT** (as amended, modified, restated or supplemented from time to time, this "**Credit Agreement**" or this "**Agreement**") is entered into as of August 16, 2011 by and among OMEGA HEALTHCARE INVESTORS, INC., a Maryland corporation (the "**Borrower**") certain subsidiaries of the Borrower identified herein, as Guarantors, the Lenders (as defined herein), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer (each, as defined herein).

**WHEREAS**, the Borrower has requested that the Lenders hereunder provide a credit facility in an amount of \$475,000,000, which amount may be increased to the amount of \$600,000,000 (the "**Credit Facility**");

**WHEREAS**, to provide assurance for the repayment of the Loans hereunder and the other Obligations of the Credit Parties, the Borrower will, among other things, provide or cause to be provided to the Administrative Agent, for the benefit of the holders of the Obligations so guaranteed, a guaranty of the Obligations by each of the Guarantors pursuant to Article XI hereof;

**WHEREAS**, subject to the terms and conditions set forth herein, the Administrative Agent is willing to act as administrative agent for the Lenders, the L/C Issuer is willing to issue Letters of Credit as provided herein, the Swing Line Lender is willing to make Swing Line Loans as provided herein, and each of the Lenders is willing to make Revolving Loans and to participate in Letters of Credit as provided herein in an aggregate amount at any one time outstanding not in excess of such Lender's Revolving Commitment hereunder.

**NOW, THEREFORE**, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

#### 1.01 **Defined Terms.**

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

"Acquisition" by any Person, means the purchase or acquisition by such Person of any Capital Stock in or any asset of another Person, whether or not involving a merger or consolidation with such other Person.

"Adjusted Consolidated Funded Debt" means, as of any date of determination, the sum of (a) all Consolidated Funded Debt plus (b) the Consolidated Parties' pro rata share of Funded Debt attributable to interest in Unconsolidated Affiliates.

“Administrative Agent” means Bank of America in its capacity as administrative agent for the Lenders under any of the Credit Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to any 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.

“Agent-Related Persons” means the Administrative Agent, together with its Affiliates (including, in the case of Bank of America in its capacity as the Administrative Agent, the Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

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

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

“Aggregate Revolving Committed Amount” has the meaning provided in Section 2.01(a), as increased from time to time pursuant to Section 2.01(d).

“Agreement” has the meaning provided in the introductory paragraph hereof.

“Applicable Percentage” means, for any applicable period, (a) a per annum rate based on, subject to clause (b) below, the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a) as follows:

<b>Applicable Percentage</b>				
<b>Pricing Level</b>	<b>Consolidated Leverage Ratio</b>	<b>Eurodollar Loans</b>	<b>Base Rate Loans</b>	<b>Letter of Credit Fees</b>
<b>1</b>	≤ 45%	2.25%	1.25%	2.25%
<b>2</b>	> 45% but ≤ 50%	2.50%	1.50%	2.50%
<b>3</b>	> 50% but ≤ 55%	2.75%	1.75%	2.75%
<b>4</b>	> 55%	3.00%	2.00%	3.00%

Any increase or decrease in the Applicable Percentage resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered within ten (10) days after being due in accordance with such Section, then Pricing Level 4 shall apply as of the eleventh (11<sup>th</sup>) day after the date on which such Compliance Certificate was required to have been delivered until the first Business Day after the date on which such Compliance Certificate is delivered. The Applicable Percentages in effect from the Closing Date through the date that the Borrower delivers the Compliance Certificate for the fiscal quarter ending September 30, 2011 shall be determined based upon the Consolidated Leverage Ratio specified in the Compliance Certificate delivered pursuant to Section 4.01(f). Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Percentage for any period shall be subject to the provisions of Section 2.10(b).

(b) In the event that the Borrower achieves at least two Investment Grade Ratings from S&P, Moody's and/or Fitch, and so long as at least two such Investment Grade Ratings are maintained (it being understood that if the Borrower subsequently fails to maintain at least two Investment Grade Ratings, clause (a) above shall be applicable), the "Applicable Percentage" shall mean, for any applicable period, the appropriate applicable percentage corresponding to the following percentages per annum, based upon the Debt Ratings at each Pricing Level as set forth below:

<b>Applicable Percentage</b>					
<b>Pricing Level</b>	<b>Debt Ratings</b>	<b>Eurodollar Loans</b>	<b>Base Rate Loans</b>	<b>Letter of Credit Fees</b>	<b>Facility Fee</b>
<b>1</b>	$\geq$ A-/A3	1.25%	0.25%	1.25%	0.25%
<b>2</b>	BBB+/Baa1	1.35%	0.35%	1.35%	0.30%
<b>3</b>	BBB/Baa2	1.50%	0.50%	1.50%	0.35%
<b>4</b>	BBB-/Baa3	1.70%	0.70%	1.70%	0.40%

Each change in the Applicable Percentage resulting from a publicly announced change in the Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrower to the Administrative Agent of notice thereof and ending on the day immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the public announcement thereof and ending on the day immediately preceding the effective date of the next such change. If at any time the Borrower has only two (2) Investment Grade Ratings, and such Debt Ratings are split, then: (A) if the difference between such Debt Ratings is one ratings category (e.g. Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Percentage shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used; and (B) if the difference between such Debt Ratings is two ratings categories (e.g. Baa1 by Moody's and BBB- by S&P), the Applicable Percentage shall be the rate per annum that would be applicable if the median of the applicable Debt Ratings were used. If at any time the Borrower has three (3) Investment Grade Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest such Debt Ratings is one ratings category (e.g. Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Percentage shall be the rate per annum that would be applicable if the highest of the Debt Ratings were used; and (B) if the difference between such Debt Ratings is two ratings categories (e.g. Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Applicable Percentage shall be the rate per annum that would be applicable if the average of the two (2) highest Debt Ratings were used; provided, that if such average is not a recognized rating category, then the Applicable Percentage shall be the rate per annum that would be applicable if the second highest Debt Rating of the three were used.

"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.

"Arranger" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as joint lead arranger and sole book manager.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"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 10.07(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent and, if such assignment and assumption requires its consent, the Borrower.

"Attorney Costs" means and includes all reasonable and documented fees, expenses and disbursements of any law firm or other external counsel and, without duplication, the allocated reasonable and documented cost of internal legal services and all expenses and disbursements of internal counsel.

"Attributable Principal Amount" means (a) in the case of capital leases, the amount of capital lease obligations determined in accordance with GAAP, (b) in the case of Synthetic Leases, an amount determined by capitalization of the remaining lease payments thereunder as if it were a capital lease determined in accordance with GAAP, (c) in the case of Securitization Transactions, the outstanding principal amount of such financing, after taking into account reserve amounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment and (d) in the case of Sale and Leaseback Transactions, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease).

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries for the fiscal year ended December 31, 2010, and the related consolidated statements of earnings, shareholders' equity and cash flows for such fiscal year of the Borrower and its consolidated Subsidiaries, including the notes thereto; provided, that the Administrative Agent hereby agrees that the Form 10-K of the Borrower delivered to it by the Borrower and containing information for the fiscal year ended December 31, 2010 shall constitute all information required to be delivered as part of the "Audited Financial Statements" for purposes of this Agreement.

"Availability Amount" means, at any time, an amount equal to the sum of sixty percent (60%) of the Unencumbered Asset Value minus Consolidated Unsecured Funded Debt (excluding the Outstanding Amount of the Revolving Obligations).

"Bank of America" means Bank of America, N.A., together with its successors.

"Bankruptcy Event" means, with respect to any Person, the occurrence of any of the following: (a) the entry of a decree or order for relief by a court or governmental agency in an involuntary case under any applicable Debtor Relief Law or any other bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment by a court or governmental agency of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or the ordering of the winding up or liquidation of its affairs by a court or governmental agency and such decree, order or appointment is not vacated or discharged within ninety (90) days of its filing; or (b) the commencement against such Person of an involuntary case under any applicable Debtor Relief Law or any other bankruptcy, insolvency or other similar law now or hereafter in effect, or of any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or for the winding up or liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall remain undischarged for a period of ninety (90) consecutive days, or the repossession or seizure by a creditor of such Person of a substantial part of its Property; or (c) such Person shall commence a voluntary case under any applicable Debtor Relief Law or any other bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment of or the taking possession by a receiver, liquidator, assignee, creditor in possession, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or make any general assignment for the benefit of creditors; or (d) the filing of a petition by such Person seeking to take advantage of any Debtor Relief Law or any other applicable Law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or (e) such Person shall fail to contest in a timely and appropriate manner (and if not dismissed within ninety (90) days or shall consent to any petition filed against it in an involuntary case under such bankruptcy laws or other applicable Law or consent to any proceeding or action relating to any bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts with respect to its assets or existence, or (f) such Person shall admit in writing, or such Person's financial statements shall reflect, an inability to pay its debts generally as they become due.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) the Eurodollar Rate plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America'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 the prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Borrower" has the meaning given to such term in the introductory paragraph hereof.

"Borrower Materials" has the meaning provided in Section 6.02.

"Borrowing" means (a) a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Loans, having the same Interest Period, or (b) a borrowing of Swing Line Loans, as appropriate.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit C-2 hereto delivered to the Administrative Agent pursuant to Section 6.02(b) or more frequently at the option of the Borrower (a) setting forth a summary of the Unencumbered Asset Value relating thereto and stating the Unencumbered Net Revenue attributable to each Unencumbered Property, in form, substance and detail reasonably satisfactory to the Administrative Agent, (b) certifying (based upon its own information and the information made available to the Borrower by the applicable Tenants, which information the Borrower believes in good faith to be true and correct in all material respects) (i) the calculation of the Availability Amount as of the date of such certificate and (ii) that each Real Property Asset used in the calculation of the Availability Amount meets each of the criteria for qualification as an Unencumbered Property and (c) providing such other information with respect to the Unencumbered Properties as the Administrative Agent may reasonably require.

"Braswell Indebtedness" means that certain Indebtedness of Regency Health Services, Inc. owing to C. Allen Braswell, Braswell Management, Inc., Dorothy Norton and Cecil Mays pursuant to that certain Promissory Note Secured by Deeds of Trust in the original principal amount of \$4,114,035 (of which no more than \$2,961,607 is outstanding as of the Closing Date).

"Businesses" has the meaning provided in Section 5.07(a).

"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 is located and, if such day relates to any Eurodollar Loan, means any such day that is also a London Banking Day.

"Capital Lease" means a lease that would be capitalized on a balance sheet of the lessee prepared in accordance with GAAP.

"Capital Stock" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests and (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalization Rate” means 10.5% for all government reimbursed assets (i.e. skilled nursing facilities, hospitals, etc.) and 8.0% for all non-government reimbursed assets (i.e. assisted living facilities, independent living facilities, medical office buildings, etc.).

“Cash Collateral” means cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer pledged and deposited with or delivered to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations.

“Cash Equivalents” means (a) securities issued or directly and fully guaranteed or insured by (i) the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof (each an “Approved Bank”), in each case with maturities of not more than two hundred seventy (270) days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody’s and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments (classified in accordance with GAAP as current assets) in money market investment programs registered under the Investment Company Act of 1940, as amended, that are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subclauses hereof.

“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, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States 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 or issued.

“Change of Control” means the occurrence of any of the following events: (a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of the Borrower (or other securities convertible into such voting stock) representing thirty-five percent (35%) or more of the combined voting power of all voting stock of the Borrower, (b) during any period of up to twenty-four (24) consecutive months, commencing after the Closing Date, individuals who at the beginning of such twenty-four (24) month period were directors of the Borrower (together with any new director whose election by the Borrower’s Board of Directors or whose nomination for election by the Borrower’s shareholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of the Borrower then in office. As used herein, “beneficial ownership” shall have the meaning provided in Rule 13d-3 of the SEC under the Securities Exchange Act of 1934, or (c) the occurrence of a “Change of Control” or any equivalent term or concept under any of the Senior Note Indentures.

“Closing Date” means the date hereof.

“Commitment” means the Revolving Commitment, the L/C Commitment and the Swing Line Commitment.

“Commitment Period” means the period from and including the Closing Date to the earlier of (a) in the case of Revolving Loans and Swing Line Loans, the Termination Date, and, in the case of the Letters of Credit, the Letter of Credit Expiration Date, or (b) the date on which the Revolving Commitments shall have been terminated as provided herein.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C-1.

“Confidential Information” has the meaning provided in Section 10.08.

“Consolidated Adjusted EBITDA” means, for any period, for the Consolidated Parties on a consolidated basis, the sum of (a) Consolidated EBITDA as of such date plus (b) an amount based on the Special Charges Adjustment (without duplication to the extent included in the determination of Consolidated Interest Expense and added back to net income in the calculation of Consolidated EBITDA).

“Consolidated EBITDA” means, for any period, for the Consolidated Parties on a consolidated basis, the sum of (a) net income of the Consolidated Parties, in each case, excluding any non-recurring or extraordinary gains and losses, plus (b) an amount which, in the determination of net income for such period pursuant to clause (a) above, has been deducted for or in connection with (i) Consolidated Interest Expense (plus, amortization of deferred financing costs, to the extent included in the determination of Consolidated Interest Expense per GAAP), (ii) income taxes, and (iii) depreciation and amortization plus (c) to the extent decreasing net income of the Consolidated Parties for such period, all expenses directly attributable to FIN 46 consolidation requirements, minus (d) to the extent increasing net income of the Consolidated Parties for such period, all revenue directly attributable to FIN 46 consolidation requirements, plus (e) to the extent decreasing net income of the Consolidated Parties for such period, all expenses directly related to owned and operated assets, minus (f) to the extent increasing net income of the Consolidated Parties for such period, all revenues directly related to owned and operated assets, all determined in accordance with GAAP.



“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA to (b) Consolidated Fixed Charges for the most recently completed four (4) fiscal quarters.

“Consolidated Fixed Charges” means, for any period, for the Consolidated Parties on a consolidated basis, the sum of (a) Consolidated Interest Expense (excluding, for purposes hereof and without duplication, Special Charges to the extent included in the calculation of Consolidated Interest Expense) for such period, plus (b) current scheduled principal payments of Consolidated Funded Debt for such period (including, for purposes hereof, current scheduled reductions in commitments, but excluding any payment of principal under the Credit Documents and any “balloon” payment or final payment at maturity that is significantly larger than the scheduled payments that preceded it) for a period beginning the day after the date of determination and lasting for the same length of time as the applicable period referenced at the beginning of this definition, plus (c) dividends and distributions on preferred stock, if any, for such period, in each case, as determined in accordance with GAAP.

“Consolidated Funded Debt” means, as of any date of determination, the sum of (a) all Funded Debt of the Consolidated Parties determined on a consolidated basis minus (b) to the extent included in the calculation of Funded Debt of the Consolidated Parties, the aggregate amount of Funded Debt directly attributable to FIN 46 consolidation requirements, all determined in accordance with GAAP.

“Consolidated Interest Expense” means, for any period, for the Consolidated Parties on a consolidated basis, all interest expense and letter of credit fee expense, as determined in accordance with GAAP during such period; provided, that interest expenses shall, in any event, (a) include the interest component under Capital Leases and the implied interest component under Securitization Transactions and (b) exclude the amortization of any deferred financing fees.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Adjusted Consolidated Funded Debt to (b) Consolidated Total Asset Value for the most recently completed fiscal quarter.

“Consolidated Parties” means the Borrower and its Consolidated Subsidiaries, as determined in accordance with GAAP.

“Consolidated Secured Funded Debt” means the aggregate principal amount of Funded Debt of the Borrower or any of its Subsidiaries, on a consolidated basis, that is secured by a Lien, and shall include (without duplication), the ownership share of the Funded Debt of the Borrower’s or its Subsidiaries’ Unconsolidated Affiliates that is secured by a Lien.

“Consolidated Secured Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Secured Funded Debt to (b) Consolidated Total Asset Value for the most recently completed fiscal quarter.

“Consolidated Subsidiary” means at any date any Subsidiary or other entity the accounts of which would be consolidated with those of the Borrower in its consolidated financial statements if such statements were prepared as of such date.

“Consolidated Tangible Net Worth” means, for the Consolidated Parties as of any date of determination, (a) stockholders' equity on a consolidated basis determined in accordance with GAAP, but with no upward adjustments due to any revaluation of assets, less (b) all Intangible Assets, plus (c) all accumulated depreciation, all determined in accordance with GAAP; provided, that the Consolidated Parties will be permitted to exclude (i.e. add back to stockholder's equity) up to \$25,000,000 in potential future impairment charges incurred during the term of this Credit Agreement (such exclusions to be clearly reflected, however, in the calculations of Consolidated Tangible Net Worth delivered to the Administrative Agent by the Borrower from time to time pursuant to the terms of this Credit Agreement).

“Consolidated Total Asset Value” means the sum of all the following of the Consolidated Parties, without duplication: (a) the quotient of (1) Net Revenue from all Real Property Assets for the fiscal quarter most recently ended, minus the Net Revenue attributable to each Real Property Asset sold or otherwise disposed of during such most recently ended quarter, minus the Net Revenue from all Real Property Assets acquired during the last fiscal quarter, multiplied by four, divided by (2) the Capitalization Rate, plus (b) the acquisition cost of each Real Property Asset acquired during the last fiscal quarter, plus (b) the GAAP book value of the Borrower's Investments permitted by Section 7.03, plus (c) cash and cash equivalents, plus (d) the Consolidated Parties' pro rata share of the foregoing items and components attributable to interest in Unconsolidated Affiliates.

“Consolidated Unsecured Debt Yield” means, as of any date of determination, the ratio of (a) Unencumbered Net Revenue plus interest income from unencumbered Mortgage Loans, as of the end of the most recently completed fiscal quarter multiplied by four (4) to (b) the Consolidated Unsecured Funded Debt for the most recently completed fiscal quarter.

“Consolidated Unsecured Funded Debt” mean the aggregate principal amount of Funded Debt of the Borrower or any of its Subsidiaries, on a consolidated basis, that is not Consolidated Secured Funded Debt.

“Consolidated Unsecured Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Unencumbered Net Revenue to (b) the Consolidated Unsecured Interest Expense for the most recently completed fiscal quarter.

“Consolidated Unsecured Interest Expense” means, for any period, for the Consolidated Parties on a consolidated basis, all interest expense and letter of credit fee expense, as determined in accordance with GAAP during such period, attributable to Borrower and its Subsidiaries' aggregate Consolidated Unsecured Funded Debt; provided, that interest expenses shall, in any event, (a) include the interest component under Capital Leases and the implied interest component under Securitization Transactions and (b) exclude the amortization of any deferred financing fees.

“Consolidated Unsecured Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Unsecured Funded Debt to (b) Unencumbered Asset Value for the most recently completed fiscal quarter.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“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. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote twenty-five percent (25%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

“COSO” means the Committee of Sponsoring Organizations of the Treadway Commission.

“Credit Agreement” has the meaning given to such term in the introductory paragraph hereof.

“Credit Documents” means this Credit Agreement, the Notes, the Engagement Letter, each Issuer Document, the Subsidiary Guarantor Joinder Agreements, the Borrowing Base Certificates, the Compliance Certificates and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14.

“Credit Party” means, as of any date, the Borrower or any Guarantor which is a party to the Credit Agreement as of such date; and “ Credit Parties” means a collective reference to each of them.

“Daily Floating Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the Daily Floating Eurodollar Rate.

“Daily Floating Eurodollar Rate” means, for each day, a fluctuating rate of interest equal to Eurodollar Rate applicable on such day for an Interest Period of one month beginning two (2) Business Days thereafter. The Daily Floating Eurodollar Rate shall be determined and adjusted on each Business Day and shall remain in effect until the next Business Day.

“Debt Rating” means, as of any date of determination, the rating as determined by S&P, Moody’s and/or Fitch for the Borrower’s non-credit-enhanced, senior unsecured long-term debt.

"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 and affecting the rights of creditors generally.

"Default" means any event, act or condition that, with notice, the passage of time, or both, would constitute an Event of Default.

"Default Rate" means an interest rate equal to (a) the Base Rate plus (b) the Applicable Percentage, if any, applicable to Base Rate Loans plus (c) two percent (2%) per annum; provided, however, that with respect to a Eurodollar Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Percentage) otherwise applicable to such Loan plus two percent (2%) per annum, in each case to the fullest extent permitted by applicable Law.

"Defaulting Lender" means, subject to Section 2.15(b), any Lender that, as reasonably determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within three Business Days of the date required to be funded by it hereunder, unless, in the case of any Loan, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's reasonable 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, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit (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 reasonable 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 Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (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 a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; 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.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dollar” or “\$” means the lawful currency of the United States.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent (such approval not to be unreasonably withheld), and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided, that notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower or any of the Borrower’s Affiliates or Subsidiaries.

“Eligible Ground Lease” means, at any time, a ground lease (a) under which the Borrower or a Subsidiary of the Borrower is the lessee or holds equivalent rights and is the fee owner of the improvements located thereon, (b) that has a remaining term of not less than thirty (30) years; provided, however, with respect to that certain ground lease covering properties located at 200 Alabama Avenue, Muscle Shoals, Alabama, 500 John Aldridge Drive, Tuscumbia, Alabama and 813 Keeler Lane, Tuscumbia, Alabama, such remaining term may be less than thirty (30) years provided that the Borrower or such Subsidiary of the Borrower at all times possesses a valid and enforceable irrevocable option to purchase the fee interest in such properties with no conditions or contingencies other than the payment of a sum of less than \$1,000.00, (c) under which any required rental payment, principal or interest payment or other payment due under such lease from the Borrower or from such Subsidiary of the Borrower to the ground lessor is not more than sixty (60) days past due and any required rental payment, principal or interest payment or other payment due to such Borrower or Subsidiary of the Borrower under any sublease of the applicable real property lessor is not more than sixty (60) days past due, (d) where no party to such lease is subject to a then-continuing Bankruptcy Event, (e) such ground lease (or a related document executed by the applicable ground lessor) contains customary provisions protective of any lender to the lessee and (f) where the Borrower’s or such Subsidiary of the Borrower’s interest in the underlying Real Property Asset or the lease is not subject to (i) any Lien other than Permitted Liens and other encumbrances acceptable to the Administrative Agent and the Required Lenders, in their discretion, or (ii) any Negative Pledge.

“Engagement Letter” means the letter agreement dated as of June 17, 2011 among the Borrower, the Arranger and the Administrative Agent, as amended and modified.

“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 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.

“Equity Transaction” means, with respect to any member of the Consolidated Parties, any issuance or sale of shares of its Capital Stock, other than an issuance (a) to a Consolidated Party, (b) in connection with a conversion of debt securities to equity, (c) in connection with the exercise by a present or former employee, officer or director under a stock incentive plan, stock option plan or other equity-based compensation plan or arrangement, or (d) in connection with any acquisition permitted hereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“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 Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“Eurodollar Base Rate” means:

(a) For any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such published rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period.

(b) For any day with respect to an interest rate calculation for a Base Rate Loan, the rate per annum equal to (i) BBA LIBOR at approximately 11:00 a.m., London time, two (2) London Banking Days prior to such date for Dollar deposits (for delivery on such day) with a term equivalent to one month or (ii) if such rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on such day in same day funds in the approximate amount of the Base Rate Loan being made, continued or converted by Bank of America and with a term equivalent to one (1) month would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at the date and time of determination.

"Eurodollar Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Eurodollar Base Rate."

"Eurodollar Rate" means for any Interest Period with respect to any Eurodollar Loan or any Base Rate Loan bearing interest at a rate based on the Eurodollar Rate, a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

"Eurodollar Reserve Percentage" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The Eurodollar Rate for each outstanding Eurodollar Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Default" has the meaning provided in Section 8.01.

"Executive Order" has the meaning provided in the definition of "Prohibited Person" in this Section 1.01.

"Existing Credit Facility" means that certain Credit Agreement, dated as of April 13, 2010, by and among the certain Subsidiaries of the Borrower, the lenders party thereto and Bank of America, N.A. as administrative agent, as amended, restated or otherwise modified from time to time prior to the date hereof.

"Extension of Credit" means (a) any Borrowing and (b) any L/C Credit Extension.

“Facilities” has the meaning provided in Section 5.07(a).

“Facility Fee” has the meaning in Section 2.09(b).

“Facility Lease” means a lease or master lease with respect to any Real Property Asset owned or ground leased by any of the Consolidated Parties as lessor, to a third party Tenant, which, in the reasonable judgment of the Administrative Agent, is a triple net lease such that such Tenant is required to pay all taxes, utilities, insurance, maintenance, casualty insurance payments and other expenses with respect to the subject Real Property Asset (whether in the form of reimbursements or additional rent) in addition to the base rental payments required thereunder such that net operating income to the applicable Consolidated Party for such Real Property Asset (before non-cash items) equals the base rent paid thereunder; provided, that each such lease or master lease shall be in form and substance reasonably satisfactory to the Administrative Agent.

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

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day immediately succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the immediately succeeding Business Day, and (b) if no such rate is so published on such immediately succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to the next 1/100<sup>th</sup> of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fitch” means Fitch Ratings, a Subsidiary of Fimalac, S.A., and any successor thereto.

“Foreign Lender” has the meaning provided in Section 10.15(a)(i).

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

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



“Fund” means any Person (other than a natural person) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Funded Debt” means, as to any Person (or consolidated group of Persons) at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all purchase money indebtedness (including indebtedness and obligations in respect of conditional sales and title retention arrangements, except for customary conditional sales and title retention arrangements with suppliers that are entered into in the ordinary course of business) and all indebtedness and obligations in respect of the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and payable on customary trade terms);
- (c) all direct obligations under letters of credit (including standby and commercial), bankers’ acceptances and similar instruments (including bank guaranties, surety bonds, comfort letters, keep-well agreements and capital maintenance agreements) to the extent such instruments or agreements support financial, rather than performance, obligations;
- (d) the Attributable Principal Amount of capital leases and Synthetic Leases;
- (e) the Attributable Principal Amount of Securitization Transactions;
- (f) all preferred stock and comparable equity interests providing for mandatory redemption, sinking fund or other like payments;
- (g) Support Obligations in respect of Funded Debt of another Person (other than Persons in such group, if applicable); and
- (h) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person (or, if applicable, any Person in such consolidated group) for payment thereof.

For purposes hereof, the amount of Funded Debt shall be determined based on the outstanding principal amount in the case of borrowed money indebtedness under clause (a) and purchase money indebtedness and the deferred purchase obligations under clause (b), based on the maximum amount available to be drawn in the case of letter of credit obligations and the other obligations under clause (c), and based on the amount of Funded Debt that is the subject of the Support Obligations in the case of Support Obligations under clause (g). For purposes of clarification, “Funded Debt” of Person constituting a consolidated group shall not include inter-company indebtedness of such Persons, general accounts payable of such Persons which arise in the ordinary course of business, accrued expenses of such Persons incurred in the ordinary course of business or minority interests in joint ventures or limited partnerships (except to the extent set forth in clause (h) above).

"Funds From Operations" means, with respect to any period, the Borrower's net income (or loss), plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures as hereafter provided. Notwithstanding contrary treatment under GAAP, for purposes hereof, (a) "Funds From Operations" shall include, and be adjusted to take into account, the Borrower's interests in unconsolidated partnerships and joint ventures, on the same basis as consolidated partnerships and subsidiaries, as provided in the "white paper" issued in April 2002 by the National Association of Real Estate Investment Trusts, a copy of which has been provided to the Administrative Agent and the Lenders and (b) net income (or loss) shall not include gains (or, if applicable, losses) resulting from or in connection with (i) restructuring of indebtedness, (ii) sales of property, (iii) sales or redemptions of preferred stock, (iv) revenue or expenses related to owned and operated assets, (v) revenue or expense related to FIN 46 consolidation requirements or (vi) any other Special Charges.

"GAAP" means generally accepted accounting principles in effect in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time applied on a consistent basis, subject to the provisions of Section 1.03.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guaranteed Obligations" has the meaning given to such term in Section 11.01.

"Guarantors" means any Subsidiary of the Borrower that guarantees the loans and obligations hereunder pursuant to the Guaranty, in each case with their successors and permitted assigns.

"Guaranty" means the guaranty of the Obligations by each of the Guarantors pursuant to Article XI hereof.

"Hazardous Material" means any toxic or hazardous substance, including petroleum and its derivatives regulated under the Environmental Laws.

"Healthcare Facilities" means any skilled nursing facilities, mentally retarded and developmentally disabled facilities, rehab hospitals, long term acute care facilities, intermediate care facilities for the mentally disabled, medical office buildings, domestic assisted living facilities, independent living facilities or Alzheimer's care facilities and any ancillary businesses that are incidental to the foregoing.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all Funded Debt;
- (b) all contingent obligations under letters of credit (including standby and commercial), bankers' acceptances and similar instruments (including bank guaranties, surety bonds, comfort letters, keep-well agreements and capital maintenance agreements) to the extent such instruments or agreements support financial, rather than performance, obligations;
- (c) net obligations under any Swap Contract;
- (d) Support Obligations in respect of Indebtedness of another Person; and
- (e) Indebtedness of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Indebtedness shall be determined based on Swap Termination Value in the case of net obligations under Swap Contracts under clause (c) and based on the outstanding principal amount of the Indebtedness that is the subject of the Support Obligations in the case of Support Obligations under clause (d).

"Indemnified Liabilities" has the meaning provided in Section 10.05.

"Indemnitees" has the meaning provided in Section 10.05.

"Intangible Assets" means all assets consisting of goodwill, patents, trade names, trademarks, copyrights, franchises, experimental expense, organization expense, unamortized debt discount and expense, deferred assets (other than prepaid insurance and prepaid taxes), the excess of cost of shares acquired over book value of related assets and such other assets as are properly classified as "intangible assets" in accordance with GAAP.

"Interest Payment Date" means, (a) as to any Base Rate Loan (including Swing Line Loans), the last Business Day of each March, June, September and December and the Termination Date and, in the case of any Swing Line Loan, any other dates reasonably determined by the Swing Line Lender, and (b) as to any Eurodollar Loan (other than Swing Line Loans), the last Business Day of each Interest Period for such Loan, the date of repayment of principal of such Loan, and where the applicable Interest Period exceeds three months, the date every three months after the beginning of such Interest Period. If an Interest Payment Date falls on a date that is not a Business Day, such Interest Payment Date shall be deemed to be the immediately succeeding Business Day.

"Interest Period" means, as to each Eurodollar Loan, the period commencing on the date such Eurodollar Loan is disbursed or converted to or continued as a Eurodollar Loan and ending on the date one, two, three or six months thereafter, as selected by the applicable Borrower in its Loan Notice; provided, that:

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

(c) no Interest Period shall extend beyond the Termination Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986 as amended.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock of another Person, (b) a loan, advance or capital contribution to, guaranty or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Investment Grade Rating" means a Debt Rating of BBB-/Baa3 (or equivalent) or higher from either Moody's, S&P or Fitch.

"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.

"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 Lender, such Lender's funding of its participation in any L/C Borrowing.

"L/C Borrowing" means any extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed or refinanced as a Borrowing of Revolving Loans.

"L/C Commitment" means, with respect to the L/C Issuer, the commitment of the L/C Issuer to issue and to honor payment obligations under Letters of Credit, and, with respect to each Lender, the commitment of such Lender to purchase participation interests in L/C Obligations up to such Lender's Revolving Commitment Percentage thereof.

"L/C Committed Amount" has the meaning provided in Section 2.01(b).

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

"L/C Issuer" means Bank of America in its capacity as issuer of Letters of Credit hereunder, in each case together with its successors in such capacity.

"L/C Issuer Fees" has the meaning given such term in Section 2.09(d)(ii).

"L/C Obligations" means, at any time, the sum of (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all Unreimbursed Amounts, including 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 1.07. 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 (and, as appropriate, includes the L/C Issuer and the Swing Line Lender) and each Person who joins as a Lender pursuant to the terms hereof, together with their respective successors and assigns.

"Lender Joinder Agreement" means a joinder agreement in the form of Exhibit F, executed and delivered in accordance with the provisions of Section 2.01(d).

“Lending Office” means, as to any Lender, the office or offices of such Lender set forth 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.

“Letter of Credit” means each standby (non-commercial) letter of credit issued hereunder.

“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) Business Days prior to the Termination Date then in effect (or, if such day is not a Business Day, the immediately preceding Business Day).

“Letter of Credit Fee” has the meaning given such term in Section 2.09(d)(i).

“Lien” means any mortgage, deed of trust, deed to secured debt, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means any Revolving Loan or Swing Line Loan and the Base Rate Loans, Eurodollar Loans and Daily Floating Eurodollar Rate Loans comprising such Loans.

“Loan Notice” means a notice of (a) a Borrowing of Loans (including Swing Line Loans), (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Loans, which, if in writing, shall be substantially in the form of Exhibit A.

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

“Material Adverse Effect” means a material adverse effect on (i) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of the Borrower and its Consolidated Subsidiaries taken as a whole, (ii) the ability of the Borrower or the other Credit Parties, taken as a whole, to perform any material obligation under the Credit Documents, or (iii) the rights and remedies of the Administrative Agent and the Lenders under the Credit Documents.

“Material Contract” means, any agreement the breach, nonperformance or cancellation of which could reasonably be expected to have a Material Adverse Effect.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Loan” means any loan owned or held by any of the Consolidated Parties secured by a first mortgage or first deed of trust on Real Property Assets.

"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 plan years, has made or been obligated to make contributions.

"Negative Pledge" means any agreement (other than this Credit Agreement or any other Credit Document) that in whole or in part prohibits the creation of any Lien on any assets of a Person; provided, however, that an agreement that establishes a maximum ratio of unsecured debt to unencumbered assets, or of secured debt to total assets, or that otherwise conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a "Negative Pledge" for purposes of this Credit Agreement.

"Net Revenues" shall mean, with respect to any Real Property Asset for the most recently ended four (4) fiscal quarter period, the sum of (a) rental payments received in cash by the applicable Consolidated Party (whether in the nature of base rent, minimum rent, percentage rent, additional rent or otherwise, but exclusive of security deposits, earnest money deposits, advance rentals, reserves for capital expenditures, charges, expenses or items required to be paid or reimbursed by the Tenant thereunder and proceeds from a sale or other disposition) pursuant to the Facility Leases applicable to such Real Property Asset, minus (b) expenses of the applicable Consolidated Party allocated to such Real Property Asset.

"Notes" means the Revolving Notes; and "Note" means any one of them.

"Obligations" means, without duplication, (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Credit Document or otherwise with respect to any Loan or Letter of Credit, 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 any Credit Party or any Affiliate thereof 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 and (b) all obligations under any Swap Contract of any Credit Party to which a Lender or any Affiliate of a Lender is a party.

"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; and (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 and 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 and, if applicable, any certificate or articles of formation or organization of such entity.

“Outstanding Amount” means (a) with respect to Revolving Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans and Swing Line Loans, as the case may be, occurring on such date and (b) with respect to any L/C Obligations on any date, 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 of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Participant” has the meaning provided in Section 10.07(d).

“Patriot Act” means the USA Patriot Act, Pub. L. No. 107-56 et seq.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Permitted Liens” means, at any time, Liens in respect of the Borrower or any of its Subsidiaries permitted to exist at such time pursuant to the terms of Section 7.01.

“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” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Internal Revenue Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning provided in Section 6.02.

“Pro Forma Basis” shall mean, for purposes of determining the calculation of and compliance with the financial covenants set forth in Section 6.12(d), (f) and (g) hereunder, that the subject transaction shall be deemed to have occurred as of the first day of the period of four (4) consecutive fiscal quarters ending as of the end of the most recent fiscal quarter for which annual or quarterly financial statements shall have been delivered in accordance with the provisions of this Credit Agreement. Further, for purposes of making calculations on a “Pro Forma Basis” hereunder, (a) in the case of a Disposition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Disposition shall be excluded to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness paid or retired in connection with the subject transaction shall be deemed to have been paid and retired as of the first day of the applicable period; (b) in the case of an Acquisition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Acquisition shall be included to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness incurred in connection with the subject transaction shall be deemed to have been incurred as of the first day of the applicable period (and interest expense shall be imputed for the applicable period utilizing the actual interest rates thereunder or, if actual rates are not ascertainable, assuming prevailing interest rates hereunder) and (c) in the case of an Equity Transaction, Indebtedness paid or retired in connection therewith shall be deemed to have been paid and retired as of the first day of the applicable period.



"Prohibited Person" means any Person (i) listed in the annex to, or who is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions, of the Executive Order; (iii) with whom a Person is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering Law, including the Executive Order; (iv) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; (v) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list; or who is an Affiliate of a Person listed in clauses (i) - (v) above.

"Property" means all property owned or leased by a Credit Party or any of its Subsidiaries, both real and personal.

"Qualified REIT Subsidiary" means the meaning given to such term in the Internal Revenue Code.

"Real Property Asset" means, a parcel of real property, together with all improvements (if any) thereon, owned in fee simple or leased pursuant to an Eligible Ground Lease by any Person; "Real Property Assets" means a collective reference to each Real Property Asset.

"Register" has the meaning provided in Section 10.07(c).

"Registered Public Accounting Firm" has the meaning provided in the Securities Laws and shall be independent of the Borrower as prescribed by the Securities Laws.

"Regulation T" means Regulation T of the FRB, as in effect from time to time.

"Regulation U" means Regulation U of the FRB, as in effect from time to time.

"Regulation X" means Regulation X of the FRB, as in effect from time to time.

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

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

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

“Request for Extension of Credit” means (a) with respect to a Borrowing of Loans (including Swing Line Loans) or the conversion or continuation of Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“Required Lenders” means, as of any date of determination, two or more Lenders (except to the extent only one Lender exists as of such date) having at least 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Article VIII, Lenders holding in the aggregate at least 50% of the Revolving Obligations (including, in each case, the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans); provided, that the unfunded Commitments of, and the portion of the Revolving Obligations held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means the chief executive officer, president, chief operating officer and chief financial officer of any Credit Party. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

“Revolving Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to share in the Revolving Obligations hereunder up to such Lender’s Revolving Commitment Percentage thereof.

“Revolving Commitment Percentage” means, at any time for each Lender, a fraction (expressed as a percentage carried to the ninth decimal place), the numerator of which is such Lender’s Revolving Committed Amount and the denominator of which is the Aggregate Revolving Committed Amount. The initial Revolving Commitment Percentages are set forth on Schedule 2.01.

“Revolving Committed Amount” means, with respect to each Lender, the amount of such Lender’s Revolving Commitment. The initial Revolving Committed Amounts are set forth on Schedule 2.01.

“Revolving Loans” has the meaning provided in Section 2.01.

“Revolving Note” means the promissory notes in the form of Exhibit B, if any, given to each Lender to evidence the Revolving Loans and Swing Line Loans of such Lender, as amended, restated, modified, supplemented, extended, renewed or replaced.

“Revolving Obligations” means the Revolving Loans, the L/C Obligations and the Swing Line Loans.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to the Borrower or any Subsidiary, any arrangement, directly or indirectly, with any person whereby the Borrower or such Subsidiary shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Securities Laws” means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Securitization Transaction” means any financing or factoring or similar transaction (or series of such transactions) entered by any member of the Consolidated Parties pursuant to which such member of the Consolidated Parties may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate or any other Person.

“Senior Notes” means collectively, the Senior Notes (2016), the Senior Notes (2020) and the Senior Notes (2022).

“Senior Notes (2016)” means any one of the 7.0% Senior Notes due 2016 issued by the Borrower in favor of the Senior Noteholders pursuant to the Senior Note Indenture (2016), as such Senior Notes may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Senior Notes (2020)” means any one of the 7.5% Senior Notes due 2020 issued by the Borrower in favor of the Senior Noteholders pursuant to the Senior Note Indenture (2020), as such Senior Notes may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Senior Notes (2022)” means any one of the 6.75% Senior Notes due 2022 issued by the Borrower in favor of the Senior Noteholders pursuant to the Senior Note Indenture (2022), as such Senior Notes may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Senior Note Indentures” means collectively, the Senior Note Indenture (2016), the Senior Note Indenture (2020) and the Senior Note Indenture (2022).

“Senior Note Indenture (2016)” means the Indenture, dated as of December 30, 2005 by and among the Borrower and the Senior Noteholders, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Senior Note Indenture (2020)” means the Indenture, dated as of February 9, 2010 by and among the Borrower and the Senior Noteholders, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Senior Note Indenture (2022)” means the Indenture, dated as of October 4, 2010 by and among the Borrower and the Senior Noteholders, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Senior Noteholder” means any one of the holders from time to time of the Senior Notes.

“Solvent” means, with respect to any person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Special Charges” means, for any period, for the Consolidated Parties on a consolidated basis, all charges, costs or expenses of the Consolidated Parties related to any of the following:

- (a) cash litigation charges incurred by the Consolidated Parties; provided, that such amount shall not exceed an aggregate amount of \$10,000,000 during the term of this Credit Agreement and any such amounts in excess of \$10,000,000 shall not be included in the determination of the Special Charges Adjustment for any period;

- (b) non-cash charges associated solely with respect to the write-down of the value of accounts due to straight-line rent;
- (c) other than as set forth in clause (b) immediately above, additional non-cash charges associated with the write-down of the value of accounts and/or notes receivable of the Consolidated Parties; provided, that such amount shall not exceed an aggregate amount of \$20,000,000 during the term of this Credit Agreement and any such amounts in excess of \$20,000,000 shall not be included in the determination of the Special Charges Adjustment for any period;
- (d) non-cash charges related to preferred stock redemptions and non-cash compensation expenses relating to restricted stock awards, stock options or similar equity based compensation awards;
- (e) non-cash charges incurred by the Consolidated Parties in association with the write-down of the value of any real properties;
- (f) to the extent applicable, the satisfaction of outstanding unamortized loan fees with respect to the Existing Credit Facility ;
- (g) any other non-cash charges associated with the sale or settlement by any Consolidated Party of any Swap Contract; and
- (h) charges related to acquisition deal related costs.

"Special Charges Adjustment" means, for any period, the amount which has been deducted for or in connection with any Special Charges (without duplication among such items or items taken into account for previous period) in the determination of net income for the applicable period for which a given Consolidated EBITDA calculation has been performed.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise provided, "Subsidiary" shall refer to a Subsidiary of the Borrower.

"Subsidiary Guarantor" means each Subsidiary of the Borrower other than the Unrestricted Subsidiaries.

“Subsidiary Guarantor Joinder Agreement” means a joinder agreement in the form of Exhibit E to be executed by each new Subsidiary of the Borrower that is required to become a Subsidiary Guarantor in accordance with Section 6.15(a) hereof.

“Support Obligations” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness 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 or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Support Obligations 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 Support Obligation 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.

“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, that 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 values determined in accordance therewith, such termination values, and (b) for any date prior to the date referenced in clause (a), the amounts determined as the mark-to-market values 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).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.01(c).

“Swing Line Commitment” means, with respect to the Swing Line Lender, the commitment of the Swing Line Lender to make Swing Line Loans, and with respect to each Lender, the commitment of such Lender to purchase participation interests in Swing Line Loans.

“Swing Line Committed Amount” has the meaning provided in Section 2.01(c).

“Swing Line Lender” means Bank of America in its capacity as such, together with any successor in such capacity.

“Swing Line Loans” has the meaning provided in Section 2.01(c).

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement that is considered borrowed money indebtedness for tax purposes but is classified as an operating lease under GAAP.

“Tenant” means any Person who is a lessee with respect to any lease held by a Consolidated Party as lessor or as an assignee of the lessor thereunder.

“Termination Date” means August 17, 2015.

“Threshold Amount” means (a) for any provision relating to the Borrower, \$10,000,000 and (b) for any provision relating to any Credit Party (other than the Borrower) or other Subsidiaries \$5,000,000.

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

“Unconsolidated Affiliates” means an affiliate of the Borrower whose financial statements are not required to be consolidated with the financial statements of the Borrower in accordance with GAAP.

“Unencumbered Asset Value” means the sum of the following, without duplication: (a) the quotient of (1) Unencumbered Net Revenue for the prior fiscal quarter, minus the Unencumbered Net Revenue attributable to each Unencumbered Property sold or otherwise disposed of during such most recently ended quarter, minus the Unencumbered Net Revenue from any Unencumbered Property acquired during the prior fiscal quarter, *multiplied* by four, divided by (2) the Capitalization Rate plus (b) the acquisition cost of each Unencumbered Property acquired during the prior fiscal quarter plus (c) the book value of unencumbered Mortgage Loans; provided, that when calculating the Unencumbered Asset Value, the aggregate occupancy of all Unencumbered Properties contributing to the Unencumbered Asset Value, reported as of the last day of the most recently ended fiscal quarter period of the Borrower, shall be at least 78% of in-service beds.

"Unencumbered Net Revenue" means, for any period, Net Revenue from all Unencumbered Properties.

"Unencumbered Property" means, for any Real Property Asset, the following criteria:

- (a) to the best of Borrower's knowledge, does not have any title, survey, environmental, condemnation or condemnation proceedings, or other defects that would give rise to a materially adverse effect as to the value, use of or ability to sell or finance such property;
- (b) is not subject to a Negative Pledge or encumbered by a mortgage, deed of trust, lien, pledge, encumbrance or other security interest, in each case, to secure Funded Debt, other than the Braswell Indebtedness;
- (c) 100% owned in fee simple absolute or with a leasehold interest or similar arrangement providing the right to occupy Real Property Asset pursuant to an Eligible Ground Lease, in either case, by the Borrower or a direct or indirect Subsidiary of the Borrower;
- (d) shall be located in the United States;
- (e) is occupied or available for occupancy (subject to final tenant improvements);
- (f) is leased to a third party Tenant and operated by a third party operator;
- (g) the Tenant at such facility is not delinquent sixty (60) days or more in rent payments.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Internal Revenue Code for the applicable plan year.

"United States" or "U.S." means the United States of America.

"Unreimbursed Amount" has the meaning provided in Section 2.03(c)(i).

"Unrestricted Subsidiaries" means the "Unrestricted Subsidiaries" as such term is defined from time to time in the Senior Note Indentures; provided, that to the extent the Senior Note Indentures are, for any reason, both terminated, the term "Unrestricted Subsidiaries" shall, for the remainder of the term of this Agreement, have the meaning assigned to such term in the Senior Note Indentures immediately prior to the termination thereof.



“Unused Fee” has the meaning given such term in [Section 2.09\(a\)](#).

“Wholly Owned” means, with respect to any direct or indirect Subsidiary of any Person, that 100% of the Capital Stock with ordinary voting power issued by such Subsidiary (other than directors’ qualifying shares and investments by foreign nationals mandated by applicable Law) is beneficially owned, directly or indirectly, by such Person.

#### **1.02 Interpretive Provisions.**

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

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Credit Document shall refer to such Credit Document as a whole and not to any particular provision thereof.
  - (ii) Unless otherwise provided or required by context, Article, Section, Exhibit and Schedule references are to the Credit Document in which such reference appears.
  - (iii) The term “including” is by way of example and not limitation.
  - (iv) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (c) 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.”
- (d) Section headings herein and in the other Credit Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Credit Document.

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

- (a) 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 Credit 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 Audited Financial Statements except as otherwise specifically prescribed herein.

(b) The Borrower will provide a written summary of material changes in GAAP or in the consistent application thereof with each annual and quarterly Compliance Certificate delivered in accordance with Section 6.02(a). If at any time any change in GAAP or in the consistent application thereof would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either the Borrower or the Required Lenders shall object in writing to determining compliance based on such change, then such computations shall continue to be made on a basis consistent with the most recent financial statements delivered pursuant to Section 6.01(a) or (b) as to which no such objection has been made.

(c) Determinations of the calculation of and compliance with the financial covenants set forth in Section 6.12(d), (f) and (g) hereunder shall be made on a Pro Forma Basis.

**1.04 Rounding.**

Any financial ratios required to be maintained by the Borrower pursuant to this Credit 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).

**1.05 References to Agreements and Laws.**

Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Credit Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Credit Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

**1.06 Times of Day.**

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

**1.07 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be 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 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.

**ARTICLE II**  
**COMMITMENTS AND EXTENSION OF CREDITS**

**2.01**     **Commitments.**

Subject to the terms and conditions set forth herein:

( a )     Revolving Loans. During the Commitment Period, each Lender severally agrees to make revolving credit loans (the “ **Revolving Loans**”) to the Borrower on any Business Day; provided, that after giving effect to any such Revolving Loan, (i) with regard to the Lenders collectively, the aggregate outstanding principal amount of Revolving Obligations shall not exceed the lesser of (x) **FOUR HUNDRED SEVENTY FIVE MILLION DOLLARS (\$475,000,000)** (the “**Aggregate Revolving Committed Amount**”) and (y) the Availability Amount for such date and (ii) with regard to each Lender individually, such Lender’s Revolving Commitment Percentage of Revolving Obligations shall not exceed its respective Revolving Committed Amount. Revolving Loans may consist of Base Rate Loans, Eurodollar Loans, or a combination thereof, as provided herein, and may be repaid and reborrowed in accordance with the provisions hereof.

(b)     Letters of Credit. During the Commitment Period, (i) the L/C Issuer, in reliance upon the commitments of the Lenders set forth herein, agrees (A) to issue Letters of Credit for the account of Borrower on any Business Day, (B) to amend or renew Letters of Credit previously issued hereunder, and (C) to honor drafts under Letters of Credit; and (ii) the Lenders severally agree to purchase from the L/C Issuer a participation interest in the Letters of Credit issued hereunder in an amount equal to such Lender’s Revolving Commitment Percentage thereof; provided, that (A) the aggregate principal amount of L/C Obligations shall not exceed an amount equal to **FORTY MILLION DOLLARS (\$40,000,000)** (as such amount may be adjusted in accordance with the provisions hereof, the “**L/C Committed Amount**”), (B) with regard to the Lenders collectively, the aggregate principal amount of Revolving Obligations shall not exceed the lesser of (x) the Aggregate Revolving Committed Amount and (y) the Availability Amount for such date, and (C) with regard to each Lender individually, such Lender’s Revolving Commitment Percentage of Revolving Obligations shall not exceed its respective Revolving Committed Amount. 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 obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(c) Swing Line Loans. During the Commitment Period, the Swing Line Lender shall make revolving credit loans (the “**Swing Line Loans**”) to the Borrower on any Business Day; provided, that (i) the aggregate principal amount of Swing Line Loans shall not exceed an amount equal to **FORTY MILLION DOLLARS (\$40,000,000)** (as such amount may be adjusted in accordance with the provisions hereof, the “**Swing Line Committed Amount**”), (ii) with respect to the Lenders collectively, the aggregate principal amount of Revolving Obligations shall not exceed the lesser of (x) the Aggregate Revolving Committed Amount and (y) the Availability Amount on such date, and (iii) the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Swing Line Loans shall be Daily Floating Eurodollar Rate Loans, and may be repaid and reborrowed in accordance with the provisions hereof. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a participation interest in such Swing Line Loan in an amount equal to the product of such Lender’s Revolving Commitment Percentage thereof. No Swing Line Loan shall remain outstanding for longer than five (5) Business Days. Notwithstanding anything herein to the contrary, the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if any Lender is at that time a Defaulting Lender, unless the Swing Line Lender has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Swing Line Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Swing Line Lender’s actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Swing Line Loan then proposed to be made or all Swing Line Loans as to which the Swing Line Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(d) Increase in Revolving Commitments. Subject to the terms and conditions set forth herein, the Borrower may, at any time during the period commencing as of the Closing Date and ending as of the Termination Date, upon written notice to the Administrative Agent, cause an increase in the Aggregate Revolving Committed Amount by up to **ONE HUNDRED TWENTY FIVE MILLION DOLLARS (\$125,000,000)** (to an aggregate amount not more than **SIX HUNDRED MILLION DOLLARS (\$600,000,000)**); provided, that such increase shall be conditioned and effective upon the satisfaction of the following conditions:

(i) the Borrower shall obtain (whether through the Arranger or otherwise) commitments for the amount of the increase from existing Lenders or other commercial banks or financial institutions reasonably acceptable to the Administrative Agent, which other commercial banks and financial institutions shall join in this Credit Agreement as Lenders by a Lender Joinder Agreement substantially in the form of Exhibit F attached hereto or other arrangement reasonably acceptable to the Administrative Agent (it being understood that in no case shall any Lender be required to increase its Revolving Commitment without its written consent);

(ii) unless otherwise agreed to by the Administrative Agent and the Borrower, any such increase shall be in a minimum aggregate principal amount of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof (or the remaining amount, if less);

(iii) if any Revolving Loans are outstanding at the time of any such increase, the Borrower shall make such payments and adjustments on the Revolving Loans (including payment of any break-funding amounts owing under Section 3.05) as may be necessary to give effect to the revised commitment percentages and commitment amounts;

(iv) the Borrower shall pay to the Administrative Agent and the Arranger all fees required under the Engagement Letter due in connection with the syndication of the increase in the Revolving Committed Amount;

(v) the Borrower shall have executed any new or amended and restated Notes (to the extent requested by the Lenders) to reflect the revised commitment amounts; and

(vi) the conditions to the making of a Revolving Loan set forth in Section 4.02 shall be satisfied.

In connection with any such increase in the Revolving Commitments, Schedule 2.01 shall be revised to reflect the modified commitments and commitment percentages of the Lenders, and the Borrower shall provide supporting corporate resolutions, legal opinions, promissory notes and other items as may be reasonably requested by the Administrative Agent and the Lenders in connection therewith. The Borrower shall not be permitted to cause more than four (4) increases in the Aggregate Revolving Committed Amount following the Closing Date.

## **2.02 Borrowings, Conversions and Continuations.**

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) with respect to Eurodollar Loans, three (3) Business Days prior to, or (ii) with respect to Base Rate Loans, on the requested date of, the requested date of any Borrowing, conversion or continuation. Each telephonic notice 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 of the Borrower. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing, conversion or continuation shall be in a principal amount of (i) with respect to Eurodollar Loans, \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof or (ii) with respect to Base Rate Loans, \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the applicable request is with respect to Revolving Loans, (ii) whether such request is for a Borrowing, conversion, or continuation, (iii) the requested date of such Borrowing, conversion or continuation (which shall be a Business Day), (iv) the principal amount of Loans to be borrowed, converted or continued, (v) the Type of Loans to be borrowed, converted or continued, and (vi) if applicable, the duration of the Interest Period with respect thereto. 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, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any 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 Eurodollar Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Loans in any Loan Notice, but fails to specify an Interest Period, the Interest Period will be deemed to be one month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Revolving Commitment Percentage 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 Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 2:00 p.m. 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 the initial Extension of Credit, Section 4.01), the Administrative Agent shall make all funds so received available to the party referenced in the applicable Loan Notice in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable party 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 the Loan Notice with respect to such Borrowing is given by the Borrower, there are Swing Line Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings, second, to the payment in full of any such Swing Line Loans, and third, to the party identified in the applicable Loan Notice as provided above.

(c) Except as otherwise provided herein, without the consent of the Required Lenders, (i) a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan and (ii) any conversion into, or continuation as, a Eurodollar Loan may be made only if the conditions to Extension of Credits in Section 4.02 have been satisfied. During the existence of a Default or Event of Default, (i) no Loan may be requested as, converted to or continued as a Eurodollar Loan and (ii) at the request of the Required Lenders, any outstanding Eurodollar Loan shall be converted immediately to a Base Rate Loan.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. The determination of the Eurodollar Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than five (5) Interest Periods in effect with respect to Loans.

**Additional Provisions with respect to Letters of Credit.**(a) Obligation to Issue or Amend.

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

(A) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer; or

(B) such Letter of Credit is in an initial amount less than \$50,000, is to be denominated in a currency other than Dollars or is not a standby letter of credit.

(ii) The L/C Issuer shall be under no 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 that was not applicable on the Closing Date and that the L/C Issuer in good faith deems material to it;

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

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date;

(D) one or more applicable conditions contained in Section 4.02 shall not then be satisfied and the L/C Issuer shall have received written notice thereof from any Lender or any Credit Party at least one Business Day prior to the requested date of issuance of such Letter of Credit;

(E) any 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 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 the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that 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; or

(F) the Revolving Commitments have been terminated pursuant to Article VIII.

(iii) 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 such Letter of Credit.

(iv) The L/C Issuer shall not amend any Letter of Credit if:

(A) one or more applicable conditions contained in Section 4.02 shall not then be satisfied and the L/C Issuer shall have received written notice thereof from any Lender or any Credit Party at least one Business Day prior to the requested date of amendment of such Letter of Credit; or

(B) the Revolving Commitments have been terminated pursuant to Article VIII.

(b) Procedures for Issuance and Amendment.

(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 of the Borrower. 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 L/C Issuer may agree in a particular instance in its 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; (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; and (G) 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 (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may 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. Upon receipt by the L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, 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 applicable Person 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 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 Lender's Revolving Commitment Percentage 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. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "**Honor Date**"), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Lender's Revolving Commitment Percentage thereof. In such event, the Borrower shall be deemed to have requested a 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, the amount of the unutilized portion of the Aggregate Revolving Commitments or the conditions set forth in Section 4.02. 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 Lender (including the Lender acting as L/C Issuer) shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Revolving Commitment 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 Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans for any 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 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 2.03.

(iv) Until each 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 Revolving Commitment Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each 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 set-off, counterclaim, recoupment, defense or other right that 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 Event of Default, (C) non-compliance with the conditions set forth in Section 4.02, or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing. 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 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), 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 Federal Funds Rate from time to time in effect. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (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 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 a Credit Party or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Revolving Commitment Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) 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 pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Revolving Commitment 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.

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

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement, any other Credit Document or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower 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 Credit 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, certificate or other document presented under 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) 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; or

(v) 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.

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 the 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, any Agent-Related Person nor any of the correspondents, participants or assignees 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 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 Letter of Credit Application. 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 from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (v) of 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 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. 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 or assigning or purporting to transfer 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.

( g ) Cash Collateral. Upon the request of the Administrative Agent or the Required Lenders, (i) if 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, or (ii) if, as of the Letter of Credit Expiration Date, any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, the Borrower shall immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be). For purposes hereof, "**Cash Collateralize**" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. Each Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent.

( h ) Applicability of ISP98. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

( i ) Letter of Credit Fees. The Borrower shall pay Letter of Credit fees as set forth in Section 2.09.

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

#### **2.04 Additional Provisions with respect to Swing Line Loans**

( a ) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in this Article II, or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Loan Notice, make the amount of its Swing Line Loan available to the Borrower by crediting the account of the Borrower on the books of the Swing Line Lender in immediately available funds.

(b) Refinancing.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Revolving Loan that is a Base Rate Loan in an amount equal to such Lender's Revolving Commitment Percentage of Swing Line 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, the unutilized portion of the Aggregate Commitments or the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Revolving Commitment Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 2:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(b)(ii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

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

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(b) by the time specified in Section 2.04(b)(i), the Swing Line 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 Swing Line Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Swing Line 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 Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(b) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default, (C) non-compliance with the conditions set forth in Section 4.02, or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such purchase or funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(c) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Revolving Commitment Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Revolving Commitment 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 Swing Line Lender.

(d) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower (by delivery of an invoice or other notice to the Borrower) for interest on the Swing Line Loans. Until each Lender funds its Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Revolving Commitment Percentage of any Swing Line Loan, interest in respect thereof shall be solely for the account of the Swing Line Lender.

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

**2.05      Repayment of Loans.**

(a)      Revolving Loans. The Borrower shall repay to the Lenders on the Termination Date the aggregate principal amount of Revolving Loans outstanding on such date.

(b)      Swing Line Loans. The Borrower shall repay each Swing Line Loan on the earliest to occur of (i) the date five (5) Business Days after such Loan is made and (ii) the Termination Date.

**2.06      Prepayments.**

(a)      Voluntary Prepayments. The Loans may be repaid in whole or in part without premium or penalty (except, in the case of Loans other than Base Rate Loans, amounts payable pursuant to Section 3.05); provided, that (i) notice thereof must be received by 11:00 a.m. by the Administrative Agent (A) at least three (3) Business Days prior to the date of prepayment of Eurodollar Loans, and (B) on the Business Day prior to the date of prepayment of Base Rate Loans, and (ii) any such prepayment shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$1,000,000 in excess thereof, in the case of Eurodollar Loans, and a minimum principal amount of \$500,000 and integral multiples of \$100,000 in excess thereof, in the case of Base Rate Loans, or, in each case, the entire principal amount thereof, if less. Each such notice of voluntary repayment hereunder shall be irrevocable and shall specify the date and amount of prepayment and the Loans and Types of Loans which are to be prepaid. The Administrative Agent will give prompt notice to the applicable Lenders of any prepayment on the Loans and the Lender's interest therein. Prepayments of Eurodollar Loans hereunder shall be accompanied by accrued interest thereon and breakage amounts, if any, under Section 3.05.

(b)      Mandatory Prepayments. If at any time (A) the Outstanding Amount of Revolving Obligations shall exceed the lesser of (x) the Aggregate Revolving Committed Amount and (y) the Availability Amount for such date, (B) the Outstanding Amount of L/C Obligations shall exceed the L/C Committed Amount, (C) the Outstanding Amount of Swing Line Loans shall exceed the Swing Line Committed Amount, immediate prepayment will be made on the Revolving Loans and/or to provide Cash Collateral to the L/C Obligations in an amount equal to such excess; provided, however, that Cash Collateral will not be provided to the L/C Obligations hereunder until the Revolving Loans and Swing Line Loans have been paid in full.

(c)      Application. Within each Loan, prepayments will be applied first to Base Rate Loans, then to Eurodollar Loans in direct order of Interest Period maturities. In addition:

( i )      Voluntary Prepayments. Voluntary prepayments shall be applied as specified by the Borrower. Voluntary prepayments on the Revolving Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein.

( i i )      Mandatory Prepayments. Mandatory prepayments on the Revolving Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein; provided, that mandatory prepayments in respect of the Revolving Commitments under subsection (b) above shall be applied to the respective Revolving Obligations as appropriate.



**2.07 Termination or Reduction of Commitments.**

The Commitments hereunder may be permanently reduced in whole or in part by notice from the Borrower to the Administrative Agent; provided, that (i) any such notice thereof must be received by 11:00 a.m. at least five (5) Business Days prior to the date of reduction or termination and any such prepayment shall be in a minimum principal amount of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof; and (ii) the Commitments may not be reduced to an amount less than the Revolving Obligations then outstanding. The Administrative Agent will give prompt notice to the Lenders of any such reduction in Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Revolving Commitment Percentage thereof. All commitment or other fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

**2.08 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Loan (other than Swing Line Loans) shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Percentage; (ii) each Loan that is a Base Rate 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 Percentage; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Daily Floating Eurodollar Rate plus the Applicable Percentage.

(b) If any amount payable by the Borrower under any Credit Document 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 Law. Furthermore, upon the written request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) 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.

## 2.09 Fees.

( a ) Unused Fee. From and after the Closing Date, and during such times in which the Borrower does not have two (2) Investment Grade Ratings (and clause (a) of the definition of "Applicable Percentage" shall be applicable), the Borrower agrees to pay the Administrative Agent for the ratable benefit of the Lenders an unused fee (the "**Unused Fee**") for each calendar quarter (or portion thereof) in an amount equal to (a) 0.35% (or 0.50% to the extent that as of the beginning of any day, the Outstanding Amount of Revolving Obligations (excluding the amount of any then-outstanding Swing Line Loans) is less than 50% of the Aggregate Revolving Commitments), multiplied by (b) the amount by which the Aggregate Revolving Commitments exceed the sum of the Outstanding Amount of Revolving Obligations (excluding the amount of any then-outstanding Swing Line Loans) as of the beginning of such day. To the extent applicable, the Unused Fee shall accrue at all times during the Commitment Period (and thereafter so long as Revolving Obligations shall remain outstanding), including periods during which the conditions to Extensions of Credit in Section 4.02 may not be met, and shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Termination Date (and, if applicable, thereafter on demand); provided, that, pursuant to Section 2.15(a)(iii), (i) no Unused Fee shall accrue on the Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (ii) any Unused Fee accrued with respect to the Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender. The Administrative Agent shall distribute the Unused Fee to the Lenders pro rata in accordance with the respective Revolving Commitments of the Lenders.

( b ) Facility Fee. From and after the Closing Date, and during such times in which the Borrower has at least two (2) Investment Grade Ratings (and clause (b) of the definition of "Applicable Percentage" shall be applicable), the Borrower agrees to pay to the Administrative Agent for the ratable benefit of the Lenders, a facility fee at a per annum rate equal to the Applicable Percentage times the actual daily amount of the Aggregate Revolving Committed Amount (as such amount may be reduced pursuant to Section 2.07 above), regardless of usage, or, if the Aggregate Revolving Commitments have terminated, on the outstanding amount of all Revolving Loans, Swing Line Loans and L/C Obligations, (the "**Facility Fee**" and collectively, for all the Lenders, the "**Facility Fees**"). To the extent applicable, the Facility Fee shall accrue at all times during the Commitment Period (and thereafter so long as Revolving Obligations shall remain outstanding), including periods during which the conditions to Extensions of Credit in Section 4.02 may not be met, and shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Termination Date (and, if applicable, thereafter on demand); provided, that, pursuant to Section 2.15(a)(iii), (i) no Facility Fee shall accrue on the Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (ii) any Facility Fee accrued with respect to the Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender. The Administrative Agent shall distribute the Facility Fee to the Lenders pro rata in accordance with the respective Revolving Commitments of the Lenders.

(c) Upfront and Other Fees. The Borrower agrees to pay to the Administrative Agent for the benefit of the Lenders the upfront and other fees provided in the Engagement Letter.

(d) Letter of Credit Fees.

(i) Letter of Credit Fee. In consideration of the L/C Commitment hereunder, the Borrower agrees to pay to the Administrative Agent for the ratable benefit of the Lenders an annual fee (the "**Letter of Credit Fee**") with respect to each Letter of Credit issued hereunder equal to (A) the Applicable Percentage per annum multiplied by (B) the average daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letters of Credit) from the date of issuance to the date of expiration. The Letter of Credit Fee shall be computed on a quarterly basis in arrears and shall be payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing on the first such date to occur after the Closing Date, and on the Letter of Credit Expiration Date (and, if applicable, thereafter on demand); provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Revolving Commitment Percentage allocable to such Letter of Credit pursuant to Section 2.15(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account.

(ii) L/C Issuer Fees. In addition to the Letter of Credit Fee, the Borrower agrees to pay to the L/C Issuer for its own account without sharing by the other Lenders (A) with the issuance of each such Letter of Credit, a fronting fee of one eighth of one percent (0.125%) per annum on the maximum amount available to be drawn under Letters of Credit issued by it from the date of issuance to the date of expiration, and (B) upon the issuance, amendment, negotiation, transfer and/or conversion of any Letters of Credit or any other action or circumstance requiring administrative action on the part of the L/C Issuer with respect thereto, customary charges of the L/C Issuer with respect thereto (collectively, the "**L/C Issuer Fees**").

(e) Administrative Agent's Fees. The Borrower agrees to pay the Administrative Agent such fees as provided in the Engagement Letter or as may be otherwise agreed by the Administrative Agent and the Borrower from time to time.

(f) Other Fees.

(i) The Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Engagement Letter. 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 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.

**2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

(a) All computations of interest for Base Rate Loans 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). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the 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 2.11(a), bear interest for one day.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Credit Parties or for any other reason related to the finances of the Credit Parties, any Credit Party or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Credit Parties as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Credit Parties shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after 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, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. The Credit Parties obligations under this paragraph shall survive the termination of the Aggregate Revolving Committed Amount and shall survive for one (1) year following the repayment of all other Obligations hereunder.

**2.11 Payments Generally.**

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Revolving Commitment Percentage (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. shall be deemed received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the definition of "Interest Period," 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.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date (or in the case of any Base Rate Loan, prior to 12:00 (Noon) on the date of such Borrowing) any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower fails to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Federal Funds Rate from time to time in effect. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights that the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) 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 Extension of Credit set forth in Section 4.02 are not satisfied or waived in accordance with the terms hereof or for any other reason, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, nor relieve Borrower from any obligations hereunder to the Lenders which fulfill such obligations and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) 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.

(g) If at any time insufficient funds are received by or are available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward costs and expenses (including Attorney Costs and amounts payable under Article III) incurred by the Administrative Agent and each Lender, (ii) second, toward repayment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (iii) third, toward repayment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

## **2.12 Sharing of Payments.**

If any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it (excluding any amounts applied by the Swing Line Lender to outstanding Swing Line Loans), any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, but excluding any payments made to a Lender in error by the Administrative Agent (which such payments shall be returned by the Lender to the Administrative Agent immediately upon such Lender's obtaining knowledge that such payment was made in error)) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; provided, however, that (i) if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (A) the amount of such paying Lender's required repayment to (B) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon and (ii) the provisions of this Section shall not be construed to apply to (A) 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), (B) the application of Cash Collateral provided for in Section 2.14, or (C) 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 Swing Line Loans to any assignee or participant, other than an assignment to any Credit Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Credit Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

**2.13 Evidence of Debt.**

(a) The Extension of Credits 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 Extension of Credits 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. The Borrower shall execute and deliver to the Administrative Agent a Note for each Lender, requesting a Note, which Note 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.

(b) In addition to the accounts and records referred to in subsection (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 Swing Line 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.

## 2.14 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the L/C Issuer (i) if 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, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrower, and to the extent provided by any Lender, such 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 (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such 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 as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender 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.

(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, 2.04, 2.06, 2.15 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the 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 Lender (or, as appropriate, its assignee following compliance with Section 11.07(b))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Credit Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.14 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.



**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. That 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 Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.09), 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 that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; third, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; fourth, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that 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 non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no 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 that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made 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 Borrowings 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 Borrowings owed to, that Defaulting Lender. 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 that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any Unused Fee pursuant to Section 2.09(a) or Facility Fee pursuant to Section 2.09(b) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.09(d)(i).

(iv) Reallocation of Revolving Commitment Percentage to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Revolving Commitment Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Commitment of that Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Loans of that Lender.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase 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 Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Revolving Commitment Percentage (without giving effect to Section 2.15(a)(iv)), whereupon that 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.

**ARTICLE III**  
**TAXES, YIELD PROTECTION AND ILLEGALITY**

**3.01**     **Taxes.**

(a) Any and all payments by any Credit Party to or for the account of the Administrative Agent or any Lender under any Credit Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of the Administrative Agent and each Lender, taxes imposed on or measured by its overall net income, and franchise and excise taxes imposed on it (in lieu of net income taxes), as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent's or such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Credit Agreement or any other Credit Document) (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as "**Taxes**"). If any Credit Party shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Credit Document to the Administrative Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), each of the Administrative Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Credit Party shall make such deductions, (iii) such Credit Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment, such Credit Party shall furnish to the Administrative Agent (which shall forward the same to such Lender) the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes or charges or similar levies which arise from any payment made under any Credit Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Credit Document (hereinafter referred to as "**Other Taxes**"). For the avoidance of doubt, "Other Taxes" shall not include any taxes assessed on the net or gross income of a taxpayer, regardless of whether such taxes are designated excise or property taxes.

(c) If the Borrower shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Credit Document to the Administrative Agent or any Lender, the Borrower shall also pay to the Administrative Agent or to such Lender, as the case may be, at the time interest is paid, such additional amount that the Administrative Agent or such Lender specifies is necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) that the Administrative Agent or such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) The Borrower agrees to indemnify the Administrative Agent and each Lender for (i) the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) that are paid by the Administrative Agent and such Lender and that are the responsibility of the Borrower, (ii) amounts payable under Section 3.01(c) and (iii) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Payment under this subsection (d) shall be made within thirty (30) days after the date the Lender or the Administrative Agent makes a written demand therefor.

**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 applicable Lending Office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Eurodollar Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert Base Rate Loans to Eurodollar Loans shall be suspended 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, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

**3.03      Inability to Determine Rates.**

If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar 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, the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended 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 Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

**3.04 Increased Cost and Reduced Return: Capital Adequacy: Reserves on Eurodollar Loans.**

(a) If any Lender determines that as a result of any Change in Law, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurodollar Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this subsection (a) any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes (as to which Section 3.01 shall govern), (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Lender is organized or has its Lending Office, and (iii) reserve requirements contemplated by Section 3.04(c)), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that any Change in Law regarding capital adequacy or liquidity requirements, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies (and the policies of such Lender's holding company) with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction.

(c) 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 Eurodollar 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, the Borrower shall have received at least fifteen (15) days' prior written notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable fifteen (15) days from receipt of such notice.

**3.05 Funding 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 any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or
- (c) any assignment of a Eurodollar 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 10.16;

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 Eurodollar Loan made by it at the Eurodollar Base Rate used in determining the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded.

**3.06 Matters Applicable to all Requests for Compensation.**

(a) A certificate of the Administrative Agent or any Lender claiming compensation under this Article III and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, the Administrative Agent or such Lender may use any reasonable averaging and attribution methods.

(b) Upon any Lender's making a claim for compensation under Section 3.01 or 3.04, the Borrower may replace such Lender in accordance with Section 10.16.

**3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Revolving Commitments and repayment of all other Obligations hereunder.

**ARTICLE IV**  
**CONDITIONS PRECEDENT TO EXTENSION OF CREDITS**

The obligation of each Lender to make Extensions of Credit hereunder is subject to satisfaction of the following conditions precedent:

**4.01      Conditions to Initial Extensions of Credit.**

The obligation of the Lenders to make the initial Extension of Credit hereunder is subject to the satisfaction of such of the following conditions in all material respects on or prior to the Closing Date as shall not have been expressly waived in writing by the Administrative Agent and Lenders.

( a )      Credit Documents, Organization Documents, Etc. The Administrative Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Credit Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent:

(i)          executed counterparts of this Credit Agreement and the other Credit Documents;

(ii)         a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii)        copies of the Organization Documents of each Credit Party (not included in (iv) below) certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Credit Party to be true and correct as of the Closing Date;

(iv)         with respect to the Credit Parties that were credit parties or subsidiary guarantors under the Existing Credit Facility, a certificate by a secretary or assistant secretary of such Credit Parties that the Organization Documents delivered to the Administrative Agent in connection with the Existing Credit Facility are still in full force and effect and have not been amended, restated, replaced or otherwise modified since the closing of the Existing Credit Facility;

(v)         such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Credit Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Credit Agreement and the other Credit Documents to which such Credit Party is a party; and

(vi)         such documents and certifications as the Administrative Agent may reasonably require to evidence that each Credit Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in the jurisdiction of their incorporation or organization.

( b ) Opinions of Counsel. The Administrative Agent shall have received, in each case dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent a legal opinion of (i) Dewey & LeBoeuf LLP, special New York and Delaware counsel for the Credit Parties and (ii) special local counsel for the Credit Parties for the states of Maryland and Ohio, in each case addressed to the Administrative Agent, its counsel and the Lenders.

(c) Officer's Certificates. The Administrative Agent shall have received a certificate or certificates executed by a Responsible Officer of the Borrower as of the Closing Date, in a form satisfactory to the Administrative Agent, stating that (i) each Credit Party is in compliance with all existing financial obligations (whether pursuant to the terms and conditions of this Credit Agreement or otherwise), (ii) all governmental, shareholder and third party consents and approvals, if any, with respect to the Credit Documents and the transactions contemplated thereby have been obtained, (iii) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental instrumentality that purports to affect any Consolidated Party or any transaction contemplated by the Credit Documents, if such action, suit, investigation or proceeding could have a Material Adverse Effect, (iv) immediately prior to and following the transactions contemplated herein, each of the Credit Parties shall be Solvent, and (v) immediately after the execution of this Credit Agreement and the other Credit Documents, (A) no Default or Event of Default exists and (B) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects.

( d ) Opening Borrowing Base Certificate. Receipt by the Administrative Agent of a Borrowing Base Certificate as of the Closing Date, substantially in the form of Exhibit C-2, duly completed and executed by a Responsible Officer of the Borrower.

( e ) Financial Statements. Receipt by the Administrative Agent and the Lenders of (i) pro forma projections of financial statements (balance sheet, income and cash flows) for each of the fiscal years of the Consolidated Parties through December 31, 2015 and (ii) such other information relating to the Consolidated Parties as the Administrative Agent may reasonably require in connection with the structuring and syndication of credit facilities of the type described herein.

(f) Opening Compliance Certificate. Receipt by the Administrative Agent of a Compliance Certificate as of the Closing Date signed by a Responsible Officer of the Borrower and including (i) pro forma calculations for the current fiscal quarter based on the amounts set forth in the unaudited financial statements for the fiscal quarter ending June 30, 2011 and taking into account any Extension of Credit made or requested hereunder as of such date and (ii) pro forma calculations of all financial covenants contained herein for each of the following four (4) fiscal quarters (based on the projections set forth in the materials delivered pursuant to clause (e) of this Section 4.01).



(g) Consents/Approvals. The Credit Parties shall have received all approvals, consents and waivers, and shall have made or given all necessary filings and notices as shall be required to consummate the transactions contemplated hereby without the occurrence of any default under, conflict with or violation of (i) any applicable Law or (ii) any agreement, document or instrument to which any Credit Party is a party or by which any of them or their respective properties is bound, except for such approvals, consents, waivers, filings and notices the receipt, making or giving of which would not reasonably be likely to (A) have a Material Adverse Effect, or (B) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect the ability of the Borrower or any other Credit Party to fulfill its respective obligations under the Credit Documents to which it is a party.

(h) Material Adverse Change. No material adverse change shall have occurred since December 31, 2010 in the condition (financial or otherwise), business, assets, operations, management or prospects of the Borrower and its Consolidated Subsidiaries, taken as a whole.

(i) Litigation. There shall not exist any pending or threatened action, suit, investigation or proceeding against any Credit Party or any of their Affiliates that could reasonably be expected to have a Material Adverse Effect or could otherwise materially and adversely effect the transactions set forth herein or contemplated hereby.

(j) Repayment of Existing Credit Agreement. Receipt by the Administrative Agent of satisfactory evidence that the Existing Credit Agreement has been simultaneously repaid in full and terminated.

(k) Fees and Expenses. Payment by the Credit Parties to the Administrative Agent of all fees and expenses relating to the preparation, execution and delivery of this Credit Agreement and the other Credit Documents which are due and payable on the Closing Date, including, without limitation, payment to the Administrative Agent of the fees set forth in the Engagement Letter.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, 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 proposed Closing Date specifying its objection thereto.

**4.02 Conditions to Extensions of Credit.**

The obligation of any Lender to make any Extension of Credit hereunder is subject to the satisfaction of such of the following conditions on or prior to the proposed date of the making of such Extension of Credit:

- (a) The Administrative Agent shall receive the applicable Request for Extension of Credit and the conditions set forth in Section 4.01 for the initial Extension of Credit shall have been met as of the Closing Date;
- (b) No Default shall have occurred and be continuing immediately before the making of such Extension of Credit and no Default shall exist immediately thereafter;
- (c) The representations and warranties of the Borrower made in or pursuant to the Credit Documents shall be true in all material respects on and as of the date of such Extension of Credit;
- (d) Immediately following the making of such Extension of Credit the sum of the outstanding principal balance of the Revolving Obligations shall not exceed the lesser of (i) the Aggregate Revolving Committed Amount and (ii) the Availability Amount for such date.

The making of such Extension of Credit hereunder shall be deemed to be a representation and warranty by the Borrower on the date thereof as to the facts specified in clauses (b), (c), and (d) of this Section.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES**

The Credit Parties represent and warrant, as applicable, to the Administrative Agent and the Lenders that:

**5.01 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Parties as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Consolidated Subsidiaries dated June 30, 2011, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) During the period from December 31, 2010, to and including the Closing Date, there has been no sale, transfer or other disposition by any Consolidated Party of any material part of the business or Property of the Consolidated Parties, taken as a whole, and no purchase or other acquisition by any of them of any business or property (including any Capital Stock of any other Person) material in relation to the consolidated financial condition of the Consolidated Parties, taken as a whole, in each case, which is not reflected in the foregoing financial statements or in the notes thereto and has not otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.

(d) The financial statements delivered pursuant to Section 6.01(a) and (b) have been prepared in accordance with GAAP (except as may otherwise be permitted under Section 6.01(a) and (b)) and present fairly (on the basis disclosed in the footnotes to such financial statements) the consolidated financial condition, results of operations and cash flows of the Consolidated Parties as of such date and for such periods.

(e) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.02 Corporate Existence and Power.**

Each of the Credit Parties is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, has all organizational powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted and is duly qualified as a foreign entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, other than in such jurisdictions where the failure to be so qualified and in good standing would not, in the aggregate, have a Material Adverse Effect.

**5.03 Corporate and Governmental Authorization; No Contravention.**

The execution, delivery and performance by each Credit Party of each Credit Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, (i) any Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law (including Regulation U or Regulation X issued by the FRB).

**5.04 Binding Effect.**

This Credit Agreement has been, and each other Credit Document, when delivered hereunder, will have been, duly executed and delivered by each Credit Party that is a party thereto. This Credit Agreement constitutes, and each other Credit Document when so delivered will constitute, a legal, valid and binding obligation of such Credit Party, enforceable against each Credit Party that is a party thereto in accordance with its terms except as enforceability may be limited by applicable Debtor Relief Laws and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**5.05      Litigation.**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Responsible Officers of the Credit Parties, threatened at law, in equity, in arbitration or before any Governmental Authority, by or against any Credit Party or against any of its properties or revenues that (a) purport to affect or pertain to this Credit Agreement or any other Credit Document, or any of the transactions contemplated hereby or (b) either individually or in the aggregate, can reasonably be expected to be determined adversely, and if so determined to have a Material Adverse Effect.

**5.06      Compliance with ERISA.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of the Responsible Officers of the Credit Parties, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrower and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Internal Revenue Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Internal Revenue Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of the Responsible Officers of the Credit Parties, threatened claims (other than routine claims for benefits), actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any ERISA Affiliate or, to the knowledge of the Responsible Officers of the Credit Parties, any other Person has engaged in any prohibited transaction or violation of the fiduciary responsibility rules under ERISA or the Internal Revenue Code with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

**5.07 Environmental Matters.**

Except as could not reasonably be expected to have a Material Adverse Effect:

(a) To the knowledge of the Responsible Officers of the Borrower, each of the facilities and real properties owned, leased or operated by any Credit Party or any Subsidiary (the "**Facilities**") and all operations at the Facilities are in compliance with all applicable Environmental Laws in all material respects and there is no violation, in any material respect, of any Environmental Law with respect to the Facilities or the businesses operated by any Credit Party or any Subsidiary at such time (the "**Businesses**"), and there are no conditions relating to the Facilities or the Businesses that are likely to give rise to liability under any applicable Environmental Laws.

(b) To the knowledge of the Responsible Officers of the Borrower, none of the Facilities contains, or has previously contained, any Hazardous Materials at, on or under the Facilities in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, applicable Environmental Laws.

(c) To the knowledge of the Responsible Officers of the Borrower, no Credit Party nor any Subsidiary has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Facilities or the Businesses, nor does any Responsible Officer of the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) To the knowledge of the Responsible Officers of the Borrower, Hazardous Materials have not been transported or disposed of from the Facilities, or generated, treated, stored or disposed of at, on or under any of the Facilities, in each case by or on behalf of any Credit Party or any Subsidiary in violation of, or in a manner that is likely to give rise to liability under, any applicable Environmental Law.

(e) To the knowledge of the Responsible Officers of the Borrower, no judicial proceeding or governmental or administrative action is pending or threatened, under any Environmental Law to which any Credit Party or any Subsidiary is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any Credit Party, any Subsidiary, the Facilities or the Businesses.

(f) To the knowledge of the Responsible Officers of the Borrower, there has been no release or threat of release of Hazardous Materials at or from the Facilities, or arising from or related to the operations (including, without limitation, disposal) of any Credit Party or any Subsidiary in connection with the Facilities or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that is likely to give rise to liability under any applicable Environmental Laws.

**5.08 Margin Regulations: Investment Company Act.**

(a) No Credit Party is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock and no part of the Letters of Credit or proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock.

(b) None of the Credit Parties are (i) required to be registered as an "investment company" under the Investment Company Act of 1940 or (ii) subject to regulation under any other Law which limits its ability to incur the Obligations.

**5.09 Compliance with Laws.**

Each of the Borrower and each of its Subsidiaries is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.10 Ownership of Property; Liens.**

Each of the Borrower and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all applicable Real Property Assets, except for Permitted Liens and such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 5.10 is a list of all Unencumbered Properties used in the calculation of the Availability Amount (Unencumbered Asset Value), as such schedule may be updated from time to time pursuant to Section 6.02. The Property of the Borrower and its Subsidiaries is subject to no Liens, other than Permitted Liens.

**5.11 Corporate Structure: Capital Stock, Etc.**

Set forth on Schedule 5.11 is a complete and accurate list of each Credit Party and each Subsidiary of any Credit Party, together with (a) jurisdiction of organization, (b) number of shares of each class of Capital Stock outstanding, (c) number and percentage of outstanding shares of each class owned (directly or indirectly) by any Credit Party or any Subsidiary and (d) U.S. taxpayer identification number. Subject to Section 7.03, the Borrower has no equity Investments in any other Person other than those specifically disclosed on Schedule 5.11, as such schedule may be updated from time to time pursuant to Section 6.02. The outstanding Capital Stock owned by any Credit Party are validly issued, fully paid and non-assessable and free of any Liens, warrants, options and rights of others of any kind whatsoever.

**5.12 Labor Matters.**

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower as of the Closing Date and the Borrower (a) has not suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years or (b) to the knowledge of the Responsible Officers of the Borrower there has not been any potential or pending strike, walkout or work stoppage. No unfair labor practice complaint is pending against the Borrower.

**5.13 No Default.**

Neither the Borrower nor any of its Subsidiaries is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.14 Solvency.**

Immediately before and immediately after giving effect to this Agreement, (a) the Borrower is Solvent and (b) the other Credit Parties are Solvent on a consolidated basis.

**5.15 Taxes.**

The Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been established in accordance with GAAP. To the knowledge of the Responsible Officers of the Borrower, there is no proposed tax assessment against any Credit Party that would, if made, have a Material Adverse Effect.

**5.16 REIT Status.**

The Borrower is taxed as a "real estate investment trust" within the meaning of Section 856(a) of the Internal Revenue Code and each of the Credit Parties (other than the Borrower) are Qualified REIT Subsidiaries.

**5.17 Insurance.**

The Real Property Assets of the Borrower and its Subsidiaries are insured, to Borrower's knowledge, with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

**5.18 Intellectual Property; Licenses, Etc.**

The Borrower and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Credit Parties, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower or any Subsidiary infringes upon any rights held by any other Person except where such infringement could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.19 Disclosure.**

Each Credit Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. To each Credit Party's knowledge, no report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Credit Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Credit Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that, with respect to projected financial information, each Credit Party represents only that, to each Credit Party's knowledge, such information was prepared in good faith based upon assumptions believed to be reasonable at the time, with the understanding that certain of such information is prepared or provided by each Credit Party based upon information and assumptions provided to such Credit Parties by Tenants of such Credit Parties.



**ARTICLE VI**  
**AFFIRMATIVE COVENANTS**

The Borrower hereby covenants and agrees (on its own behalf and on behalf of the other Credit Parties, as applicable) that until the Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Revolving Commitments hereunder shall have terminated:

**6.01      Financial Statements.**

The Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall disseminate such information pursuant to the terms of Section 6.02 hereof), in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower (or if earlier, the date that is five (5) days after the reporting date for such information required by the SEC), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal year, and the related consolidated statements of earnings, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by (i) a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and (ii) an attestation report of such Registered Public Accounting Firm as to the Borrower's internal controls pursuant to Section 404 of Sarbanes-Oxley expressing a conclusion that the Borrower has maintained effective internal controls over financial reporting based on COSO criteria; provided, that the Administrative Agent hereby agrees that a Form 10-K of the Borrower in form similar to that delivered as part of the Audited Financial Statements shall satisfy the requirements of this Section 6.01(a); and

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (or if earlier, the date that is five (5) days after the reporting date for such information required by the SEC), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal quarter, and the related consolidated statements of earnings, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; provided, that the Administrative Agent hereby agrees that a Form 10-Q of the Borrower in form similar to that delivered to the SEC shall satisfy the requirements of this Section 6.01(b).

**6.02 Certificates; Other Information.**

The Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall disseminate such information pursuant to the terms of this Section 6.02), in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

- (a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower; which shall include, without limitation, calculation of the financial covenants set forth in Section 6.12 and an update of Schedules 5.10 and 5.11, if applicable;
- (b) within forty five (45) days after the end of each fiscal quarter, a Borrowing Base Certificate calculated as of the end of the immediately prior fiscal quarter, duly completed and executed by a Responsible Officer of the Borrower; provided, however, the Borrower may, at its option, provide an updated Borrowing Base Certificate more frequently than quarterly;
- (c) within thirty (30) days after the end of each fiscal year of the Borrower, beginning with the fiscal year ending December 31, 2011, an annual operating forecast of the Borrower containing, among other things, pro forma financial statements for the then current fiscal year and updated versions of the pro forma financial projections delivered in connection with Section 4.01(e) hereof;
- (d) promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors by the independent accountants of the Borrower (or the audit committee of the board of directors of the Borrower) in respect of the Borrower (and, to the extent any such reports, letters or recommendations are prepared separately for any one or more of the Credit Parties, such Credit Party) by independent accountants in connection with the accounts or books of the Borrower (or such Credit Party) or any audit of the Borrower (or such Credit Party);
- (e) promptly after the same are available, (i) copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or to a holder of any Indebtedness owed by the Borrower in its capacity as such holder and not otherwise required to be delivered to the Administrative Agent pursuant hereto and (ii) upon the request of the Administrative Agent, all reports and written information to and from the United States Environmental Protection Agency, or any state or local agency responsible for environmental matters, the United States Occupational Health and Safety Administration, or any state or local agency responsible for health and safety matters, or any successor agencies or authorities concerning environmental, health or safety matters;
- (f) promptly upon receipt thereof, a copy of any other report or "management letter" submitted by independent accountants to the Borrower in connection with any annual, interim or special audit of the books of the Borrower;

(g) promptly upon any Responsible Officer of the Borrower becoming aware thereof, notice of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect and (iii) any other Default or Event of Default;

(h) within ten (10) days upon any Responsible Officer of the Borrower becoming aware thereof, reports detailing income or expenses of any assets directly owned or operated, or which will be included on the balance sheet for purposes of FIN 46, other than as previously disclosed in the Borrower's Form 10-K, 10-Q or any other publicly available information;

(i) promptly, such additional information regarding the business, financial or corporate affairs of the Credit Parties, or compliance with the terms of the Credit Documents, as the Administrative Agent or any Lender (through the Administrative Agent) may from time to time reasonably request; and

(j) promptly upon any announcement by Moody's, S&P or Fitch of any change or possible change in a Debt Rating.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(b), (c), or (d) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) 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 10.02; or (ii) on which such documents are posted by the Administrative Agent (on the Borrower's behalf) on IntraLinks/IntraAgency or another relevant 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: (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender (through the Administrative Agent) that requests 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 (through the Administrative Agent) and (B) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender (through the Administrative Agent) of the posting of any such documents (each Lender to which delivery of such documents shall be made by posting to any such website shall have been given access to such website on or prior to the date of such posting) and 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 or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower or the other Credit Parties with any such request 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 (x) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (y) certain of the Lenders may be "public-side" Lenders ( *i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby further agrees that (ww) all Borrower Materials that are to be made available to Public Lenders 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 (xx) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as either publicly available information or not material 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 Confidential Information, they shall be treated as set forth in Section 10.08); (yy) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public;" and (zz) the Administrative Agent 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 marked as "Public."

**6.03      Preservation of Existence and Franchises.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, do all things necessary to preserve and keep in full force and effect its legal existence, rights, franchises and authority. Each Credit Party shall remain qualified and in good standing in each jurisdiction in which the failure to so qualify and be in good standing could have a Material Adverse Effect.

**6.04      Books and Records.**

Each Credit Party shall, as shall cause each of its Subsidiaries to, keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP.

**6.05      Compliance with Law.**

Each Credit Party shall, and shall cause each of its Subsidiaries, to comply with all Laws, rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities, applicable to it and all of its real and personal property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.06      Payment of Taxes and Other Indebtedness.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, pay and discharge (or cause to be paid or discharged) (a) all taxes (including, without limitation, any corporate or franchise taxes), assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon any of its properties, and (c) except as prohibited hereunder, all of its other Indebtedness as it shall become due.

**6.07 Insurance.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, maintain (or caused to be maintained) with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons. Each Credit Party shall, and shall cause each of its Subsidiaries to, provide prompt notice to the Administrative Agent following such Credit Party's receipt from the relevant insurer of any notice of termination, lapse or cancellation of such insurance.

**6.08 Maintenance of Property.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, maintain, preserve and protect (or caused to be maintained, preserved and protected) all of its Unencumbered Properties and all other material property and equipment necessary in the operation of its business in good working order and condition, in each case, in a manner consistent with how such Person maintained its Unencumbered Properties and other material property on the Closing Date, ordinary wear and tear excepted.

**6.09 Performance of Obligations.**

The Credit Parties will pay and discharge at or before maturity, or prior to expiration of applicable notice, grace and curative periods, all their respective material obligations and liabilities, including, without limitation, tax liabilities, except where the same may be contested in good faith by appropriate proceedings, and will maintain, in accordance with GAAP, appropriate reserves for the accrual of any of the same.

**6.10 Visits and Inspections.**

Subject to the rights of Tenants, each Credit Party shall, and shall cause each of its Subsidiaries to, permit representatives or agents of any Lender or the Administrative Agent, from time to time, and, if no Event of Default shall have occurred and be continuing, after reasonable prior notice, but not more than twice annually and only during normal business hours to: (a) visit and inspect any of its Real Property Assets to the extent any such right to visit or inspect is within the control of such Person; (b) inspect and make extracts from their respective books and records, including but not limited to management letters prepared by independent accountants; and (c) discuss with its principal officers, and its independent accountants, its business, properties, condition (financial or otherwise), results of operations and performance. If requested by the Administrative Agent, the Borrower or the Credit Parties, as applicable, shall execute an authorization letter addressed to its accountants authorizing the Administrative Agent or any Lender to discuss the financial affairs of the Borrower or any other Credit Party with its accountants.

**6.11 Use of Proceeds/Purpose of Loans and Letters of Credit.**

The Borrower shall use the proceeds of all Loans and use Letters of Credit only for the purpose of (i) on the Closing Date to refinance existing Indebtedness of the Credit Parties under the Existing Credit Facility and (ii) on and after the Closing Date to finance general corporate working capital (including asset acquisitions, and acquiring or improving, directly or indirectly, income producing Healthcare Facilities and Investments incidental or related thereto), capital expenditures or other corporate purposes of the Borrower and the other Credit Parties (to the extent not inconsistent with the Credit Parties' covenants and obligations under this Credit Agreement and the other Credit Documents).

**6.12 Financial Covenants.**

(a) Consolidated Leverage Ratio. The Borrower shall cause the Consolidated Leverage Ratio, as of the end of any fiscal quarter, to be equal to or less than 60%.

( b ) Consolidated Secured Leverage Ratio. The Borrower shall cause the Consolidated Secured Leverage Ratio, as of the end of any fiscal quarter, to be equal to or less than 30%.

(c) Consolidated Unsecured Leverage Ratio. The Borrower shall cause the Consolidated Unsecured Leverage Ratio, as of the end of any fiscal quarter, to be equal to or less than 60%.

(d) Consolidated Fixed Charge Coverage Ratio. The Borrower shall cause the Consolidated Fixed Charge Coverage Ratio, as of the end of any fiscal quarter, to be equal to or greater than 1.75 to 1.00.

(e) Consolidated Tangible Net Worth. The Borrower shall cause the Consolidated Tangible Net Worth as of the end of any fiscal quarter to be equal to or greater than the sum of (i) \$1,074,867,000 plus (ii) an amount equal to 85% of the net cash proceeds received by the Consolidated Parties from Equity Transactions subsequent to the Closing Date.

(f) Consolidated Unsecured Debt Yield. The Borrower shall cause the Consolidated Unsecured Debt Yield, as of the end of any fiscal quarter, to be equal to or greater than 12.5%.

(g) Consolidated Unsecured Interest Coverage Ratio. The Borrower shall cause the Consolidated Unsecured Interest Coverage Ratio, as of the end of any fiscal quarter, to be equal to or greater than 2.00 to 1.00.

( h ) Distribution Limitation. The Borrower shall cause the cash distributions to the Borrower's shareholders made or declared by the Borrower during the immediately prior four (4) fiscal quarter period ending on such date to be equal to or less than ninety-five percent (95%) (or such greater amount as is required for the Borrower to maintain REIT status) of the aggregate cumulative Funds From Operations accrued on a cumulative basis during such immediately prior four (4) fiscal quarter period. Notwithstanding anything to the contrary contained in this Section 6.12(h), the Borrower may (i) distribute to the Borrower's shareholders any and all cash proceeds received by the Borrower in connection with any issuance or sale of shares of its Capital Stock and (ii) make unlimited distributions to the Borrower's shareholders payable solely in the form of common stock of the Borrower.

**6.13 Environmental Matters: Preparation of Environmental Reports.**

The Borrower will, and will cause each of its Subsidiaries to, comply in all material respects with all Environmental Laws in respect of its Real Property Assets.

**6.14 REIT Status.**

The Borrower will, and will cause each of its Subsidiaries to, 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 Internal Revenue Code. The Borrower will maintain adequate records so as to comply in all material respects with all record-keeping requirements relating to its qualification as a real estate investment trust as required by the Internal Revenue Code and applicable regulations of the Department of the Treasury promulgated thereunder and will properly prepare and timely file with the IRS all returns and reports required thereby.

**6.15 Additional Guarantors: Withdrawal or Addition of Unencumbered Properties; Release of Guarantors .**

(a) Upon the acquisition, incorporation or other creation of any direct or indirect Subsidiary of the Borrower which owns an Unencumbered Property and/or provides a guaranty of the Senior Notes or other unsecured Funded Debt and to the extent such Subsidiaries have not been designated as Unrestricted Subsidiaries, the Borrower shall (i) cause such Subsidiary to become a Subsidiary Guarantor hereunder through the execution and delivery to the Administrative Agent of a Subsidiary Guarantor Joinder Agreement on or before the earlier of (A) the date on which a Unencumbered Property owned by such Subsidiary is included in any calculation (pro forma or otherwise) of the Availability Amount and (B) the deadline for the delivery of the next Compliance Certificate pursuant to Section 6.02(a), and (ii) cause such Subsidiary to deliver such other documentation as the Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, certified resolutions and other organizational and authorizing documents of such Subsidiary, favorable opinions of counsel to such Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) The Borrower may add and withdraw Real Property Assets from the pool of Unencumbered Properties without the consent of the Administrative Agent; provided, that (i) in the case of addition of a Real Property Asset owned or leased by a Consolidated Party that is not a Credit Party, the owner of the Real Property Asset shall have complied with the requirements of clause (a)(i) of this Section 6.15 and (ii) in the case of withdrawal of a Real Property Asset, the Borrower shall have given notice thereof to the Administrative Agent, together with a written request to release the owner of the subject Real Property Asset, where appropriate, in accordance with the provisions hereof, and (iii) in any such case, the Borrower shall have delivered to Administrative Agent a Borrowing Base Certificate reflecting the addition or withdrawal of the subject Real Property Asset as an Unencumbered Property. In the case of withdrawal of a subject Property from the pool of Unencumbered Properties entitling the owner of the subject Real Property Asset to a release from the Guaranty hereunder, the Administrative Agent shall acknowledge (in writing delivered to the Borrower upon written request of the Borrower) withdrawal of the subject Real Property Asset and release of Guaranty of the owner in respect thereof (excepting a situation where an Event of Default shall then exist and be continuing, or where withdrawal of the subject Real Property Asset would cause the pool of Unencumbered Properties to be insufficient to support the Outstanding Obligations, which in either such case, the owner of the subject Real Property Asset shall not be released from its Guaranty hereunder until such time as the foregoing conditions no longer exist). Notwithstanding anything to the contrary in this Agreement, if the removal of any Unencumbered Properties would have the effect of curing all existing Events of Default, Borrower shall be permitted to withdraw such Real Property Assets, and any Event of Default with respect thereto shall be deemed cured as of the date of such withdrawal.

(c) Notwithstanding the requirements set forth in clauses (a) or (b) of this Section 6.15, to the extent that (i) the Borrower has received two (2) Investment Grade Ratings and (ii) the Borrower provides a written request to the Administrative Agent that the Guarantors be released from their respective Guaranties pursuant to the Credit Documents in conjunction with the simultaneous or substantially simultaneous issuance (or modification) by such Subsidiary Guarantors of any pari passu senior unsecured notes (including, without limitation, the Senior Notes) that do not require, or no longer require, a guaranty from the Subsidiary Guarantors of such notes, then, following the Administrative Agent's receipt of such notice (and so long as no Default or Event of Default shall have occurred and be continuing on the date of the Administrative Agent's receipt of such notice), the Subsidiary Guarantors shall be automatically released from their respective Guaranties pursuant to the Credit Documents (the "**Release**").

Notwithstanding the foregoing, (A) as set forth in Section 6.18 below, the Obligations shall remain a senior unsecured obligation, pari passu with all other senior unsecured Funded Debt of the Borrower and (B) to the extent that following any such Release, any Real Property Asset owned by an otherwise released or to be released Guarantor that is obligated in respect of outstanding recourse debt for Funded Debt shall not be deemed an Unencumbered Property for purposes of this Agreement.

#### **6.16 Anti-Terrorism Laws.**

None of the Credit Parties nor any of their respective Affiliates (i) will conduct any business or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) will deal in, or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) will engage in or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act. Each Borrower covenants and agrees to execute and/or deliver to Administrative Agent any certification or other evidence requested from time to time by Administrative Agent in its sole discretion, confirming such Borrower's compliance with this Section including, without limitation, any documentation which is necessary for ongoing compliance with any anti-money laundering Laws applicable to any Lender.



**6.17 Compliance With Material Contracts.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, perform and observe all the material terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon the reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Credit Party is entitled to make under such Material Contract.

**6.18 Designation as Senior Debt.**

Each Credit Party shall, and shall cause each of its Subsidiaries to, ensure that all Obligations are designated as "Senior Indebtedness" and are at least pari passu with all unsecured debt of such Credit Party and each Subsidiary.

**ARTICLE VII  
NEGATIVE COVENANTS**

The Borrower hereby covenants and agrees (on its own behalf and on behalf of the other Credit Parties, as applicable) that until the Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Revolving Commitments hereunder shall have terminated:

**7.01 Liens.**

No Credit Party shall, nor shall they permit any Subsidiary to, at any time, create, incur, assume or suffer to exist any Lien upon any of its assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Credit Document;

(b) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies (including pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation) not yet due and payable or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business; provided, that such Liens secure only amounts not overdue for more than thirty (30) days or are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established;

(d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness not otherwise permitted pursuant to Section 7.02), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) zoning restrictions, easements, rights-of-way, restrictions, restrictive covenants, encroachments, protrusions, sets of facts that an accurate and up to date survey would show 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;

(f) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(g) leases or subleases (and the rights of the tenants thereunder) granted to others not interfering in any material respect with the business of any Credit Party or any Subsidiary;

(h) any interest of title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;

(i) Liens in existence as of the Closing Date as set forth on Schedule 7.01 and any renewals or extensions thereof; provided, that the property covered thereby is not materially changes;

(j) Liens arising from mortgages, deeds of trust and other Uniform Commercial Code financing statements (or equivalent filings or registrations) pursuant to the Existing Credit Facility (solely with respect to the Borrowers as defined in the Existing Credit Facility) not yet released, satisfied or otherwise terminated as of the Closing Date;

(k) Liens pursuant to the Braswell Indebtedness; and

(l) other Liens incurred in connection with Consolidated Funded Debt as long as, after giving effect thereto, the Credit Parties are in compliance with the financial covenants in Section 6.12, on a pro forma basis as if such Lien had been incurred as of the last day of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 (or if such Lien exists as of the Closing Date, as of June 30, 2011); provided, that the Credit Parties may not grant a mortgage, deed of trust, lien, pledge, encumbrance or other security interest, in each case, to secure Funded Debt with respect to any Unencumbered Property or the Capital Stock in any Subsidiary except in favor of the Lenders.

## 7.02 Indebtedness.

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Credit Documents;

(b) Indebtedness in connection with intercompany Investments permitted under Section 7.03;

(c) obligations (contingent or otherwise) existing or arising under any Swap Contract; provided, that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view"; and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(d) without duplication, Guaranties by a Credit Party or any Subsidiary in respect of any Indebtedness otherwise permitted hereunder;

(e) Indebtedness set forth in Schedule 7.02 (and renewals, refinancing and extensions thereof); provided, that the amount of such Indebtedness is not increased at the time of such refinancing, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments utilized thereunder (for purposes of clarity, it is understood that Funded Debt on Schedule 7.02 is included in calculating the financial covenants in Section 6.12); and

(f) other Funded Debt (including any portion of any renewal, financing, or extension of Indebtedness set forth in Schedule 7.02 to the extent such portion does not meet the criteria set for the in the proviso of clause (e) above) as long as, after giving effect thereto, the Credit Parties are in compliance with the financial covenants in Section 6.12, on a pro forma basis as if such Indebtedness had been incurred as of the last day of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 (or if such Indebtedness exists as of the Closing Date, as of June 30, 2011).

**7.03**      **Investments.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, make any Investments, except:

- (a) Investments held in the form of cash or Cash Equivalents;
- (b) Investments in any Person that is a Credit Party prior to giving effect to such Investment;
- (c) Investments by any Subsidiary that is not a Credit Party in any other Subsidiary that is not a Credit Party;
- (d) Investments consisting of (i) extensions of credit in the nature of the performance of bids, (ii) accounts receivable or notes receivable arising from the grant of trade contracts and leases (other than credit) in the ordinary course of business, and (iii) Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (e) Guaranties permitted by Section 7.02;
- (f) Investments existing as of the Closing Date and set forth in Schedule 7.03; and
- (g) Investments in or related to Healthcare Facilities and Investments as described in Section 6.11 (including, without limitation, Investments of the type set forth in subclauses (i)-(iv) of this clause (g)); provided, however, that after giving effect to any such Investments, (i) the aggregate amount of Investments consisting of unimproved land holdings shall not, at any time, exceed 5% of Consolidated Total Asset Value, (ii) the aggregate amount of Investments consisting of Mortgage Loans, notes receivables and mezzanine loans shall not, at any time, exceed 20% of Consolidated Total Asset Value, (iii) the aggregate amount of Investments consisting of construction in progress shall not, at any time, exceed 15% of Consolidated Total Asset Value and (iv) the aggregate amount of Investments in Unconsolidated Affiliates shall not, at any time, exceed 20% of Consolidated Total Asset Value; provided, further, that the aggregate amount of all Investments made pursuant to clauses (i), (ii), (iii) and (iv) above shall not, at any time, exceed 30% of Consolidated Total Asset Value.

**7.04 Fundamental Changes.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person; provided, that, notwithstanding the foregoing provisions of this Section 7.04, (a) the Borrower may merge or consolidate with any of its Subsidiaries provided that the Borrower is the continuing or surviving Person, (b) any Consolidated Party (including any Unrestricted Subsidiary) may merge or consolidate with any other Consolidated Party; provided, that if a Credit Party is a party to such transaction, such Credit Party shall be the continuing or surviving Person, (c) any Subsidiary Guarantor may be merged or consolidated with or into any other Subsidiary Guarantor and (d) any Subsidiary Guarantor that is not a Credit Party may dissolve, liquidate or wind up its affairs at any time; provided, that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect.

**7.05 Dispositions.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Dispositions of obsolete or worn out Property, whether now owned or hereafter acquired, in the ordinary course of business;
- (b) Dispositions of inventory in the ordinary course of business;
- (c) Dispositions of equipment or Property to the extent that (i) such Property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement Property; provided, that if the Property disposed of is an Unencumbered Property it is removed from the calculation of Unencumbered Asset Value.
- (d) Dispositions of Property by any Subsidiary to a Credit Party or to a Wholly Owned Subsidiary; provided, that if the transferor of such property is a Credit Party, the transferee thereof must be a Credit Party;
- (e) Dispositions permitted by Section 7.04;
- (f) Dispositions by the Borrower and its Subsidiaries not otherwise permitted under this Section 7.05; provided, that (i) at the time of such Disposition, no Default or Event of Default exists and is continuing (that would not be cured by such Disposition) or would result from such Disposition and (ii) after giving effect thereto, the Credit Parties are in compliance with the financial covenants in Section 6.12, on a pro forma basis as if such Disposition had been incurred as of the last day of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01; and
- (g) real estate leases entered into in the ordinary course of business.

Notwithstanding anything above, any Disposition pursuant to clauses (a) through (f) shall be for fair market value.

**7.06 Change in Nature of Business.**

No Credit Party shall, nor shall they permit any Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.07 Transactions with Affiliates and Insiders.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, enter into any transaction of any kind with any officer, director or Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to such Credit Party or Subsidiary as would be obtainable by such Credit Party or Subsidiary at the time in a comparable arm's length transaction with a Person other than a director, officer or Affiliate; provided, that the foregoing restriction shall not apply to transactions between or among the Credit Parties.

**7.08 Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly:

- (a) Amend, modify or change its Organization Documents in a manner materially adverse to the Lenders.
- (b) Make any material change in (i) accounting policies or reporting practices, except as required by GAAP, FASB, the SEC or any other regulatory body, or (ii) its fiscal year.
- (c) Without providing ten (10) days prior written notice to the Administrative Agent, change its name, state of formation or form of organization.

**7.09 Negative Pledges.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, enter into, assume or otherwise be bound, by any Negative Pledge other than (i) any Negative Pledge contained in an agreement entered into in connection with any Indebtedness that is permitted pursuant to Section 7.02; (ii) any Negative Pledge required by law; (iii) Negative Pledges contained in (x) the agreements set forth on Schedule 7.09; (y) any agreement relating to the sale of any Subsidiary or any assets pending such sale; provided, that in any such case, the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such sale; or (z) any agreement in effect at the time any Person becomes a Subsidiary so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary and such restriction only applies to such Person and/or its assets, and (iv) customary provisions in leases, licenses and other contracts restricting the assignment thereof, in each case as such agreements, leases or other contracts may be amended from time to time and including any renewal, extension, refinancing or replacement thereof; provided, that, with respect to any amendment, renewal, extension, refinancing or replacement of an agreement described in clause (iii), such amendment, renewal, extension, refinancing or replacement does not contain restrictions of the type prohibited by this Section 7.09 that are, in the aggregate, more onerous in any material respect on the Borrower or any Subsidiary than the restrictions, in the aggregate, in the original agreement.

**7.10 Use of Proceeds.**

No Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, use the proceeds of any Extension of Credit, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Prepayments of Indebtedness.**

If a Default or Event of Default exists and is continuing or would be caused thereby, no Credit Party shall, nor shall they permit any Subsidiary to, directly or indirectly, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except the prepayment of Extensions of Credit in accordance with the terms of this Agreement.

**7.12 Stock Repurchases.**

If a Default or Event of Default exists and is continuing or would be caused thereby, the Borrower shall not make any payment (whether in cash, securities or other Property), including any sinking fund or similar deposit, for the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any of its Capital Stock or any option, warrant or other right to acquire any such Capital Stock other than the repurchase of warrants or stock in an aggregate amount not to exceed \$100,000,000 during the term of this Agreement.

**ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES**

**8.01 Events of Default.**

The occurrence and continuation of any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Credit Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Loan or any L/C Obligation, (ii) within five (5) days after the same becomes due, any interest on any Loan or on any L/C Obligation or any Unused Fee or any Facility Fee, as applicable or (iii) within ten (10) days after the earlier of (A) a Responsible Officer of the Borrower or any Credit Party becoming aware that the same has become due or (B) written notice from the Administrative Agent to the Borrower, any other fee payable herein or any other amount payable herein or under any other Credit Document becomes due; or

(b) Specific Covenants. Any Credit Party fails to perform or observe any term, covenant or agreement contained in (i) any of Sections 6.01 6.02 or 6.10 within ten (10) days after the same becomes due or required or (ii) any of Sections 6.03, 6.06, 6.11, 6.12, 6.14 or 6.15 or Article VII; or

(c) Other Defaults. Any Credit Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Credit Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of (i) a Responsible Officer of the Borrower or any Credit Party becoming aware of such default or (ii) written notice thereof by the Administrative Agent to the Borrower (or, if such failure cannot be reasonably cured within such period, sixty (60) days, so long as the applicable Credit Party has diligently commenced such cure and is diligently pursuing completion thereof); or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party and contained in this Credit Agreement, in any other Credit Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) there occurs any event of default under any of the Senior Note Indentures; (ii) any Credit Party or any Subsidiary (A) fails to perform or observe (beyond the applicable grace or cure period with respect thereto, if any) any Contractual Obligation if such failure could reasonably be expected to have a Material Adverse Effect, (B) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise and beyond the applicable grace or cure period with respect thereto, if any) in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) or otherwise fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which event of default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such 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 Indebtedness to be made, prior to its stated maturity, or cash collateral in respect thereof to be demanded, in each case to the extent such Indebtedness or other obligation is in an 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; or (iii) 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 Borrower 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 Borrower is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Borrower as a result thereof is greater than the Threshold Amount; or



( f ) Insolvency Proceedings, Etc. Any Credit Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its properties; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged or unstayed for ninety (90) calendar days; or any proceeding under any Debtor Relief Law relating to such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for ninety (90) calendar days, or an order for relief is entered in any such proceeding; or

( g ) Inability to Pay Debts; Attachment. (i) Any Credit Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process in an amount in excess of the Threshold Amount is issued or levied against all or any material part of the properties of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

( h ) Judgments. There is entered against a Credit Party or any Subsidiary (i) any one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (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, 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 ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

( i ) ERISA. (i) An ERISA Event occurs with respect to a Plan which has resulted in liability of any Credit Party or any Subsidiary under Title IV of ERISA to the Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) any Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Credit Documents: Guaranty. (i) Any Credit Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or as a result of satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Credit Party contests in any manner the validity or enforceability of any Credit Document; or any Credit Party denies that it has any or further liability or obligation under any Credit Document, or purports to revoke, terminate or rescind any Credit Document; or (ii) except as the result of or in connection with a dissolution, merger or disposition of a Subsidiary Guarantor not prohibited by the terms of this Credit Agreement, the Guaranty shall cease to be in full force and effect, or any Guarantor hereunder shall deny or disaffirm such Guarantor's obligations under such Guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the Guaranty; or

(k) Change of Control. There occurs any Change of Control.

## **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, upon written notice to the Borrower in any instance, 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 Credit Document to be immediately due and payable, without presentment, demand, protest or additional 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 then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Credit Documents or applicable law;

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, 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.

**8.03      Application of Funds.**

After the exercise of remedies in accordance with the provisions of Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to provide Cash Collateral as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including Attorney Costs 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 and interest) payable to the Lenders (including Attorney Costs and amounts payable under Article III), ratably among the Lenders in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and (b) the Administrative Agent for the account of the L/C Issuer, to provide Cash Collateral for that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among such parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of that portion of the Obligations constituting obligations under Swap Contracts between any Credit Party and any Lender or Affiliate of any Lender (including, without limitation, payment of breakage, termination or other amounts owing in respect of any Swap Contract between any Credit Party and any Lender, or any Affiliate of a Lender, to the extent such Swap Contract is permitted hereunder); 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 Section 2.03(d), amounts used to provide Cash Collateral for the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth 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**

**9.01 Appointment and Authorization of Administrative Agent.**

(a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Credit Agreement and each other Credit Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Credit Agreement or any other Credit Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Credit Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any other Credit Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Credit Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The L/C Issuer shall act on behalf of the 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 (i) provided to the Administrative Agent in this 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 the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "**Administrative Agent**" as used in this Article IX and in the definition of "**Agent-Related Person**" included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

**9.02 Delegation of Duties.**

The Administrative Agent may execute any of its duties under this Credit Agreement or any other Credit Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

**9.03 Liability of Administrative Agent.**

No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Credit Agreement or any other Credit Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Credit Party or any officer thereof, contained herein or in any other Credit Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Credit Agreement or any other Credit Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Credit Agreement or any other Credit Document, or for any failure of any Credit Party or any other party to any Credit Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Credit Agreement or any other Credit Document, or to inspect the properties, books or records of any Credit Party or any Affiliate thereof.

**9.04      Reliance by Administrative Agent.**

(a)            The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Credit Party), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Credit Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Credit Agreement or any other Credit Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b)            For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Credit 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 proposed Closing Date specifying its objection thereto.

**9.05      Notice of Default.**

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Credit Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Default or Event of Default as may be directed by the requisite Lenders in accordance herewith; provided, however, that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

**9.06 Credit Decision: Disclosure of Confidential Information by Administrative Agent.**

Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession (in each case, except to the extent the Administrative Agent has confirmed to any Lender in writing the satisfaction of conditions to funding as of the Closing Date). Each Lender represents to the Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Credit Agreement and to extend credit to the Borrower and the other Credit Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement and the other Credit Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Credit Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their respective Affiliates that may come into the possession of any Agent-Related Person.

**9.07 Indemnification of Administrative Agent.**

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Credit Party and without limiting the obligation of any Credit Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

**9.08 Administrative Agent in its Individual Capacity.**

Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Credit Parties and their respective Affiliates as though Bank of America were not the Administrative Agent or the L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding any Credit Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, Bank of America shall have the same rights and powers under this Credit Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent or the L/C Issuer, and the terms “**Lender**” and “**Lenders**” include Bank of America in its individual capacity.

**9.09 Successor Administrative Agent.**

The Administrative Agent may resign as Administrative Agent upon thirty (30) days’ notice to the Lenders; provided, that any such resignation by Bank of America shall also constitute its resignation as L/C Issuer and Swing Line Lender. If the Administrative Agent resigns under this Credit Agreement, the Required Lenders shall appoint from among the Lenders a successor administrative agent for the Lenders, which successor administrative agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Borrower, a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent, L/C Issuer and Swing Line Lender and the respective terms “Administrative Agent,” “L/C Issuer” and “Swing Line Lender” thereafter shall mean such successor administrative agent, Letter of Credit issuer and swing line lender, and the retiring Administrative Agent’s appointment, powers and duties as Administrative Agent shall be terminated and the retiring L/C Issuer’s and Swing Line Lender’s rights, powers and duties as such shall be terminated, without any other or further act or deed on the part of such retiring L/C Issuer or Swing Line Lender or any other Lender, other than the obligation of the successor L/C Issuer to issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or to make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Article IX and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Credit Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date thirty (30) days following a retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

**9.10 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, 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, L/C Obligations and all other Obligations (other than obligations under Swap Contracts to which the Administrative Agent is not a party) 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 and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.03(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, sequesteror or other similar official in any such judicial proceeding is hereby authorized by each Lender 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, 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 any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.11 Guaranty Matters.**

The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion to release any Guarantor from its obligations under the Guaranty if such Person (a) ceases to be a Subsidiary as a result of a transaction permitted hereunder, (b) no longer is required to be a Guarantor pursuant to Section 6.15(c) or (c) has been designated as an Unrestricted Subsidiary (in each case, a “**Release**”). Notwithstanding the foregoing, to the extent that following any such Release, any Real Property Asset owned by an otherwise to be released Guarantor that is obligated in respect of outstanding recourse debt for Funded Debt shall not be deemed an Unencumbered Property hereunder. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the authority of the Administrative Agent to release any Guarantor from its obligations hereunder pursuant to this Section 9.11. Upon the release of any Guarantor pursuant to this Section 9.11, the Administrative Agent shall (to the extent applicable) deliver to the Credit Parties, upon the Credit Parties’ request and at the Credit Parties’ expense, such documentation as is reasonably necessary to evidence the release of such Guarantor from its obligations under the Credit Documents.

**9.12 Other Agents: Arrangers and Managers.**

None of the Lenders or other Persons identified on the facing page or signature pages of this Credit Agreement as a “syndication agent,” “documentation agent,” “co-agent,” “book manager,” “lead manager,” “arranger,” “lead arranger” or “co-arranger” shall have any right, power, obligation, liability, responsibility or duty under this Credit Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Credit Agreement or in taking or not taking action hereunder.

**ARTICLE X  
MISCELLANEOUS**

**10.01    Amendments, Etc.**

No amendment or waiver of, or any consent to deviation from, any provision of this Credit Agreement or any other Credit Document shall be effective unless in writing and signed by the Borrower, the Guarantors (if applicable) and the Required Lenders and acknowledged by the Administrative Agent, and each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given; provided, however, that:

- (a) unless also signed by each Lender directly affected thereby, no such amendment, waiver or consent shall:
  - (i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02), it being understood that the amendment or waiver of an Event of Default or a mandatory reduction or a mandatory prepayment in Commitments shall not be considered an increase in Commitments,
  - (ii) waive non-payment or postpone any date fixed by this Credit Agreement or any other Credit Document for any payment of principal, interest, fees or other amounts due to any Lender hereunder or under any other Credit Document,
  - (iii) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or any fees or other amounts payable hereunder or under any other Credit Document; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) 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,
  - (iv) change any provision of this Credit Agreement regarding pro rata sharing or pro rata funding with respect to (A) the making of advances (including participations), (B) the manner of application of payments or prepayments of principal, interest, or fees, (C) the manner of application of reimbursement obligations from drawings under Letters of Credit, or (D) the manner of reduction of commitments and committed amounts,
  - (v) change any provision of this Section 10.01(a) or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, or
  - (vi) release the Borrower or all or substantially all of the Subsidiary Guarantors from their obligations hereunder (other than as provided herein or as appropriate in connection with transactions permitted hereunder);
- (b) unless also signed by the L/C Issuer, no such amendment, waiver or consent shall affect the rights or duties of the L/C Issuer under this Credit Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it;

(c) unless also signed by the Swing Line Lender, no such amendment, waiver or consent shall affect the rights or duties of the Swing Line Lender under this Credit Agreement; and

(d) unless also signed by the Administrative Agent, no such amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Credit Agreement or any other Credit Document;

provided, however, that notwithstanding anything to the contrary contained herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that, without the prior written consent of such Lender, (A) no Commitment of such Lender may be increased or extended, (B) the terms and conditions of this proviso may not be amended or otherwise modified and (C) no other amendment or other modification to this Agreement or any Note that would disproportionately affect a "Defaulting Lender" may be effective, (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy or insolvency reorganization plan that affects the Loans, (iii) each Lender acknowledged that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iv) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

#### **10.02 Notices and Other Communications: Facsimile Copies.**

( a ) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission). All such written notices shall be mailed certified or registered mail, faxed or delivered to the applicable address, facsimile number or (subject to subsection (c) below) electronic mail address, 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 any Credit Party, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to any Credit Party, the Administrative Agent, the L/C Issuer and the Swing Line Lender.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile 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 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 hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided, that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its respective 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.

( 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 through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

( d ) Effectiveness of Facsimile Documents and Signatures. Credit Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all Credit Parties, the Administrative Agent and the Lenders. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices permitted under Section 2.02(a)) 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 each Agent-Related Person and each Lender 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 communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(f) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line 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, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

### **10.03 No Waiver; Cumulative Remedies.**

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder 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 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 Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; 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 Credit Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Credit Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.12), 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 any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Credit 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 2.12, 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.

#### **10.04 Attorney Costs, Expenses and Taxes.**

The Credit Parties agree (a) to pay directly to the provider thereof or to pay or reimburse the Administrative Agent for all reasonable and documented costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Credit Agreement and the other Credit Documents, the preservation of any rights or remedies under this Credit Agreement and the other Credit Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs and (b) to pay or reimburse the Administrative Agent and each Lender for all reasonable costs and expenses incurred following an Event of Default in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Credit Agreement or the other Credit Documents (including all such costs and expenses incurred during any "workout" or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all Attorney Costs. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the reasonable and documented cost of independent public accountants and other outside experts retained by the Administrative Agent or any Lender. All amounts due under this Section 10.04 shall be payable within twenty (20) Business Days after written invoice therefor is received by the Borrower. The agreements in this Section shall survive the termination of the Aggregate Commitments and repayment of all other Obligations.

#### **10.05 Indemnification.**

The Credit Parties shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, trustees, advisors and attorneys-in-fact (collectively the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, claims, litigation, investigation, proceeding, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever (subject to the provisions of Section 3.01 with respect to Taxes and Other Taxes) that may at any time be imposed on, incurred by or asserted against any such Indemnitee (whether by a Credit Party or any other party) in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Credit Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated 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 Credit Documents, (b) any Commitment, 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), or (c) any actual or threatened claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); provided, that such indemnification shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, litigation, investigation, proceeding, demands, actions, judgments, suits, costs, expenses or disbursements are determined to have resulted from the gross negligence or willful misconduct of any Indemnitee. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Credit Agreement, and no Indemnitee shall have any liability for any indirect or consequential damages relating to this Credit Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). All amounts that may become due under this Section 10.05 shall be payable within twenty (20) Business Days after written invoice therefor is received by the Borrower. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the assignment by any Lender of any of its interests hereunder, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.06 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off 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 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 set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share 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.

**10.07 Successors and Assigns.**

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) or (i) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit 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 Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided, that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) 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 \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed) provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swing Line Loans; (iii) any assignment of a Commitment must be approved by the Administrative Agent and, with respect to any assignment of a Revolving Commitment, the L/C Issuer and the Swing Line Lender (each such consent not to be unreasonably withheld or delayed), unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); (iv) 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 \$3,500; 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 and (v) 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. 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 the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Revolving Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs. Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Credit 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 Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Credit 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, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). 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 Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.



(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts 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, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Credit Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent a copy of the Register.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided, that (i) such Lender's obligations under this Credit 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 and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification that extends the time for, reduces the amount or alters the application of proceeds with respect to such obligations and payments required therein that directly affects such Participant. Subject to subsection (e) of this Section, 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. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; provided, such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 10.15 as though it were a Lender.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender that is a Fund may (without notice to or the consent of any of the parties hereto) create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided, that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Credit Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Credit Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(h) Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America 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 Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder (with the consent of the Lender so-appointed); provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights and obligations 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 Revolving Loans that are Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Revolving Loans that are Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(b).

#### **10.08 Confidentiality.**

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of Confidential Information, except that Confidential Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential); (b) to the extent requested by any regulatory authority or self regulatory body; (c) to the extent required by applicable Law or regulations or by any subpoena or similar legal process; (d) to any other party to this Credit Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Credit Agreement or the enforcement of rights hereunder (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential); (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Credit Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Credit Parties; (g) with the consent of the Borrower; (h) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower; (i) to the National Association of Insurance Commissioners or any other similar organization (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential); or (j) to any nationally recognized rating agency that requires access to a Lender's or an Affiliate's investment portfolio in connection with ratings issued with respect to such Lender or Affiliate. In addition, the Administrative Agent and the Lenders may disclose the existence of this Credit Agreement and information about this Credit Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Credit Agreement, the other Credit Documents, the Commitments, and the Extension of Credits. Any Person required to maintain the confidentiality of Confidential 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 Confidential Information as such Person would accord to its own confidential information. For the purposes of this Section, "**Confidential Information**" means all information received from any Credit Party relating to any Credit Party, any of the other Consolidated Parties, or its or their business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Credit Party; provided, that, in the case of information received from a Credit Party after the date hereof, such information is clearly identified in writing at the time of delivery as confidential.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Confidential Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

**10.09 Set-off.**

In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender and each of its Affiliates are authorized at any time and from time to time, without prior notice to the Borrower or any other Credit Party, any such notice being waived by the Borrower (on their own behalf and on behalf of each Credit Party) to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or Affiliate to or for the credit or the account of the respective Credit Parties against any and all Obligations owing to such Lender hereunder or under any other Credit Document, now or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Credit Agreement or any other Credit Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 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 and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. 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.

**10.10 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit 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.

**10.11 Counterparts.**

This Credit Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**10.12 Integration.**

This Credit Agreement, together with the other Credit Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Credit Agreement and those of any other Credit Document, the provisions of this Credit Agreement shall control; provided, that the inclusion of specific supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Credit Document shall not be deemed a conflict with this Credit Agreement. Each Credit Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

**10.13 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Credit 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 or Event of Default at the time of any Extension of Credit, 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.

**10.14 Severability.**

If any provision of this Credit Agreement or the other Credit Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Credit Agreement and the other Credit 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.

**10.15 Tax Forms.**

(a) (i) Each Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code (a "**Foreign Lender**") shall deliver to the Administrative Agent, prior to receipt of any payment subject to withholding under the Internal Revenue Code (or upon accepting an assignment of an interest herein), two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to an exemption from, or reduction of, withholding tax on all payments to be made to such Foreign Lender by the Borrower pursuant to this Credit Agreement) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by the Borrower pursuant to this Credit Agreement) or such other evidence satisfactory to the Borrower and the Administrative Agent that such Foreign Lender is entitled to an exemption from, or reduction of, U.S. withholding tax, including any exemption pursuant to Section 881(c) of the Internal Revenue Code. Thereafter and from time to time, each such Foreign Lender shall (A) promptly submit to the Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to the Borrower and the Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by the Borrower pursuant to this Credit Agreement, (B) promptly notify the Administrative Agent of any change in circumstances that would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Law that the Borrower make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Credit Documents (for example, in the case of a typical participation by such Lender), shall deliver to the Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of the Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of IRS Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Internal Revenue Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(iii) The Borrower shall not be required to pay any additional amount to any Foreign Lender under Section 3.01 (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with an IRS Form W-8IMY pursuant to this Section 10.15(a) or (B) if such Lender shall have failed to satisfy the foregoing provisions of this Section 10.15(a); provided, that if such Lender shall have satisfied the requirement of this Section 10.15(a) on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Credit Documents, nothing in this Section 10.15(a) shall relieve the Borrower of their obligation to pay any amounts pursuant to Section 3.01 in the event that, as a result of any change in any applicable Law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other Person for the account of which such Lender receives any sums payable under any of the Credit Documents is not subject to withholding or is subject to withholding at a reduced rate.

(iv) The Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Credit Documents with respect to which the Borrower is not required to pay additional amounts under this Section 10.15(a).

(b) Upon the request of the Administrative Agent, each Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Administrative Agent two duly signed completed copies of IRS Form W-9. If such Lender fails to deliver such forms, then the Administrative Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable back-up withholding tax imposed by the Internal Revenue Code, without reduction.

(c) If any Governmental Authority asserts that the Administrative Agent did not properly withhold or backup withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify the Administrative Agent therefor, including all penalties and interest, any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section, and costs and expenses (including Attorney Costs) of the Administrative Agent. The obligation of the Lenders under this Section shall survive the termination of the Aggregate Commitments, repayment of all other Obligations hereunder and the resignation of the Administrative Agent.

**10.16 Replacement of Lenders.**

To the extent that Section 3.06(b) provides that the Borrower shall have the right to replace a Lender as a party to this Credit Agreement, or if any Lender is a Defaulting Lender, the Borrower may, upon notice to such Lender and the Administrative Agent, replace such Lender by causing such Lender to assign its Commitment (with the related assignment fee to be paid by the Borrower) pursuant to Section 10.07(b) to one or more Eligible Assignees procured by the Borrower; provided, however, that if the Borrower elects to exercise such right with respect to any Lender pursuant to such Section 3.06(b), they shall be obligated to replace all Lenders that have made similar requests for compensation pursuant to Section 3.01 or 3.04. The Borrower shall pay in full all principal, interest, fees and other amounts owing to such Lender through the date of replacement (including any amounts payable pursuant to Section 3.05). Any Lender being replaced shall execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans.

**10.17 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees, and acknowledges its respective Affiliates' understanding, that: (a) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between the Borrower and its respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, and each Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, the Administrative Agent and the Arranger each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its respective Affiliates, stockholders, creditors or employees or any other Person; (c) neither the Administrative Agent nor the Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether the Administrative Agent or the Arranger has advised or is currently advising the Borrower or any of its respective Affiliates on other matters) and neither the Administrative Agent nor the Arranger has any obligation to the Borrower or any of its respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; (d) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its respective Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent and the Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Credit Document) and each Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty.



**10.18 Source of Funds.**

Each of the Lenders hereby represents and warrants to the Borrower that at least one of the following statements is an accurate representation as to the source of funds to be used by such Lender in connection with the financing hereunder:

- (a) no part of such funds constitutes assets allocated to any separate account maintained by such Lender in which any employee benefit plan (or its related trust) has any interest;
- (b) to the extent that any part of such funds constitutes assets allocated to any separate account maintained by such Lender, such Lender has disclosed to the Borrower the name of each employee benefit plan whose assets in such account exceed ten percent (10%) of the total assets of such account as of the date of such purchase (and, for purposes of this subsection (b), all employee benefit plans maintained by the same employer or employee organization are deemed to be a single plan);
- (c) to the extent that any part of such funds constitutes assets of an insurance company's general account, such insurance company has complied with all of the requirements of the regulations issued under Section 401(c)(1)(A) of ERISA; or
- (d) such funds constitute assets of one or more specific benefit plans that such Lender has identified in writing to the Borrower.

As used in this Section, the terms "employee benefit plan" and "separate account" shall have the respective meanings provided in Section 3 of ERISA.

**10.19 GOVERNING LAW.**

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES; PROVIDED, THAT THE ADMINISTRATIVE AGENT AND EACH LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER, THE CREDIT PARTIES, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWER, THE CREDIT PARTIES, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY CREDIT DOCUMENT OR OTHER DOCUMENT RELATED THERETO. THE BORROWER, THE CREDIT PARTIES, THE ADMINISTRATIVE AGENT AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

**10.20 WAIVER OF RIGHT TO TRIAL BY JURY.**

EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY CREDIT DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY CREDIT DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**10.21 No Conflict.**

To the extent there is any conflict or inconsistency between the provisions hereof and the provisions of any other Credit Document, this Credit Agreement shall control.

**10.22 USA Patriot Act Notice.**

Each Lender 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 (and to the extent applicable, the other Credit Parties), which information includes the name and address of the Borrower (and to the extent applicable, the other Credit Parties) and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower (and to the extent applicable, the other Credit Parties) in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

**10.23 Entire Agreement.**

THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

**ARTICLE XI  
GUARANTY**

**11.01 The Guaranty.**

(a) Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Obligations, as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (the "**Guaranteed Obligations**") in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Guaranteed Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein, in any of the other Credit Documents or other documents relating to the Obligations, the obligations of each Guarantor under this Credit Agreement shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

**11.02 Obligations Unconditional.**

The obligations of the Guarantors under Section 11.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents or other documents relating to the Obligations, or any substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 11.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Article XI until such time as the Obligations have been irrevocably paid in full and the Commitments relating thereto have expired or been terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by applicable Laws, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Credit Documents, or other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents or other documents relating to the Guaranteed Obligations, or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent or any of the holders of the Guaranteed Obligations as security for any of the Guaranteed Obligations shall fail to attach or be perfected; or

(e) any of the Guaranteed Obligations shall be determined to be void or voidable (including for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest notice of acceptance of the guaranty given hereby and of extensions of credit that may constitute Guaranteed Obligations, notices of amendments, waivers and supplements to the Credit Documents and other documents relating to the Guaranteed Obligations, or the compromise, release or exchange of collateral or security, and all notices whatsoever, and any requirement that the Administrative Agent or any holder of the Guaranteed Obligations exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents or any other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Obligations.

**11.03 Reinstatement.**

Neither the Guarantors' obligations hereunder nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Borrower, by reason of the Borrower's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Guaranteed Obligations. The obligations of the Guarantors under this Article XI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings pursuant to any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each holder of Guaranteed Obligations on demand for all reasonable costs and expenses (including all reasonable fees, expenses and disbursements of any law firm or other counsel) incurred by the Administrative Agent or such holder of Guaranteed Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law; provided, that such indemnification shall not be available to the extent that such costs and expenses are determined to have resulted from the gross negligence or willful misconduct of the Administrative Agent or such holder of the Guaranteed Obligations.

**11.04 Certain Waivers.**

Each Guarantor acknowledges and agrees that (a) the guaranty given hereby may be enforced without the necessity of resorting to or otherwise exhausting remedies in respect of any other security or collateral interests, and without the necessity at any time of having to take recourse against the Borrower hereunder or against any collateral securing the Guaranteed Obligations or otherwise, (b) it will not assert any right to require the action first be taken against the Borrower or any other Person (including any other Guarantor) or pursuit of any other remedy or enforcement any other right and (c) nothing contained herein shall prevent or limit action being taken against the Borrower hereunder, under the other Credit Documents or the other documents and agreements relating to the Guaranteed Obligations or from foreclosing on any security or collateral interests relating hereto or thereto, or from exercising any other rights or remedies available in respect thereof, if neither the Borrower nor the Guarantors shall timely perform their obligations, and the exercise of any such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Guarantors' obligations hereunder unless as a result thereof, the Guaranteed Obligations shall have been paid in full and the Commitments relating thereto shall have expired or been terminated, it being the purpose and intent that the Guarantors' obligations hereunder be absolute, irrevocable, independent and unconditional under all circumstances.

**11.05 Rights of Contribution.**

The Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each Guarantor shall have a right of contribution from each other Guarantor in accordance with applicable Laws. Such contribution rights shall be subordinate and subject in right of payment to the Guaranteed Obligations until such time as the Guaranteed Obligations have been paid in full and the Commitments relating thereto shall have expired or been terminated, and none of the Guarantors shall exercise any such contribution rights until the Guaranteed Obligations have been paid in full and the Commitments relating thereto shall have expired or been terminated.

**11.06 Guaranty of Payment: Continuing Guaranty.**

The guaranty in this Article XI is a guaranty of payment and not of collection, and is a continuing guaranty, and shall apply to all Guaranteed Obligations whenever arising until such time as the Guaranteed Obligations have been paid in full and the Commitments relating thereto shall have expired or been terminated.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -  
SIGNATURE PAGES AND SCHEDULES AND EXHIBITS TO FOLLOW]**

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

BORROWER:

OMEGA HEALTHCARE INVESTORS, INC.

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

GUARANTORS:

OHI ASSET (LA), LLC

By: Omega Healthcare Investors, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

By: Omega TRS I, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

OHI ASSET, LLC  
OHI ASSET (ID), LLC  
OHI ASSET (CA), LLC  
DELTA INVESTORS I, LLC  
DELTA INVESTORS II, LLC  
OHI ASSET (CO), LLC  
COLONIAL GARDENS, LLC  
WILCARE, LLC  
NRS VENTURES, L.L.C.  
OHI ASSET (CT) LENDER, LLC  
OHI ASSET (FL), LLC  
OHI ASSET (IL), LLC  
OHI ASSET (MO), LLC  
OHI ASSET (OH), LLC  
OHI ASSET (OH) LENDER, LLC  
OHI ASSET (PA), LLC  
OHI ASSET II (CA), LLC  
OHI ASSET II (FL), LLC  
OHI ASSET CSE-E, LLC  
OHI ASSET CSE-U, LLC  
OHI ASSET CSB LLC  
OHI ASSET (MI), LLC  
OHI ASSET (FL) LENDER, LLC  
OHI ASSET HUD WO, LLC  
OHI ASSET (MD), LLC  
OHI ASSET (IN), LLC  
OHI ASSET (MI/NC), LLC  
OHI ASSET (OH) NEW PHILADELPHIA, LLC  
OHI ASSET (TX), LLC  
OHI ASSET ESSEX (OH), LLC

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By: Omega Healthcare Investors, Inc.,  
the Sole Member of each such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

TEXAS LESSOR - STONEGATE, LP

By: Texas Lessor – Stonegate GP, Inc.,  
Its General Partner

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE ANCHORAGE LLC  
CSE DENVER ILIFF LLC  
CSE FAIRHAVEN LLC  
CSE MARIANNA HOLDINGS LLC  
CSE TEXARKANA LLC  
CSE WEST POINT LLC  
CSE WHITEHOUSE LLC  
CARNEGIE GARDENS LLC  
FLORIDA REAL ESTATE COMPANY, LLC  
GREENBOUGH, LLC  
LAD I REAL ESTATE COMPANY, LLC  
PANAMA CITY NURSING CENTER LLC  
SKYLER MAITLAND LLC  
SUWANEE, LLC

By: OHI Asset CSE-U, LLC,  
the Sole Member of each of the companies

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

CSE BLOUNTVILLE LLC  
CSE BOLIVAR LLC  
CSE CAMDEN LLC  
CSE HUNTINGDON LLC  
CSE JEFFERSON CITY LLC  
CSE MEMPHIS LLC  
CSE RIPLEY LLC

By: OHI Tennessee, Inc.,  
the Sole Member of each of the companies

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE CORPUS NORTH LLC  
CSE CRANE LLC  
CSE JACINTO CITY LLC  
CSE KERRVILLE LLC  
CSE RIPON LLC  
CSE SPRING BRANCH LLC  
CSE THE VILLAGE LLC  
CSE WILLIAMSPORT LLC  
DESERT LANE LLC  
NORTH LAS VEGAS LLC

By: OHI Asset CSE-E, LLC,  
the Sole Member of each of the companies

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

HOUSE OF HANOVER, LTD.

By: OHI Asset (OH), LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

PAVILLION NORTH, LLP

By: Pavillion Nursing Center North, Inc.,  
its General Partner

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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OHI ASSET (PA) TRUST  
OHI ASSET II (PA) TRUST  
OHI ASSET III (PA) TRUST  
OHI ASSET IV (PA) SILVER LAKE TRUST

By: OHI Asset (PA), LLC,  
the Sole Trustee of each of the Trusts

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

CSE CASABLANCA HOLDINGS LLC

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

CSE CASABLANCA HOLDINGS II LLC

By: CSE Casablanca Holdings LLC,  
the Sole Member of such company

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE ALBANY LLC  
CSE AMARILLO LLC  
CSE AUGUSTA LLC  
CSE BEDFORD LLC  
CSE CAMBRIDGE REALTY LLC  
CSE CANTON LLC  
CSE CEDAR RAPIDS LLC  
CSE CHELMSFORD LLC  
CSE CHESTERTON LLC  
CSE CLAREMONT LLC  
CSE DENVER LLC  
CSE DOUGLAS LLC  
CSE DUMAS LLC  
CSE ELKTON REALTY LLC  
CSE FORT WAYNE LLC  
CSE FRANKSTON LLC  
CSE GEORGETOWN LLC  
CSE GREEN BAY LLC  
CSE HILLIARD LLC  
CSE HUNTSVILLE LLC  
CSE INDIANAPOLIS – CONTINENTAL LLC  
CSE INDIANAPOLIS – GREENBRIAR LLC  
CSE JEFFERSONVILLE – HILLCREST CENTER LLC  
CSE JEFFERSONVILLE – JENNINGS HOUSE LLC  
CSE KINGSPORT LLC  
CSE LAKE CITY LLC  
CSE LAKE WORTH LLC  
CSE LAKEWOOD LLC  
CSE LAS VEGAS LLC  
CSE LAWRENCEBURG LLC  
CSE LEXINGTON PARK REALTY LLC  
CSE LIGONIER LLC  
CSE LIVE OAK LLC  
CSE LOGANSPOUR LLC  
CSE LOWELL LLC  
CSE MOBILE LLC  
CSE MOORE LLC  
CSE NORTH CAROLINA HOLDINGS I LLC  
CSE NORTH CAROLINA HOLDINGS II LLC  
CSE OMRO LLC  
CSE ORANGE PARK LLC  
CSE ORLANDO – PINAR TERRACE MANOR LLC  
CSE ORLANDO – TERRA VISTA REHAB LLC  
CSE PIGGOTT LLC  
CSE PILOT POINT LLC  
CSE PONCA CITY LLC  
CSE PORT ST. LUCIE LLC  
CSE RICHMOND LLC  
CSE SAFFORD LLC  
CSE SALINA LLC  
CSE SEMINOLE LLC  
CSE SHAWNEE LLC  
CSE STILLWATER LLC  
CSE TAYLORSVILLE LLC  
CSE TEXAS CITY LLC  
CSE UPLAND LLC  
CSE WINTER HAVEN LLC  
CSE YORKTOWN LLC

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By: CSE Casablanca Holdings II LLC,  
the Sole Member of each of the companies

By: CSE Casablanca Holdings LLC,  
the Sole Member of such company

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

CSE LEXINGTON PARK LLC

By: CSE Lexington Park Realty LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings II LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings LLC,  
the Sole Member of such company

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE CAMBRIDGE LLC

By: CSE Cambridge Realty LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings II LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings LLC,  
the Sole Member of such company

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

CSE ELKTON LLC

By: CSE Elkton Realty LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings II LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings LLC,  
the Sole Member of such company

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE ARDEN L.P.  
CSE KING L.P.  
CSE KNIGHTDALE L.P.  
CSE LENOIR L.P.  
CSE WALNUT COVE L.P.  
CSE WOODFIN L.P.

By: CSE North Carolina Holdings I LLC,  
the General Partner of each limited partnership

By: CSE Casablanca Holdings II LLC,  
the Sole Member of such company

By: CSE Casablanca Holdings LLC,  
the Sole Member of such company

By: OHI Asset CSB LLC,  
the Sole Member of such company

By: Omega Healthcare Investors, Inc.,  
the Sole Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE PENNSYLVANIA HOLDINGS

By: OHI Asset (PA), LLC,  
the Managing Trustee of the Trust

By: Omega Healthcare Investors, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

By: OHI Asset CSE-E, LLC,  
the Sole Beneficial Owner of the Trust

By: Omega Healthcare Investors, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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CSE CENTENNIAL VILLAGE

By: OHI Asset (PA), LLC,  
the Managing Trustee of the Trust

By: Omega Healthcare Investors, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

By: CSE Pennsylvania Holdings,  
the Sole Beneficial Owner of the Trust

By: OHI Asset (PA), LLC,  
the Managing Trustee of such trust

By: Omega Healthcare Investors, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

By: OHI Asset CSE-E, LLC,  
the Sole Beneficial Owner of such trust

By: Omega Healthcare Investors, Inc.,  
a Member of such company

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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OHIMA, INC.  
CANTON HEALTH CARE LAND, INC.  
DIXON HEALTH CARE CENTER, INC.  
HUTTON I LAND, INC.  
HUTTON II LAND, INC.  
HUTTON III LAND, INC.  
LEATHERMAN PARTNERSHIP 89-1, INC.  
LEATHERMAN PARTNERSHIP 89-2, INC.  
LEATHERMAN 90-1, INC.  
MERIDIAN ARMS LAND, INC.  
ORANGE VILLAGE CARE CENTER, INC.  
ST. MARY'S PROPERTIES, INC.  
ARIZONA LESSOR – INFANIA, INC.  
BALDWIN HEALTH CENTER, INC.  
BAYSIDE STREET II, INC.  
COLORADO LESSOR – CONIFER, INC.  
COPLEY HEALTH CENTER, INC.  
FLORIDA LESSOR – EMERALD, INC.  
FLORIDA LESSOR – MEADOWVIEW, INC.  
GEORGIA LESSOR – BONTERRA/PARKVIEW, INC.  
HANOVER HOUSE, INC.  
INDIANA LESSOR – WELLINGTON MANOR, INC.  
LONG TERM CARE ASSOCIATES – TEXAS, INC.  
OHI (CONNECTICUT), INC.  
OHI (FLORIDA), INC.  
OH (ILLINOIS), INC.  
OHI (INDIANA), INC.  
OHI (IOWA), INC.  
PAVILLION NORTH PARTNERS, INC.  
PAVILLION NURSING CENTER NORTH, INC.  
STERLING ACQUISITION CORP.  
THE SUBURBAN PAVILION, INC.  
TEXAS LESSOR – STONEGATE, LIMITED, INC.  
TEXAS LESSOR – STONEGATE GP, INC.  
WASHINGTON LESSOR – SILVERDALE, INC.  
OMEGA TRS I, INC.  
BAYSIDE ALABAMA HEALTHCARE SECOND, INC.  
BAYSIDE ARIZONA HEALTHCARE ASSOCIATES, INC.  
BAYSIDE ARIZONA HEALTHCARE SECOND, INC.  
BAYSIDE COLORADO HEALTHCARE ASSOCIATES, INC.

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BAYSIDE COLORADO HEALTHCARE SECOND, INC.  
BAYSIDE INDIANA HEALTHCARE ASSOCIATES, INC.  
BAYSIDE STREET, INC.  
CENTER HEALTHCARE ASSOCIATES, INC.  
CHERRY STREET – SKILLED NURSING, INC.  
DALLAS – SKILLED NURSING, INC.  
FLORIDA LESSOR – CRYSTAL SPRINGS, INC.  
FLORIDA LESSOR – LAKELAND, INC.  
HERITAGE TEXARKANA HEALTHCARE ASSOCIATES, INC.  
INDIANA LESSOR – JEFFERSONVILLE, INC.  
JEFFERSON CLARK, INC.  
LAKE PARK – SKILLED NURSING, INC.  
LONG TERM CARE – MICHIGAN, INC.  
LONG TERM CARE – NORTH CAROLINA, INC.  
LONG TERM CARE ASSOCIATES – ILLINOIS, INC.  
LONG TERM CARE ASSOCIATES – INDIANA, INC.  
OHI (KANSAS), INC.  
OHI ASSET (SMS) LENDER, INC.  
OHI OF TEXAS, INC.  
OHI SUNSHINE, INC.  
OHI TENNESSEE, INC.  
OMEGA (KANSAS), INC.  
OS LEASING COMPANY  
PARKVIEW – SKILLED NURSING, INC.  
PINE TEXARKANA HEALTHCARE ASSOCIATES, INC.  
REUNION TEXARKANA HEALTHCARE ASSOCIATES, INC.  
SAN AUGUSTINE HEALTHCARE ASSOCIATES, INC.  
SKILLED NURSING – GASTON, INC.  
SKILLED NURSING – HERRIN, INC.  
SKILLED NURSING – HICKSVILLE, INC.  
SKILLED NURSING – PARIS, INC.  
SOUTH ATHENS HEALTHCARE ASSOCIATES, INC.  
STERLING ACQUISITION CORP. II  
TEXAS LESSOR – TREEMONT, INC.  
WAXAHACHIE HEALTHCARE ASSOCIATES, INC.

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WEST ATHENS HEALTHCARE ASSOCIATES, INC.

By: /s/ Daniel J. Booth

Name: Daniel J. Booth

Title: Chief Operating Officer

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ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.,  
as Administrative Agent

By: /s/ Amie L. Edwards  
Name: Amie L. Edwards  
Title: Director

LENDERS:

BANK OF AMERICA, N.A., as L/C Issuer, Swing  
Line Lender and as a Lender

By: /s/ Amie L. Edwards  
Name: Amie L. Edwards  
Title: Director

DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as a Lender

By: /s/ Marguerite Sutton  
Name: Marguerite Sutton  
Title: Director

By: /s/ Erin Morrissey  
Name: Erin Morrissey  
Title: Director

CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK, as a Lender

By: /s/ Tom Randolph  
Name: Tom Randolph  
Title: Managing Director

By: /s/ John Bosco  
Name: John Bosco  
Title: Vice President

RBS CITIZENS, N.A. d/b/a Charter One,  
as a Lender

By: /s/ Erin L. Mahon  
Name: Erin L. Mahon  
Title: Vice President

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UBS LOAN FINANCE LLC, as a Lender

By: /s/ Irja R. Otsa  
Name: Irja R. Otsa  
Title: Associate Director

By: /s/ Joselin Fernandes  
Name: Joselin Fernandes  
Title: Associate Director

JEFFERIES GROUP, INC., as a Lender

By: /s/ Peregrine Broadbent  
Name: Peregrine Broadbent  
Title: Executive Vice President/Chief Financial Officer

ROYAL BANK OF CANADA, as a Lender

By: /s/ G. David Cole  
Name: G. David Cole  
Title: Authorized Signatory

SUNTRUST BANK, as a Lender

By: /s/ John Cappellari  
Name: John Cappellari  
Title: Vice President

STIFEL BANK & TRUST, as a Lender

By: /s/ John H. Phillips  
Name: John H. Phillips  
Title: Executive Vice President

BRANCH BANK AND TRUST COMPANY,  
as a Lender

By: /s/ Ahaz A. Armstrong  
Name: Ahaz A. Armstrong  
Title: Assistant Vice President

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Schedule 2.01

**LENDERS AND COMMITMENTS**

Lender	Revolving Commitment	Pro Rata Share of Revolving Commitment	Letter of Credit Commitment	Pro Rata Share of Letter of Credit Commitment
Bank of America, N.A.	\$ 67,500,000.00	14.210526317%	\$ 5,684,210.52	14.210526317%
Deutsche Bank Trust Company Americas	\$ 67,500,000.00	14.210526317%	\$ 5,684,210.52	14.210526317%
Crédit Agricole Corporate and Investment Bank	\$ 50,000,000.00	10.526315789%	\$ 4,210,526.32	10.526315789%
RBS Citizens, N.A., d/b/a Charter One	\$ 50,000,000.00	10.526315789%	\$ 4,210,526.32	10.526315789%
UBS Loan Finance LLC	\$ 50,000,000.00	10.526315789%	\$ 4,210,526.32	10.526315789%
Jefferies Group, Inc.	\$ 50,000,000.00	10.526315789%	\$ 4,210,526.32	10.526315789%
Royal Bank of Canada	\$ 50,000,000.00	10.526315789%	\$ 4,210,526.32	10.526315789%
SunTrust Bank	\$ 50,000,000.00	10.526315789%	\$ 4,210,526.32	10.526315789%
Stifel Bank & Trust	\$ 20,000,000.00	4.210526316%	\$ 1,684,210.52	4.210526316%
Branch Banking and Trust Company	\$ 20,000,000.00	4.210526316%	\$ 1,684,210.52	4.210526316%
<b>Total:</b>	\$ 475,000,000.00	100.000000000%	\$ 40,000,000.00	100.000000000%









Schedule 7.01

**LIENS**

Braswell Indebtedness

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Schedule 7.02

**INDEBTEDNESS**

**UNSECURED INDEBTEDNESS**

<u>Description</u>	<u>Current Obligor</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Current Balance @ 6/30/2011</u>
7% Senior Notes due 2016	Omega Healthcare Investors, Inc.	1/15/2016	7.00%	175,000,000
7 1/2% Senior Notes due 2020	Omega Healthcare Investors, Inc.	2/15/2020	7.50%	200,000,000
6 3/4% Senior Notes due 2022	Omega Healthcare Investors, Inc.	10/15/2022	6.75%	575,000,000
9% Delta Subordinated Promissory Note due 2021	OHI Asset HUD Delta, LLC	12/1/2021	9.00%	4,000,000
9% Delta Subordinated Promissory Note due 2021	OHI Asset HUD Delta, LLC	12/1/2021	9.00%	4,000,000
9% Delta Subordinated Promissory Note due 2021	OHI Asset HUD Delta, LLC	12/1/2021	9.00%	4,000,000
9% Delta Subordinated Promissory Note due 2021	OHI Asset HUD Delta, LLC	12/1/2021	9.00%	4,000,000
9% Delta Subordinated Promissory Note due 2021	OHI Asset HUD Delta, LLC	12/1/2021	9.00%	4,000,000

**SECURED INDEBTEDNESS**

<u>Description</u>	<u>Current Obligor</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Current Balance @ 7/1/2011</u>
<i>Gulf Coast Properties</i>				
Department of Housing and Urban Development Note	Pensacola Real Estate Holdings I, Inc.	5/1/2037	7.25%	7,574,227
Department of Housing and Urban Development Note	Pensacola Real Estate Holdings II, Inc.	5/1/2037	7.25%	6,453,113
Department of Housing and Urban Development Note	Pensacola Real Estate Holdings III, Inc.	8/1/2037	6.55%	4,761,899
Department of Housing and Urban Development Note	Pensacola Real Estate Holdings IV, Inc.	11/1/2037	5.57%	3,430,162
Department of Housing and Urban Development Note	Pensacola Real Estate Holdings V, Inc.	11/1/2037	5.65%	2,443,265
Department of Housing and Urban Development Note	Dixie White House Nursing Home, Inc.	2/1/2037	6.80%	1,968,467
Department of Housing and Urban Development Note	Ocean Springs Nursing Home, Inc.	4/1/2037	6.95%	3,841,845
Department of Housing and Urban Development Note	Skyler Pensacola, Inc.	1/1/2036	7.33%	9,611,727
Department of Housing and Urban Development Note	Skyler Boyington, Inc.	9/1/2038	5.20%	5,798,535
Department of Housing and Urban Development Note	CSE Pine View LLC (originally to Skyler Waynesboro, Inc.)	12/1/2036	6.65%	3,148,112
Department of Housing and Urban Development Note	Skyler Florida, Inc.	5/1/2040	5.65%	3,432,747
<i>Airamid - Hearthstone Properties</i>				
Department of Housing and Urban Development Note	CHR Bartow LLC (The Bartow Convalescent Center)	1/1/2045	4.85%	4,863,128
Department of Housing and Urban Development Note	CHR St. Pete Egret LLC (Egret Cove Center)	1/1/2040	4.85%	3,429,706
Department of Housing and Urban Development Note	CHR Fort Walton Beach LLC (Emerald Coast)	1/1/2040	4.85%	5,090,580
Department of Housing and Urban Development Note	CHR Lakeland LLC (Lakeland Hills Center)	1/1/2045	4.85%	7,720,842
Department of Housing and Urban Development Note	CHR Tarpon Springs LLC (Tarpon Bayou Center)	1/1/2040	4.85%	3,927,968
Department of Housing and Urban Development Note	CHR Lake Wales LLC (The Groves Center)	1/1/2045	4.85%	8,230,552
Department of Housing and Urban Development Additional Mortgage	CHR Gulfport LLC (Boca Ciega)			
Department of Housing and Urban Development Additional Mortgage	CHR Deland East LLC (University East)			
Department of Housing and Urban Development Additional Mortgage	CHR Deland West LLC (University West)			
Department of Housing and Urban Development Additional Mortgage	CHR Clearwater LLC (Clearwater)			
Department of Housing and Urban Development Additional Mortgage	CHR Panama City LLC (Bay Center)			
Provide additional collateral support via a boot collateral mortgage to secure the property specific Hearthstone property HUD loans listed above				
<i>Airamid - FILTC Properties</i>				
Department of Housing and Urban Development Note	CHR Boca Raton LLC (Boca Raton Rehabilitation Center)	1/1/2040	4.85%	5,264,972
Department of Housing and Urban Development Note	CHR Bradenton LLC (Casa Mora Rehab & Extended Care)	1/1/2040	4.85%	7,797,805
Department of Housing and Urban Development Note	CHR Cape Coral LLC (Rehabilitation and Health Center of Cape Coral)	1/1/2045	4.85%	10,352,948
Department of Housing and Urban Development Note	CHR Fort Myers LLC (Colonial Oaks Rehab Center aka Winkler Court)	1/1/2045	4.85%	7,549,596
Department of Housing and Urban Development Note	CHR Pompano Beach Broward LLC (North Broward Rehab & Nursing Center)	1/1/2045	4.85%	8,155,349
Department of Housing and Urban Development Note	CHR Pompano Beach LLC (Pompano Rehab/Nursing Center)	1/1/2040	4.85%	5,364,624
Department of Housing and Urban Development Note	CHR Sanford LLC (Healthcare and Rehabilitation Center of Sanford)	1/1/2040	4.85%	6,361,149
Department of Housing and Urban Development Note	CHR Spring Hill LLC (Evergreen Woods Health & Rehabilitation)	1/1/2045	4.85%	11,815,228
Department of Housing and Urban Development Note	CHR St. Pete Bay LLC (Bay Pointe Nursing Pavilion)	1/1/2045	4.85%	5,725,161
Department of Housing and Urban Development Note	CHR Tampa Carrollwood LLC (Carrollwood Care Center)	1/1/2045	4.85%	8,974,226
Department of Housing and Urban Development Note	CHR Tampa LLC (Rehabilitation and Healthcare Center of Tampa)	1/1/2045	4.85%	11,590,602
Department of Housing and Urban Development Note	CHR Titusville LLC (Titusville Rehabilitation and Nursing Center)	1/1/2040	4.85%	4,932,797
Department of Housing and Urban Development Additional Mortgage	CHR West Palm Beach LLC (Palm Beaches)			
Department of Housing and Urban Development Additional Mortgage	CHR Sarasota LLC (Waldmere)			
Department of Housing and Urban Development Additional Mortgage	CHR Hudson LLC (Windsor Woods)			
Department of Housing and Urban Development Additional Mortgage	CHR St. Pete Abbey LLC (The Abbey)			
Department of Housing and Urban Development Additional Mortgage	CHR Clearwater Highland LLC (Highland Pines)			
Department of Housing and Urban Development Additional Mortgage	CHR Clearwater Highland LLC (Highland Terrace)			
Provide additional collateral Support via a boot collateral mortgage to secure the property specific FILTC property HUD loans listed above.				

Schedule 7.03

**INVESTMENTS**

On October 20, 2006, Advocat Inc. ("Advocat") issued to Omega Healthcare Investors, Inc. ("Omega") 5,000 shares of Series C Preferred Stock with a stated value, as of the issued date, of approximately \$4.9 million and carries an annual dividend rate of 7% of its stated value. The Series C Preferred Stock pays quarterly cash dividends. The Series C Preferred Stock is not convertible, but is redeemable at its stated value at Omega's option after September 30, 2010, and is redeemable at its stated value at Advocat's option after September 30, 2007, subject to certain limitations.

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Schedule 7.09

**NEGATIVE PLEDGES**

None

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**NOTICE ADDRESSES**

**Credit Parties:**

Omega Healthcare Investors, Inc.  
200 International Circle, Suite 3500  
Hunt Valley, Maryland 21030  
Attention: Daniel J. Booth  
Telephone: (410) 427-1724  
Facsimile: (410) 427-8824  
Website: [www.omegahealthcare.com](http://www.omegahealthcare.com)

**with a copy to:**

Dewey & LeBoeuf LLP  
1301 Avenue of the Americas  
New York, New York 10019  
Attention: John R. Fallon, Jr., Esq.  
Telephone: (212) 259-8279  
Facsimile: (212) 259-9383

**Administrative Agent:**

**For payments and Requests for Credit Extensions:**

Bank of America, N.A.  
101 North Tryon Street  
Mail Code: NC1-001-04-39  
Charlotte, North Carolina 28255-0001  
Attention: Jean Hood  
Telephone: (980) 388-9114  
Facsimile: (704) 719-8162  
Electronic Mail: [jean.hood@baml.com](mailto:jean.hood@baml.com)  
ABA #: 026009593  
Account No.: 1366212250600  
Reference: Omega Healthcare Investors, Inc.

**For all other Notices:**

Bank of America, N.A.  
100 N. Tryon Street  
17<sup>th</sup> Floor  
Mail Code: NC1-007-17-11  
Charlotte, North Carolina 28255-0001  
Attention: Amie Edwards, Director  
Telephone: (980) 387-1346  
Facsimile: (980) 683-6305  
Electronic Mail: [amie.l.edwards@baml.com](mailto:amie.l.edwards@baml.com)

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**with a copy to:**

Bank of America, N.A.  
Agency Management  
1455 Market Street  
Mail Code: CA5-701-05-19  
San Francisco, California 94103-1399  
Attention: Angela Lau  
Telephone: (415) 436-4000  
Facsimile: (415) 503-5008  
Electronic Mail: [angela.lau@baml.com](mailto:angela.lau@baml.com)

**Lenders:**

Contact information on file with the Administrative Agent.

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Exhibit A

FORM OF LOAN NOTICE

Date: \_\_\_\_\_, 20\_\_

To: Bank of America, N.A., as Administrative Agent

Re: Credit Agreement (as amended, modified, supplemented and extended from time to time, the "Credit Agreement"), dated as of August 16, 2011, by and among Omega Healthcare Investors, Inc., a Maryland corporation (the "Borrower"), the Guarantors (as defined therein), the Lenders identified therein, and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

Ladies and Gentlemen:

The undersigned hereby requests (select one):

A Borrowing

A continuation

A conversion

of Revolving Loans:

1. On: \_\_\_\_\_, 20\_\_ (which is a Business Day).
2. In the amount of: \_\_\_\_\_.
3. Comprised of: \_\_\_\_\_ (Type of Loan).
4. For Eurodollar Loans: with an Interest Period of \_\_\_\_\_ months.

With respect to any Borrowing or any conversion or continuation requested herein, the Borrower hereby represents and warrants that (i) in the case of a Borrowing of Revolving Loans, such request complies with the requirements of Section 2.01(a) of the Credit Agreement and (ii) in the case of a Borrowing or any conversion or continuation, each of the conditions set forth in Section 2.02 of the Credit Agreement have been satisfied on and as of the date of such Borrowing or such conversion or continuation.

OMEGA HEALTHCARE INVESTORS, INC.,  
a Maryland corporation

By: \_\_\_\_\_  
Name:  
Title:

---

Exhibit B

FORM OF REVOLVING NOTE

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned (the "Borrower"), hereby promises to pay to **[INSERT LENDER]** or its registered assigns (the "Lender"), in accordance with the terms and conditions of the Credit Agreement (as hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to the Borrower under that certain Credit Agreement (as amended, modified, supplemented and extended from time to time, the "Credit Agreement"), dated as of August 16, 2011 by and among the Borrower, the Guarantors, the Lenders identified therein and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan from the date of such Revolving Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note, upon written notice to the Borrower, may be declared to be, immediately due and payable all as provided in the Credit Agreement. Revolving Loans made by the Lender may be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Revolving Loans and payments with respect thereto.

Except as otherwise provided for in the Credit Agreement, the Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and nonpayment of this Note.

---

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

OMEGA HEALTHCARE INVESTORS, INC.,  
a Maryland corporation

By: \_\_\_\_\_  
Name: Daniel J. Booth  
Title: Chief Operating Officer

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Exhibit C-1

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_, 20\_\_

To: Bank of America, N.A., as Administrative Agent

Re: Credit Agreement (as amended, modified, supplemented and extended from time to time, the "Credit Agreement"), dated as of August 16, 2011, by and among Omega Healthcare Investors, Inc., a Maryland corporation (the "Borrower"), the Guarantors, the Lenders identified therein, and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

Ladies and Gentlemen:

The undersigned Responsible Officer of the Borrower hereby certifies as of the date hereof that [he/she] is the \_\_\_\_\_ of the Borrower, and that, in [his/her] capacity as such, [he/she] is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on the behalf of the Borrower, and that:

[Use following paragraph 1 for fiscal year-end financial statements:]

[1. Attached hereto as Schedule 1 is the Form 10-K of the Borrower as required by Section 6.01(a) of the Credit Agreement for the fiscal year of the Borrower ended as of the above date.]

[Use following paragraph 1 for fiscal quarter-end financial statements:]

[1. Attached hereto as Schedule 1 is the Form 10-Q of the Borrower, as required by Section 6.01(b) of the Credit Agreement for the fiscal quarter of the Borrower ended as of the above date. Such financial statements fairly present the financial condition, results of operations and cash flows of the Consolidated Parties in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.]

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made, a review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by the attached financial statements.

3. A review of the activities of each member of the Credit Parties during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Credit Parties have performed and observed in all material respects all their respective Obligations under the Credit Documents, and

[select one:]

[to the best knowledge of the undersigned Responsible Officer during such fiscal period, each of the Credit Parties has performed and observed in all material respects each covenant and condition of the Credit Documents applicable to it.]

[or:]

[the following covenants or conditions of the Credit Documents have not been performed or observed in all material respects and the following is a list of any Default and its nature and status:]

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4. The representations and warranties of the Credit Parties contained in the Credit Agreement, any other Credit Document or any other certificate or document furnished at any time under or in connection with the Credit Documents, are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date.

5. The financial covenant analyses and information set forth on Schedule 2 hereto are true and accurate in all material respects on and as of the date of this Compliance Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate as of \_\_\_\_\_, 20\_\_.

OMEGA HEALTHCARE INVESTORS, INC.,  
a Maryland corporation

By: \_\_\_\_\_  
Name:  
Title:

---

Exhibit C-2

FORM OF BORROWING BASE CERTIFICATE

Bank of America  
Agency Management  
1455 Market Street  
CA5-701-05-19  
San Francisco, CA 94103-1399  
Attn: Angela Lau

The undersigned [\_\_\_\_\_], Responsible Officer of the Borrower hereby refers to the Credit Agreement dated as of August 16, 2011 (as it may be amended, modified, extended or restated from time to time, the "Credit Agreement"), by and among Omega Healthcare Investors, Inc. (the "Borrower"), the Guarantors (as defined therein), the Lenders (as defined therein) and Bank of America, N.A., as Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The undersigned, on behalf of the Borrower, hereby represents, warrants and certifies that, based upon the Borrower's own information and the information made available to the Borrower by the respective Tenants of the Real Property Assets, which information the undersigned believes in good faith to be true and correct in all material respects, for the fiscal quarter ended \_\_\_\_\_, 20\_\_:

- (a) Schedule I hereto accurately sets forth the Unencumbered Asset Value and Unencumbered Net Revenue relating to each Unencumbered Property used in the calculation of the Availability Amount set forth on Schedule I hereto;
- (b) Each Real Property Asset used in the calculation of the Availability Amount set forth on Schedule I hereto meets each of the criteria for qualification as an Unencumbered Property;
- (c) Schedule I hereto accurately sets forth the Availability Amount as of the date hereof.

The undersigned [\_\_\_\_\_] Responsible Officer of the Borrower hereby represents and warrants that he/she has the necessary power and authority to execute this Borrowing Base Certificate on behalf of the Borrower and that such action has been duly authorized by all necessary action of the Borrower prior to or on the date hereof.

OMEGA HEALTHCARE INVESTORS, INC.,  
a Maryland corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

Schedule I

AVAILABILITY AMOUNT CALCULATIONS

**ATTACHED**

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Exhibit D

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "Assignor") and [Insert name of Assignee] (the "Assignee"). Capitalized terms used but not defined herein have the meanings provided in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, Letters of Credit and Guaranty included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"); provided, however, the Assignor shall remain entitled to the indemnities set forth in Section 10.05 of the Credit Agreement pursuant to the terms thereof. Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:
  2. Assignee: \_\_\_\_\_ [and is an Affiliate/Approved Fund of [Identify Lender]]
  3. Borrower: Omega Healthcare Investors, Inc., a Maryland corporation  
(the "Borrower")
  4. Administrative Agent: Bank of America, N.A.
  5. Credit Agreement: The Credit Agreement dated as of August 16, 2011, by and among the Borrower, the Guarantors party thereto,  
the Lenders party thereto and the Administrative Agent
-



6. Assigned Interest:

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Facility Assigned <sup>1</sup>	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned <sup>2</sup>	Percentage Assigned of Commitment/Loans <sup>3</sup>
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7. Trade Date: \_\_\_\_\_ <sup>4</sup>

8. Effective Date: \_\_\_\_\_ <sup>5</sup>

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<sup>1</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment ( e.g. "Revolving Commitment")

<sup>2</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>4</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

<sup>5</sup> To be inserted by Administrative Agent and shall be the effective date of recordation of transfer in the register therefor.

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The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR:

[NAME OF ASSIGNOR]

By:  
Name:  
Title:

ASSIGNEE:

[NAME OF ASSIGNEE]

By:  
Name:  
Title:

[Consented to and]<sup>6</sup> Accepted:

BANK OF AMERICA, N.A., as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[Consented to:]<sup>7</sup>

OMEGA HEALTHCARE INVESTORS, INC.  
a Maryland corporation

By: \_\_\_\_\_  
Name:  
Title:

[Consented to:]<sup>8</sup>

BANK OF AMERICA, N.A., as L/C Issuer

By: \_\_\_\_\_  
Name:  
Title:

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<sup>6</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>7</sup> To be deleted only if the consent of the Borrower is not required by the terms of the Credit Agreement.

<sup>8</sup> To be added only if the consent of the L/C Issuer is required by the terms of the Credit Agreement.

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Annex 1 to Assignment and Assumption

STANDARD TERMS AND CONDITIONS

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower or any Guarantors, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York, without regard to conflict of laws principles.

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Exhibit E

FORM OF GUARANTY JOINDER AGREEMENT

**THIS GUARANTY JOINDER AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_, is by and between **[INSERT NEW GUARANTOR]**, a **[INSERT TYPE OF ORGANIZATION]** (the "Subsidiary"), and **BANK OF AMERICA, N. A.**, in its capacity as Administrative Agent under that certain Credit Agreement (as it may be amended, modified, restated or supplemented from time to time, the "Credit Agreement"), dated as of August 16, 2011, by and among Omega Healthcare Investors, Inc. (the "Borrower"), the Guarantors party thereto, the Lenders and Bank of America, N. A., as Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Credit Parties are required under the provisions of Section 6.15 of the Credit Agreement to cause the Subsidiary to become a "Guarantor".

Accordingly, the Subsidiary hereby agrees as follows with the Administrative Agent, for the benefit of the Lenders:

1. The Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Subsidiary will be deemed to be a party to the Guaranty and a "Guarantor" for all purposes of the Guaranty, and shall have all of the obligations of a Guarantor thereunder as if it had executed the Guaranty. The Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Guarantor contained in the Guaranty. Without limiting the generality of the foregoing terms of this paragraph 1, the Subsidiary hereby (i) jointly and severally together with the other Guarantors, guarantees to each Lender and the Administrative Agent, the prompt payment and performance of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof.

2. The address of the Subsidiary for purposes of all notices and other communications is described on Schedule 10.02 of the Credit Agreement.

3. The Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the Subsidiary upon the execution of this Agreement by the Subsidiary.

4. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

5. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York, without regard to conflict of laws principles.

IN WITNESS WHEREOF, the Subsidiary has caused this Guaranty Joinder Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[INSERT NEW GUARANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Acknowledged and accepted:

BANK OF AMERICA, N. A.,  
as Administrative Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Exhibit F

FORM OF LENDER JOINDER AGREEMENT

THIS LENDER JOINDER AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 20\_\_ to the Credit Agreement referenced below is by and among **[INSERT NEW LENDER]** (the "New Lender"), Omega Healthcare Investors, Inc., a Maryland corporation (the "Borrower") and Bank of America, N.A., as administrative agent (in such capacity, the "Administrative Agent") for the Lenders. All of the defined terms of the Credit Agreement are incorporated herein by reference.

W I T N E S S E T H

WHEREAS, pursuant to that Credit Agreement dated as of August 16, 2011 (as amended and modified from time to time, the "Credit Agreement"), by and among the Borrower, the Guarantors, the Lenders and the Administrative Agent, the Lenders have agreed to provide the Borrower with a revolving credit facility;

WHEREAS, pursuant to Section 2.01(d) of the Credit Agreement, the Borrower has requested that the New Lender provide an additional Revolving Commitment under the Credit Agreement; and

WHEREAS, the New Lender has agreed to provide the additional Revolving Commitment on the terms and conditions set forth herein and to become a "Lender" under the Credit Agreement in connection therewith;

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The New Lender hereby agrees to provide Commitments to the Borrower in the amounts set forth on Schedule 2.01 to the Credit Agreement as attached hereto. The Revolving Commitment Percentage of the New Lender shall be as set forth on Schedule 2.01.

2. The New Lender shall be deemed to have purchased without recourse a risk participation from the L/C Issuer in all Letters of Credit issued or existing under the Credit Agreement (including Existing Letters of Credit) and the obligations arising thereunder in an amount equal to its pro rata share of the obligations under such Letters of Credit (based on the Revolving Commitment Percentages of the Lenders as set forth on Schedule 2.01 as attached hereto), and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to the L/C Issuer therefor and discharge when due, its pro rata share of the obligations arising under such Letter of Credit.

3. The New Lender (a) represents and warrants that it is a commercial lender, other financial institution or other "accredited" investor (as defined in SEC Regulation D) that makes or acquires loans in the ordinary course of business and that it will make or acquire Loans for its own account in the ordinary course of business, (b) confirms that it has received a copy of the Credit Agreement, together with copies of the financial statements referred to in Section 6.01 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement; (c) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (e) agrees that, as of the date hereof, the New Lender shall (i) be a party to the Credit Agreement and the other Credit Documents, (ii) be a "Lender" for all purposes of the Credit Agreement and the other Credit Documents, (iii) perform all of the obligations that by the terms of the Credit Agreement are required to be performed by it as a "Lender" under the Credit Agreement and (iv) shall have the rights and obligations of a Lender under the Credit Agreement and the other Credit Documents.

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4. The Borrower and each of the Guarantors agree that, as of the date hereof, the New Lender shall (i) be a party to the Credit Agreement and the other Credit Documents, (ii) be a "Lender" for all purposes of the Credit Agreement and the other Credit Documents, and (iii) have the rights and obligations of a Lender under the Credit Agreement and the other Credit Documents.

5. The address of the New Lender for purposes of all notices and other communications is \_\_\_\_\_, \_\_\_\_\_, Attention of \_\_\_\_\_ (Facsimile No. \_\_\_\_\_).

6. This Agreement may be executed in any number of counterparts and by the various parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one contract. Delivery of an executed counterpart of this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

7. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York, without regard to conflict of laws principles.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Lender Joinder Agreement to be executed by a duly authorized officer as of the date first above written.

NEW LENDER:

[INSERT NEW LENDER],  
as New Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER:

OMEGA HEALTHCARE INVESTORS, INC.

By: \_\_\_\_\_  
Name: Daniel J. Booth  
Title: Chief Operating Officer

Accepted and Agreed:

BANK OF AMERICA, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:



SEVENTH AMENDMENT TO  
SECOND CONSOLIDATED AMENDED AND RESTATED MASTER LEASE  
Multiple Facilities

THIS SEVENTH AMENDMENT TO SECOND CONSOLIDATED AMENDED AND RESTATED MASTER LEASE ("Amendment") is executed and delivered as of this \_\_\_ day of September 7, 2011 and is entered into by OHI ASSET III (PA) TRUST, a Maryland business trust ("Lessor"), the successor by merger to OHI Asset II (OH), LLC, a Delaware limited liability company, and Ohio Lessor – Waterford & Crestwood, Inc., a Maryland corporation, the address of which is 200 International Circle, Suite 3500, Hunt Valley, MD 21030, OMG MSTR LSCO, LLC, an Ohio limited liability company ("Lessee One"), the successor by merger to CSC MSTR LSCO, LLC, and OMG LS LEASING CO., LLC, an Ohio limited liability company ("Lessee Two", and collectively with Lessee One, "Lessee"), the address of which is 4700 Ashwood Drive, Suite 200, Cincinnati, OH 45241.

RECITALS

The circumstances underlying the execution and delivery of this Amendment are as follows:

- A. Lessee and Lessor have executed and delivered to each other a Second Consolidated Amended and Restated Master Lease dated as of April 18, 2008, as amended by a First Amendment to Second Consolidated Amended and Restated Master Lease dated as of July 31, 2009, a Second Amendment to Second Consolidated Amended and Restated Master Lease dated as of November 3, 2009, a Third Amendment to Second Consolidated Amended and Restated Master Lease dated as of April 1, 2010, a Fourth Amendment to Second Consolidated Amended and Restated Master Lease dated as of October 1, 2010, a Fifth Amendment to Second Consolidated Amended and Restated Master Lease dated as of December 31, 2010, and a Sixth Amendment to Second Consolidated Amended and Restated Master Lease dated as of March 31, 2011 (the "Existing Master Lease") pursuant to which Lessee leases from Lessor certain healthcare facilities located in Ohio and Pennsylvania.
- B. Lessee has requested that Lessor consent pursuant to Section 8.7 of the Existing Master Lease to the following mergers (the "Proposed Mergers") of (i) HCH RRW, LLC, an Ohio limited liability company, into Health Care Holdings, LLC, an Ohio corporation (which is defined in the Existing Master Lease as HCH), with HCH as the surviving entity, and (ii) HC RE RRW, LLC, an Ohio limited liability company, into HC Real Estate Holdings, LLC, an Ohio limited liability company (which is defined in the Existing Master Lease as HCREH), with HCREH as the surviving entity.
- C. Pursuant to that certain Consent to Reorganization, Lessor desires to amend the Existing Master Lease as set forth in this Amendment.
-

The parties agree as follows:

1. Definitions.

(a) Any capitalized term used but not defined in this Amendment will have the meaning assigned to such term in the Existing Master Lease.

(b) In addition to the other definitions contained herein, when used in this Amendment the following terms shall have the following meaning:

CRS: C.R. STOLTZ, LLC, an Ohio limited liability company.

(c) The following definitions set forth in Section 2.1 of the Existing Master Lease are hereby amended and restated in its entirety as follows:

Financial Statement:

(A) For each quarter during Lessee's fiscal year, on a consolidated basis for Lessee, (i) a statement of earnings for the current period and fiscal year to the end of such period, with a comparison to the corresponding figures for the corresponding period in the preceding fiscal year from the beginning of the fiscal year to the end of such period, and (ii) a balance sheet as of the end of the period, and after the first Lease Year, with a comparison to the corresponding figures for the corresponding period in the preceding fiscal year from the beginning of the fiscal year to the end of such period; and

(B) For each Lessee's and each Guarantor's fiscal year, a financial report on a consolidated basis, prepared and reviewed by an accounting firm or any other firm of independent certified public accountants reasonably acceptable to Lessor, containing such Person's balance sheet as of the end of that year, its related profit and loss, a statement of shareholder's equity for that year, a statement of cash flows for that year, any management letter prepared by the certified public accountants, such comments and financial details as customarily are included in reports of like character.

(C) For each of HCREH's and HCH's fiscal year, a financial report on a consolidated basis (for avoidance of doubt, HCREH and HCH will not be consolidated with each other), prepared and reviewed by an accounting firm or any other firm of independent certified public accountants reasonably acceptable to Lender, containing, as applicable, HCREH's or HCH's balance sheet as of the end of that year, its related profit and loss, a statement of owner's equity for that year, a statement of cash flows for that year, any management letter prepared by the certified public accountants, such comments and financial details as customarily are included in reports of like character.

(D) Lessor may, at its own expense, cause any Financial Statement to be audited by a certified public accountant selected by Lessor and reasonably acceptable to Lessee. Lessor consents to the use of the firm of Mellott & Mellott, P.L.L. (Cincinnati, Ohio) to prepare such reports.

Pledge Agreement: The Pledge Agreements between Lessor, as creditor, and Lessee, certain of the Parent Guarantors, HCREH, HCH, and CRS, as pledgors.

(d) From and after the date of this Amendment, each reference in the Transaction Documents to the Existing Master Lease, means the Existing Master Lease as modified by this Amendment.

2. Amendments to Article VIII.

(a) Section 8.2.5 of the Existing Master Lease is hereby amended and restated in its entirety as follows:

8.2.5 Indebtedness. None of Lessee, any Sublessee, HCREH, HCH, RE Holdings, and CRS will create, incur or suffer to exist any Indebtedness, except:

- (i) The equipment financing permitted under Section 8.2.7;
- (ii) The Working Capital Loan permitted under Section 6.4; and
- (iii) The Other Permitted Indebtedness.

(b) Section 8.2.6 of the Existing Master Lease is hereby amended and restated in its entirety as follows:

8.2.6 Guarantees Prohibited. Except for guaranties of the Indebtedness permitted under Section 8.2.5 and guaranties and assumption of obligations in favor of Lessor and its Affiliates, neither Lessee nor any Sublessee shall guarantee any Indebtedness of any Affiliate or other third party. Except for guaranties of Other Permitted Indebtedness and guaranties and assumption of obligations in favor of Lessor and its Affiliates, none of HCREH, HCH, and CRS or any Guarantor shall guarantee any Indebtedness of any Affiliate or other third party.

(c) Section 8.7 of the Existing Master Lease is hereby amended and restated in its entirety as follows:

8 . 7 Existence: No Fundamental Change. Lessee, the Sublessees, HCREH, HCH, AO, RE Leasing, RE Holdings, and CRS shall preserve and maintain their legal existence and such of their rights, licenses and privileges as are material to their business and operations; and qualify and remain qualified to do business in each jurisdiction in which such qualification is material to their business and operations or the ownership of their properties. Except with the prior written approval of Lessor, which may be withheld in Lessor's sole and absolute discretion, none of Lessee, the Sublessees, HCREH, HCH, AO, RE Leasing, RE Holdings, and CRS will fundamentally change the nature of its business, enter into any amalgamation, merger, consolidation, reorganization or recapitalization, or reclassify its capital stock or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, assign, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or substantially all of its business, property or assets, whether now owned or hereafter acquired, or acquire by purchase or otherwise all or substantially all the business, property or assets, of any Person or any shares of stock or other equity securities of any Person.

(d) Section 8.8 of the Existing Master Lease is hereby amended and restated in its entirety as follows:

8 . 8 No Investments. Without the prior written consent of Lessor, except for the Permitted Investments, none of Lessee, Sublessees, HCREH, HCH, AO, RE Leasing, RE Holdings, and CRS will, or will they permit any Subsidiary to, make or suffer to exist any Investments (including without limitation, loans and advances to, and other Investments in, Subsidiaries), or commitments therefor, or to create any Subsidiary or to become or remain a partner in any partnership or joint venture, or to make any Acquisition of any Person.

(e) Section 8.9 of the Existing Master Lease is hereby amended and restated in its entirety as follows:

8.9 Off-Balance Sheet Liabilities. Without the prior written consent of Lessor, Lessee, Sublessees, HCREH, HCH, AO, RE Leasing, RE Holdings, and CRS will not, nor will any of them permit any Subsidiary to, enter into or suffer to exist any (i) Sale and Leaseback Transaction or (ii) any other transaction pursuant to which it incurs or has incurred Off-Balance Sheet Liabilities.

(f) Section 8.11 of the Existing Master Lease is hereby amended and restated in its entirety as follows:

8.11 Liens. Subject to the provisions of Section 12.1 relating to permitted contests, Lessee, the Sublessees, HCREH, HCH, AO, RE Leasing, RE Holdings, and CRS shall not directly or indirectly create or allow to remain, and shall promptly discharge at their expense, any lien, encumbrance, attachment, title retention agreement or claim upon any assets of Lessee, the Sublessees, HCREH, HCH, AO, RE Leasing, RE Holdings, and CRS excluding, however, (a) the liens and security interests in favor of Lessor and its Affiliates, (b) intentionally omitted, (c) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as (i) the same are not yet payable, or (ii) such liens are in the process of being contested as permitted by Section 12.1, (e) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due, provided that any such liens are in the process of being contested as permitted by Section 12.1, (f) liens permitted under Section 6.4 of this Agreement, and (g) liens or security interests in assets (not including assets subject to the lien of the Pledge Agreements) of HCREH, HCH and RE Holdings which secure Other Permitted Indebtedness.

3 . Costs and Expenses. Lessee shall pay Lessor's reasonable costs and expenses, including reasonable attorneys fees, incurred in connection with this Amendment.

4 . Execution and Counterparts. This Amendment may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but when taken together shall constitute one and the same Amendment.

5. Headings. Section headings used in this Amendment are for reference only and shall not affect the construction of the Amendment.

6 . Enforceability of Transaction Documents. Except as expressly and specifically set forth herein, the Transaction Documents remain unmodified and in full force and effect. In the event of any discrepancy between any other Transaction Document and this Amendment, the terms and conditions of this Amendment will control and such other Transaction Document is deemed amended to conform hereto.

**SIGNATURE PAGES FOLLOW**

*Signature Page to*  
SEVENTH AMENDMENT TO SECOND  
CONSOLIDATED AMENDED AND RESTATED MASTER LEASE  
Multiple Facilities

LESSOR:

OHI ASSET III (PA) TRUST

By: OHI Asset (PA), LLC, a Delaware limited liability  
company, its sole trustee

By: Omega Healthcare Investors, a Maryland  
corporation, its sole member

By: /s/ Daniel J. Booth  
Name: Daniel J. Booth  
Title: Chief Operating Officer

THE STATE OF MARYLAND     )  
  )  
COUNTY OF BALTIMORE     )

This instrument was acknowledged before me on the 7<sup>th</sup> day of September, 2011, by Daniel J. Booth, the Chief Operating Officer of Omega Healthcare Investors, Inc., a Maryland corporation, the sole member of OHI Asset (PA), LLC, a Delaware limited liability company, the sole trustee of OHI Asset III (PA) Trust, a Maryland business trust, on behalf of said business trust.

Notary Public

Judith A. Jacobs  
Notary Public, State of Maryland  
County of Baltimore  
My Commission Expires May 12, 2012

*Signature Page to*  
SEVENTH AMENDMENT TO SECOND  
CONSOLIDATED AMENDED AND RESTATED MASTER LEASE  
Multiple Facilities

LESSEE:

OMG MSTR LSCO, LLC

By: HEALTH CARE HOLDINGS, LLC,  
its Sole Member

By: /s/ Charles R. Stoltz  
Name: Charles R. Stoltz  
Title: Treasurer

OMG LS LEASING CO., LLC

By: OMG RE HOLDINGS, LLC,  
its Sole Member

By: /s/ Charles R. Stoltz  
Name: Charles R. Stoltz  
Title: Treasurer

THE STATE OF OHIO        )  
                                  )  
COUNTY OF HAMILTON    )

This instrument was acknowledged before me on the 31<sup>st</sup> day of August, 2011, by Charles R. Stoltz, the Treasurer of HEALTH CARE HOLDINGS, LLC, an Ohio limited liability company, the sole member of OMG MSTR LSCO, LLC, an Ohio limited liability company, and of OMG RE HOLDINGS, LLC, an Ohio limited liability company, the sole member of OMG LS LEASING CO., LLC, an Ohio limited liability company, on behalf of said companies.

Notary Public

Kathleen M. Portman  
Notary Public, State of Ohio  
My Commission Expires 03-28-2012

**RULE 13a-14(a)/15d-14(a) CERTIFICATION OF CHIEF EXECUTIVE OFFICER****Certification**

I, C. Taylor Pickett, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Omega Healthcare Investors, 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: November 7, 2011

/S/ C. TAYLOR PICKETT  
C. Taylor Pickett  
Chief Executive Officer



**RULE 13a-14(a)/15d-14(a) CERTIFICATION OF CHIEF FINANCIAL OFFICER****Certifications**

I, Robert O. Stephenson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Omega Healthcare Investors, 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: November 7, 2011

/S/ ROBERT O. STEPHENSON

Robert O. Stephenson  
Chief Financial Officer

**SECTION 1350 CERTIFICATION  
OF THE CHIEF EXECUTIVE OFFICER**

I, C. Taylor Pickett, hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to the best of my knowledge:

- (1) the Quarterly Report on Form 10-Q of the Company for the three months ended September 30, 2011 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2011

/S/ C. TAYLOR PICKETT

C. Taylor Pickett  
Chief Executive Officer

**SECTION 1350 CERTIFICATION  
OF THE CHIEF FINANCIAL OFFICER**

I, Robert O. Stephenson, hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the best of my knowledge:

- (1) the Quarterly Report on Form 10-Q of the Company for the three months ended September 30, 2011 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2011

/S/ ROBERT O. STEPHENSON

Robert O. Stephenson  
Chief Financial Officer