

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

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FORM 8-K

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CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (date of earliest event reported):

December 31, 2014

**SUMMIT HEALTHCARE REIT, INC.**

(Exact name of registrant as specified in its charter)

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**Maryland**  
(State or other jurisdiction  
of incorporation)

**000-52566**  
(Commission  
File Number)

**73-1721791**  
(I.R.S. Employer  
Identification No.)

**2 South Pointe Drive, Suite 100, Lake Forest, California 92630**

(Address of principal executive offices)

**(949) 535-2022**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act.
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act.
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act.
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act.
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**Item 1.01. Entry into a Material Definitive Agreement.**

The information set forth below in Items 2.01 and 2.03 is incorporated herein by reference.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

On December 31, 2014, through two wholly-owned subsidiaries, we acquired a facility in Portland, Oregon (“Gateway”) with 59 skilled nursing beds and 32 independent living units from Whitbrit, LLC, an unaffiliated third party, and a facility in Salem, Oregon (“Applewood”) with 69 independent living units from Bremerton Assisted Living, LLC, and Applewood Holding Company, LLC, two unaffiliated third parties (collectively, with Gateway, the “Properties”) for \$14.2 million including cash on hand plus the proceeds of the secured loan described in Item 2.03 below.

The Properties are leased to an affiliate of Sapphire Health Services, LLC of Gresham, Oregon, under 15-year triple net leases. The information in Item 2.03 below is hereby incorporated in this Item 2.01.

The press release is attached to this Current Report as Exhibit 99.1 and hereby incorporated to this Form 8-K.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

On December 31, 2014, we entered into a loan agreement with General Electric Capital Corporation for a secured loan in the aggregate principal amount of \$13.4 million collateralized by security interests in the Properties and the Sundial Assisted Living facility in Redding, California (“Redding”). Principal amounts of the secured loan are allocated as follows: \$8.4 million to Gateway, \$2.8 million to Redding, and \$2.2 million to Applewood. The loan proceeds from Redding, which was previously an unencumbered asset, were used to fund the purchase of the Properties. The secured loan, which bears interest at the Three Month LIBOR (London Interbank Rate), with a floor of 50 basis points, plus a spread of 4.00%, has a 25 year amortization schedule and matures on December 30, 2017. The loan may be prepaid with no penalty after 12 months.

**Item 9.01 Financial Statements and Exhibits**

Exhibit No.	Description
99.1	Press release issued January 7, 2015, titled “Summit Healthcare REIT, Inc. Acquires Two Senior Living Facilities”
10.1	Purchase and Sale Agreement between Summit Healthcare REIT, Inc. and Whitbrit, LLC, dated as of September 24, 2014 (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed on December 18, 2014).
10.2	Purchase and Sale Agreement among Summit Healthcare REIT, Inc. and Applewood Holding Company, LLC and Bremerton Assisted Living, LLC dated as of October 20, 2014.
10.3	Loan Agreement by and among General Electric Capital Corporation and HP Redding, LLC, Summit Salem, LLC, and Summit Portland, LLC dated as of December 31, 2014.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

SUMMIT HEALTHCARE REIT, INC.

By: /s/ Elizabeth A. Pagliarini

Name: Elizabeth A. Pagliarini

Title: Chief Financial Officer

Dated: January 7, 2015

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**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into as of this 20th day of October, 2014 (the “**Effective Date**”), by and between APPLEWOOD HOLDING COMPANY, LLC, an Oregon limited liability company and BREMERTON ASSISTED LIVING, LLC a California limited liability company (“**Seller**”), and SUMMIT HEALTHCARE REIT, INC. a Maryland corporation, or its assignee (“**Buyer**”).

Therefore, in consideration of the mutual representations, warranties and promises of the parties, the parties enter into the following:

**AGREEMENT**

1. **Purchase and Sale.** On the terms and conditions set forth herein, Seller shall sell, assign, transfer, convey and deliver to Buyer and Buyer shall purchase from Seller its interest in the following, which are hereinafter referred to collectively as the “**Property**”:

(a) The improvements located on the Real Property, consisting of one (1) independent living facility for the elderly as described in Schedule 1(a) attached hereto (the “**Facility**”), owned by Seller, and all right, title and interest of Seller in and to the items described in this Section 1 (a) through (f) herein;

(b) All of the real estate on which the Facility is situated, together with all tenements, easements, appurtenances, privileges, rights of way, and other rights incident thereto, all building and improvements and any parking lot to the Facility located thereon situated in the State of Oregon, which is described in Exhibit A attached hereto and made a part hereof by this reference (collectively, the “**Real Property**”);

(c) All of the tangible personal property, inventory, equipment, machinery, supplies including drugs and other supplies, spare parts, furniture, furnishings, warranty claims, contracts, including but not limited to supply contracts, contracts rights, intellectual property, including but not limited to patents, trade secrets, and all rights and title to the names under which the Facility operates, mailing lists, customer lists, vendor lists, resident files, books and records owned by the Seller, who may retain copies of same, and shall have reasonable access to such books and records after the Closing as required for paying taxes and responding to legal inquiry, as such personal property is described in Schedule 1(c) attached hereto (collectively, the “**Personal Property**”);

(d) All transferable licenses, permits, certifications, assignable guaranties and warranties in favor of Seller, approvals or authorizations and all assignable intangible property not enumerated herein which is used by the Seller in connection with each Facility, and all other assets whether tangible or intangible; provided, that Seller shall retain all licenses required to be retained by Seller in order to operate the current business within each Facility;

(e) All trade names or other names commonly used to identify each Facility and all goodwill associated therewith. The intent of the parties is to transfer to Buyer only such names and goodwill associated with the Facility itself and not with Seller or any affiliate of Seller, so as to avoid any interference with the unrelated business activities of Seller; and

(f) All telephone numbers used in connection with the operation of the Facility, and to the extent not described above, all goodwill of Seller associated with the Facility (the items described in clauses (d), (e) and (f) above are collectively referred to as "**Intangibles**").

2. **Excluded Assets.** Seller's cash, investment securities, bank account(s) and accounts receivable, and deposits attributable and relating to the operation of the Facility, and Seller's corporate minute books and corporate tax returns, partnership records, and other corporate and partnership records shall be excluded from the Property sold by Seller to Buyer hereunder as well as Seller's real property not identified in **Schedule 1(a)** (the "**Excluded Assets**").

3. **Purchase Price; Deposits.** The following shall apply with respect to the Purchase Price of the Property:

(a) The purchase price (the "**Purchase Price**") payable by Buyer to Seller for the Property is Two Million Nine Hundred Thousand Dollars (\$2,900,000.00).

(b) The Purchase Price as allocated to the Facility by Seller is set forth on **Schedule 3** attached hereto and made a part hereof.

(c) Within three (3) business days after this Agreement is fully executed by the parties, Buyer shall deposit the sum of Seventy Five Thousand Dollars (\$75,000) as an earnest money deposit ("**Initial Deposit**") with Lawyers Title Company/Commonwealth Title, 4100 Newport Place Drive, Suite 120, Newport Beach, California 92660, Attention: Debi Calmelat ("**Title Company**" or "**Escrow Agent**"), and Escrow Agent will deposit it into an interest-bearing account with the interest for the benefit of Buyer. In addition, if Buyer has not terminated this Agreement on or before the expiration of the Due Diligence Period (defined below), then Buyer shall deposit with Escrow Agent an additional non-refundable, except as otherwise expressly provided herein, Seventy Five Thousand Dollars (\$75,000) ("**Non-Refundable Additional Deposit**") within three (3) business days following the expiration of the Due Diligence Period (the Initial Deposit and Non-Refundable Additional Deposit, are collectively referred to as the "**Deposits**"). Interest earned on the Deposits shall be paid to the party entitled to such amount as provided in this Agreement.

(d) At Closing, the Deposits shall be credited against the Purchase Price and Buyer shall deposit the balance of the Purchase Price in Cash to the Escrow Agent.

(e) Buyer shall not assume or pay, and Seller shall continue to be responsible for, any and all debts, obligations and liabilities of any kind or nature, fixed or contingent, known or unknown, of Seller not expressly assumed by Buyer in this Agreement. Specifically, without limiting the foregoing, Buyer shall not assume any obligation, liability, cost, expense, claim, action, suit or proceeding pending as of the Closing, nor shall Buyer assume or be responsible for any subsequent claim, action, suit or proceeding arising out of or relating to any such other event occurring, with respect to the manner in which Seller conducted its business at the Facility. Buyer shall assume all obligation, liability, cost, expense, claim, action, suit or proceeding arising out of or relating to any event occurring, with respect to the manner in which Buyer or any third party operator of Buyer conducted its business at the Facility on or after Closing.

(f) Each party hereby agrees to the allocation of the Purchase Price set forth on Schedule 3 attached hereto. Neither Buyer nor Seller shall assert an allocation of the Purchase Price which differs from that set forth in Schedule 3 to any governmental taxing authority. Buyer shall provide Seller with copies of all final appraisals relating to the property purchased by Buyer pursuant to this Agreement. Such appraisals shall be provided within five (5) days of receipt by Buyer.

4. Closing. The closing of the purchase and sale transactions pursuant to this Agreement ("**Closing**") shall occur on or before the date that is thirty (30) days after the expiration of the Due Diligence Period ("**Closing Date**"). The Closing shall take place through Seller's delivery of a Special Warranty Deed in the form attached hereto marked Exhibit 1 (the "**Deed**"), and Buyer's delivery of cash or immediately available funds through an escrow agreement (the "**Escrow**") to be established with the Escrow Agent pursuant to form escrow instructions which shall be modified to be consistent with the terms and provisions of this Agreement, and which shall be mutually agreed upon by the parties hereto.

5. Conveyance. Title to the Facility shall be conveyed to Buyer by the Deed and bill of sale in form agreed to by the parties prior to the end of the Due Diligence Period, as defined herein. Fee simple indefeasible title to the Real Property, and marketable title to the Personal Property, shall be conveyed from Seller to Buyer or Buyer's nominee in "AS-IS, WHERE-IS" condition, free and clear of all liens, charges, easements and encumbrances of any kind, other than:

- (a) Liens for real estate taxes or assessments not yet due and payable;
- (b) The standard printed exceptions included in the Title Commitment, as defined in Section 14(a) herein;
- (c) Such exceptions that appear in the Title Commitment and that are either waived or approved by Buyer in writing pursuant to Section 14(b) herein;
- (d) Liens or encumbrances caused by the actions of Buyer but not those caused by the actions of Seller; and
- (e) Those matters identified as Permitted Exceptions on the attached Exhibit B.

The items described in this Section 5 are sometimes collectively referred to as the "**Permitted Exceptions**."

6. Buyer's Due Diligence.

(a) Buyer shall have sixty (60) days from the Effective Date to complete Buyer's due diligence review of the Property (the "**Due Diligence Period**"). During the Due Diligence Period, Seller shall permit the officers, employees, directors, agents, consultants, attorneys, accountants, lenders, appraisers, architects, investors and engineers designated by Buyer and representatives of Buyer (collectively, the "**Buyer's Consultants**") access to, and entry upon the Real Property and the Facility to perform its normal and customary due diligence, including, without limitation, the following (collectively, the "**Due Diligence Items**"):

(i) Review of vendor contracts ("**Contracts**") and leases ("**Leases**") to which the Facility (or the Seller, on behalf of such Facility) are a party, as set forth on Schedule 8(f) attached hereto;

(ii) Obtain an environmental investigation (including a Phase 1 Environmental Audit);

(iii) Inspection of the physical structure of the Facility;

(iv) Review of current Title Commitment, as defined in Section 14 herein, and underlying documents referenced therein;

(v) Review of ALTA Surveys, as defined in Section 14 herein, for the Facility;

(vi) Inspection of the books and records of the Facility and that portion of the Seller's books and records which pertain to the Facility;

(vii) Review of the Due Diligence Items, as described in Schedule 10(a)(v) attached hereto, to be provided by Seller within five (5) business days following the Effective Date;

(viii) Complete such other inspections or investigations as Buyer may reasonably require relating to the ownership, operation or maintenance of the Facility;

(ix) View resident files, agreements, and any other documentation regarding the residents of the Facility, which review shall in all events be subject to all applicable laws, rules and regulations; and

(x) Review files maintained by the State of Oregon, if applicable, relating to the Facility; and

(xi) Review all drawings, plans and specifications and all engineering reports for the Facility in the possession of or readily available to Seller; and

(xii) Seller will furnish copies of all environmental reports, property condition reports, appraisals, title reports and ALTA Surveys (or surveys) that it currently has in its possession.

(xiii) Review copies of currently effective written employment manuals or written employment policies and/or procedures have been provided to or for employees; and

(xiv) Successful negotiation of the Post Closing Lease with Seller or Seller's affiliate, as operator ("**Operator**"), and Buyer.

Notwithstanding the foregoing provisions of this Subsection, in the event Seller fails to deliver all Due Diligence Items listed in Schedule 10(a)(v) on or before the time set forth in Subsection (a)(vii) above, then the Due Diligence Period shall be deemed extended on a day-to-day basis until Seller completes such delivery of the Due Diligence Items to Buyer.

(b) Buyer agrees and acknowledges that: (i) Buyer agrees to hold in confidence and will not disclose the Due Diligence Items and/or the contents thereof or any other materials received from Seller pursuant to this Agreement (the "**Property Information**") or any of the provisions, terms or conditions thereof, or any information disclosed therein or thereby, to any party outside of Buyer's organization, other than Buyer's Consultants and Buyer shall use commercially reasonable efforts to ensure that the Due Diligence Items are held in confidence; (ii) the Property Information is delivered to Buyer solely as an accommodation to Buyer; (iii) Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of any matters set out in or disclosed by the Property Information; and (iv) except as expressly contained in this Agreement, Seller has not made and does not make any warranties or representations of any kind or nature regarding the truth, accuracy or completeness of the information set out in or disclosed by the Property Information.

(c) All due diligence activities of Buyer at the Facility shall be scheduled with Seller upon two (2) business days prior notice. Reviews, inspections and investigations at the Facility shall be conducted by Buyer in such manner so as not to disrupt the operation of the Facility.

(d) Buyer may, at its sole cost, obtain third party engineering and physical condition reports and a Phase I Environmental Audit covering the Facility, certified to Buyer, prepared by an engineering and/or environmental consultants acceptable to Buyer; provided, no inspection by Buyer's Consultants shall involve the taking of samples or other physically invasive procedures (such as a Phase II environmental audit) without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed, and Buyer shall provide copies of all final reports (except for appraisals or attorney-client communications) received from such third parties (the "**Third Party Reports**") to Seller within ten (10) days of Buyer receiving the Third Party Reports. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall indemnify, defend (with counsel acceptable to Seller) and hold Seller and its employees and agents, and each of them, harmless from and against any and all losses, claims, damages and liabilities, without limitation, attorneys' fees incurred in connection therewith) arising out of or resulting from Buyer's exercise of its right of inspection as provided for in this Section 6; provided, however, such indemnification shall not extend to matters merely discovered by Buyer and/ or the acts or omissions of Seller or any third party, except for the acts or omissions of Buyer's Consultants. The indemnification obligation of Buyer under this Section 6 shall survive the Closing or earlier termination of this Agreement for a period of twelve (12) months. Following any audit or inspection as provided for herein, Buyer shall return the Real Property and the Facility to the condition in which they existed immediately prior to such audit or inspection.

(e) On or before 5:00 p.m. (Pacific Time) on the last day of the Due Diligence Period, Buyer shall provide Seller with copies of all Third Party Reports and provide Seller with notice that:

(i) The inspections and audits are not acceptable to Buyer in its sole and absolute discretion and Buyer terminates this Agreement, and in such event, neither party shall have any further rights and obligations under this Agreement, except the obligations which expressly survive the termination of this Agreement; or

(ii) Provide Seller with written notice that the inspections and audits are acceptable to Buyer in its sole and absolute discretion.

(f) If this Agreement is terminated prior to Closing, Buyer shall promptly return to Seller or destroy all copies of the Due Diligence items.

7. Prorations; Closing Costs; Possession; Post Closing Assistance.

(a) There will be no prorations at the Closing since Seller shall remain responsible for all taxes, costs and expenses relating to the Facility following the Closing pursuant to the Post Closing Lease (as defined in Section 12(a)(v)).

(b) Seller shall pay any state, county and local transfer taxes arising out of the transfer of the Real Property.

(c) Seller shall pay the cost of the standard owner's title insurance policy, as described in this Agreement (excluding any survey exception or deletion of coverage). Buyer shall pay the cost of any lender's policy for Buyer's lender, any title endorsements requested by Buyer and its lender and the cost of updating or obtaining new Surveys. Seller and Buyer shall share equally all fees of Escrow Agent. All other costs associated with title and survey matters shall be paid in accordance with custom and practice of the County in which the Facility is located.

(d) Buyer and Seller shall each pay their own attorney's fees. Buyer shall pay for all costs of review of the Due Diligence Items and its additional due diligence inspection costs including, without limitation, the cost of any environmental reports.

(e) On the Closing Date, Seller or Operator shall retain possession of the Facility pursuant to the Post Closing Lease.

8. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer that:

(a) Legality.

(i) Organization, Corporate Powers, Etc. Seller is duly organized, validly existing and in good standing under the laws of the State of Oregon. Seller has full power, authority and legal right (A) to execute and deliver, and perform and observe the provisions of this Agreement and each Transaction Document, as defined herein, (B) to transfer good, indefeasible title to the Property to Buyer free and clear of all liens, claims and encumbrances except for Permitted Exceptions (as defined in Section 5 hereof), and (C) to carry out the transactions contemplated hereby and by such other instruments to be carried out by such party.

(ii) Due Authorization, Etc. This Agreement and the Closing Documents (as defined in Section 10(b)) (collectively the “**Transaction Documents**”) have been, and each instrument provided for herein or therein to which Seller is a party will be, when executed and delivered as contemplated hereby authorized, executed and delivered by Seller and the Transaction Documents constitute, and each such instrument will constitute, when executed and delivered as contemplated hereby, legal, valid and binding obligations of Seller and enforceable in accordance with their terms.

(iii) Governmental Approvals. To the best of Seller’s knowledge, no consent, approval or other authorization (other than corporate or other organizational consents which have been obtained), or registration, declaration or filing with, any court or governmental agency or commission is required for the due execution and delivery of any of the Transaction Documents or for the validity or enforceability thereof against such party other than the recording or filing for recordation of the Deed, which recordings shall be accomplished at Closing.

(iv) Other Rights. No right of first refusal, option or preferential purchase or other similar rights are held by any person with respect to any portion of the Property.

(v) No Litigation. Except as set forth on Schedule 8(a)(v) attached hereto, neither Seller nor its registered agent for service of process has been served with summons with respect to any actions or proceedings pending or, to Seller’s actual knowledge, no such actions or proceedings are threatened, against Seller before or by any court, arbitrator, administrative agency or other governmental authority, which (A) individually or in the aggregate, are expected, in the reasonable judgment of Seller, to materially and adversely affect Seller’s ability to carry out any of the transactions contemplated by any of the Transaction Documents or (B) otherwise involve any portion of the Property including, without limitation, the Facility.

(vi) No Conflicts. Neither the execution and delivery of the Transaction Documents to which Seller is a party, compliance with the provisions thereof, nor the carrying out of the transactions contemplated thereby to be carried out by such party will result in (A) a breach or violation of (1) any material law or governmental rule or regulation applicable to Seller now in effect, (2) any provision of any of Seller’s organizational documents, (3) any material judgment, settlement agreement, order or decree of any court, arbitrator, administrative agency or other governmental authority binding upon Seller, or (4) any material agreement or instrument to which Seller is a party or by which Seller or its respective properties are bound; (B) the acceleration of any obligations of Seller; or (C) the creation of any lien, claim or encumbrance upon the Property.

(b) Property. As of the Effective Date and the Closing Date, except as set forth on Schedule 8(b):

(i) Seller has no actual knowledge of and has not received any notice of outstanding deficiencies or work orders of any authority having jurisdiction over any portion of the Property;

(ii) Seller has no actual knowledge of and has not received any notice of any claim, requirement or demand of any licensing or certifying agency supervising or having authority over the Facility to rework or redesign it in any material respect or to provide additional furniture, fixtures, equipment or inventory so as to conform to or comply with any law which has not been fully satisfied;

(iii) Seller has not received any notice from any governmental authority of any material violation of any law applicable to any portion of the Real Property or to the Facility;

(c) Condemnation. To the actual knowledge of Seller, there is no pending or threatened condemnation or similar proceeding or assessment affecting the Real Property, nor, to the actual knowledge of Seller, is any such proceeding or assessment contemplated by any governmental authority.

(d) Hazardous Substances. Except as disclosed in any of the Due Diligence Items, any phase I, phase II or other environmental study commissioned by Buyer, or on Schedule 8(d) (and as disclosed to Buyer during the Due Diligence Period), and to Seller's actual knowledge, there has been no production, storage, manufacture, voluntary or involuntary transmission, use, generation, treatment, handling, transport, release, dumping, discharge, spillage, leakage or disposal at, on, in, under or about the Real Property of any Hazardous Substances by Seller, or any affiliate or agent thereof, except in strict compliance with all applicable Laws. To Seller's actual knowledge there are no Hazardous Substances at, on, in, under or about the Real Property in violation of any Law, and to Seller's actual knowledge, there is no proceeding or inquiry by any federal, state or local governmental agency with respect thereto. For purposes of this Agreement, "**Hazardous Substances**" shall mean any hazardous or toxic substances, materials or wastes, including, without limitation, those substances, materials and wastes listed in the United States Department of Transportation Table (49 CFR 172.1 01) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto) or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law (collectively, "**Laws**"), including, without limitation, any material, waste or substance which is (i) a hazardous waste as defined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 et seq.); (ii) a pollutant or contaminant or hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.); (iii) a hazardous substance pursuant to § 311 of the Clean Water Act (33 U.S.C. § 1251, et seq., 33 U.S.C. § 1321) or otherwise listed pursuant to § 307 of the Clean Water Act (33 U.S.C. § 1317); (iv) a hazardous waste pursuant to § 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); (v) polychlorinated biphenyls (PCBs) as defined in the Federal Toxic Substance Control Act, as amended (15 U.S.C. § 2501 et seq.); (vi) hydrocarbons, petroleum and petroleum products; (vii) asbestos; (viii) formaldehyde or medical or biohazardous waste; (ix) radioactive substances; (x) flammables and explosives; (xi) any state statutory counterparts to those federal statutes listed herein; or (vii) any other substance, waste or material which could presently or at any time in the future require remediation at the behest of any governmental agency. Any reference in this definition to Laws shall include all rules and regulations which have been promulgated with respect to such Laws.

(e) Brokers. Neither Seller nor Buyer has dealt with any broker or finder in connection with the transactions contemplated hereby. Each party represents and warrants to the other party that it has not dealt with any broker, salesman, finder or consultant with respect to this Agreement or the transactions contemplated hereby. Each party agrees to indemnify, protect, defend, protect and hold the other party harmless from and against all claims, losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees and disbursements) and charges resulting from such indemnifying party's breach of the foregoing representation. The provisions of this Section 8 (e) shall survive the Closing or earlier termination of this Agreement for a period of twelve (12) months.

(f) Leases and Contracts. Schedule 8(f) is a list of all Leases and Contracts relating to the Facility to which Seller is a party or by which Seller may be bound. Seller has made or will promptly make available to Buyer true, complete and accurate copies of all Leases and Contracts including, without limitation, any modifications thereto. All of the Leases and Contracts are in full force and effect without claim of material default there under, and, except as may be set forth on Schedule 8(f).

(g) Financial Statements. Within five (5) business days after the execution of this Agreement, Seller shall provide to Buyer (i) the unaudited balance sheets of the Operating entities for the last three (3) fiscal years ending prior to the date of this Agreement and the unaudited balance sheets of the past three (3) fiscal quarters completed prior to the date of this Agreement, and (ii) the related consolidated statements of income, results of operations, changes in members' equity and changes in financial position with respect to each such period for the Operator as compared with the immediately prior period (collectively, the "**Financial Statements**"). The Financial Statements taken as a whole (A) fairly present the financial condition and results of operation of the Operator for the periods indicated, (B) are true, accurate, correct and complete in all material respects, and (C) except as stated in Schedule 8(g) (or in the notes to the Financial Statements) have been prepared in accordance with the Operator's tax basis reporting, as consistently applied. Except as disclosed in Schedule 8(g), or otherwise disclosed in writing to Buyer, to Seller's actual knowledge neither Seller nor the Facility is obligated for or subject to any material liabilities, contingent or absolute, and whether or not such liabilities would be disclosed in accordance with tax basis reporting, and Schedule 8(g) sets forth all notes payable, other long term indebtedness and, to Seller's actual knowledge, all other liabilities to which the Facility and the Real Property are or at Closing (and following Closing) will be subject, other than new indebtedness obtained by Buyer in connection with its purchase of the Property. Seller has received no notice of default under any such instrument.

(h) Interests in Competitors, Suppliers and Customers. Other than the Operator, and except as set forth on Schedule 8 (h), or in Schedule 1(a) as constituting a part of the Facility, neither Seller nor any of its members has any interest in any property used in the operation of, or holds an interest in, any competitor, supplier or customer of Seller or the Facility within a five (5) mile radius of the Seller as further provided in Section 25 of this Agreement.

- (i) Intentionally Omitted.
- (j) Intentionally Omitted.
- (k) Intentionally Omitted.
- (l) Intentionally Omitted
- (m) Number of Units:

(n) Operations. The Facility is reasonably and adequately equipped and the Facility includes sufficient and adequate numbers of furniture, furnishings, equipment, consumable inventory, and supplies to operate the Facility as each is presently operated by Seller. Personal Property used to operate the Facility and to be conveyed to Buyer is free and clear of liens, security interests, encumbrances, leases and restrictions of every kind and description, except for Permitted Encumbrances and any liens, security interests and encumbrances to be released at Closing.

(o) No Misstatements, Etc. To Seller's knowledge, neither the representations and warranties of Seller stated in this Agreement, including the Exhibits and the Schedules attached hereto, nor the Due Diligence Items or any certificate or instrument furnished or to be furnished to Buyer by Seller in connection with the transactions contemplated hereby, contains or will contain any untrue or misleading statement of a material fact.

(p) Supplementation of Schedules; Change in Representations and Warranties. Seller shall have the continuing right and obligation to supplement and amend the Schedules herein on a regular basis including and Seller's warranties and representations required hereunder, as necessary or appropriate (i) in order to make any representation or warranty not misleading due to events, circumstances or the passage of time or (ii) with respect to any matter hereafter arising or discovered up to and including the Closing Date, but Buyer shall not be deemed to have approved such supplemental Schedules unless Buyer expressly acknowledges approval of same in writing. In the event Seller amends any such Schedules, or Buyer or Seller gains actual knowledge prior to the Closing that any representation or warranty made by the other party contained in this Section 8 is otherwise untrue or inaccurate, such party shall, within five (5) days after gaining such actual knowledge but in any event prior to the Closing, provide the other party with written notice of such inaccuracy, whereupon the noticed party shall promptly commence, and use its best efforts to prosecute to completion, the cure of such matter, to the extent any such matter is curable. If any such matter is not curable within reason and is material, in Buyer's reasonable business judgment, Buyer shall have the right to terminate this Agreement upon written notice to Seller within five (5) business days of receipt or delivery of such notice, as applicable, on the same basis as set forth in Section 13(a) if during the Due Diligence Period and in Section 13(b)(ii) herein if after expiration of the Due Diligence Period.

(q) Survival of Representations and Warranties; Updates. The representations and warranties of Seller in this Agreement shall not be merged with the Deed at the Closing and shall survive the Closing for the period of one (1) year; provided, Seller understands and agrees that the Post Closing Lease, shall provide for a lengthier period of survival with respect to certain matters referenced therein.

For purposes of this Agreement, the phrase “to Seller’s actual knowledge” or words of similar import shall mean the actual knowledge of seller or words similar in part shall mean the current, actual knowledge of Kevin Ricker, without investigation. Seller represents that Kevin Ricker is the most knowledgeable person as to all matters pertaining to the Property.

9. Representations and Warranties of Buyer.

(a) Buyer hereby warrants and represents to Seller that:

(i) Organization, Corporate Powers, Etc. Buyer is a corporation, validly existing and in good standing under the laws of the State of Maryland and in each other state or jurisdiction in which the nature of its business requires the same except where a failure to be so qualified does not have a material adverse effect on the business, properties, condition (financial or otherwise) or operations of that person. Buyer has full power, authority and legal right (a) to execute and deliver, and perform and observe the provisions of this Agreement and each Transaction Document to which it is a party, and (b) to carry out the transactions contemplated hereby and by such other instruments to be carried out by Buyer pursuant to the Transaction Documents.

(ii) Due Authorization, Etc. The Transaction Documents have been, and each instrument provided for herein or therein to which Buyer is a party will be, when executed and delivered as contemplated hereby, duly authorized, executed and delivered by Buyer and the Transaction Documents constitute, and each such instrument will constitute, when executed and delivered as contemplated hereby, legal, valid and binding obligations of the Buyer enforceable in accordance with their terms.

(iii) Governmental Approvals. To Buyer’s actual knowledge, no consent, approval or other authorization (other than corporate or other organizational consents which have been obtained), or registration, declaration or filing with, any court or governmental agency or commission is required for the due execution and delivery of any of the Transaction Documents to which Buyer is a party or for the validity or enforceability thereof against such party.

(iv) No Litigation. Neither Buyer nor its registered agent for service of process has been served with summons with respect to any actions or proceedings pending or, to Buyer’s actual knowledge, no such actions or proceedings are threatened, against Buyer before or by any court, arbitrator, administrative agency or other governmental authority, which individually or in the aggregate, are expected, in the reasonable judgment of Buyer, to materially and adversely affect Buyer’s ability to carry out any of the transactions contemplated by any of the Transaction Documents.

(v) No Conflicts. Neither the execution and delivery of the Transaction Documents to which Buyer is a party, compliance with the provisions thereof, nor the carrying out of the transactions contemplated thereby to be carried out by such party will result in (a) a breach or violation of (1) any material law or governmental rule or regulation applicable to Buyer now in effect, (2) any provision of any Buyer's organizational documents, (3) any material judgment, settlement agreement, order or decree of any court, arbitrator, administrative agency or other governmental authority binding upon Buyer, or (4) any material agreement or instrument to which Buyer is a party or by which Buyer or its respective properties are bound; (b) the acceleration of any obligations of Buyer; or (c) the creation of any lien, claim or encumbrance upon any properties or assets of Buyer.

(vi) No Misstatements, Etc. To Buyer's knowledge, neither the representations and warranties of Buyer stated in this Agreement, including the Exhibits and the Schedules attached hereto, nor any certificate or instrument furnished or to be furnished to Seller by Buyer in connection with the transactions contemplated hereby, contains or will contain any untrue or misleading statement of a material fact.

(vii) Survival of Representations and Warranties; Updates. The representations and warranties of Buyer in this Agreement shall not be merged with the Deed at the Closing and shall survive the Closing for the period of one (1) year.

10. Covenants of Seller. Seller covenants with respect to the Facility as follows:

(a) Pre-Closing. Between the date of this Agreement and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed:

(i) Seller shall use its best efforts to cause the Operator to operate the Facility diligently, in accordance with the Operator's obligations under its lease or other arrangement with Seller, and only in the ordinary course of business.

(ii) Seller shall use its best efforts to prevent the Operator from making any material change in the operation of the Facility, and shall prevent the Operator from selling or agreeing to sell any items of machinery, equipment or other assets of the Facility, or otherwise entering into any agreement affecting the Facility, except in the ordinary course of business;

(iii) Seller shall use its best efforts to prevent the Operator from entering into any Lease or Contract or commitment affecting the Facility, except for Leases or Contracts entered into in the ordinary course of business;

(iv) During normal business hours and consistent with Section 6(a) herein, Seller shall provide Buyer or its designated representative with access to the Facility upon prior notification and coordination with Seller and the Operator; provided, Buyer shall not materially interfere with the operation of the Facility. At such times Seller and the Operator shall permit Buyer to inspect the books and records of the Facility;

(v) Within five (5) business days following the execution of this Agreement by the parties, Seller has delivered or made available to Buyer all of the Due Diligence Items which are in Seller's possession or control. All Due Diligence Items which have not previously been delivered are identified as the Unavailable Items ("**Unavailable Items**"). If any of the Unavailable Items become available to Seller, Seller shall within five (5) days of receiving such items, deliver such items to Buyer. If Buyer requests additional items in writing delivered by Buyer to Seller, Seller shall use commercially reasonable efforts to provide such information within five (5) days of receipt of the request; and provided further, Seller shall continue to cause Operator to deliver to Buyer following the expiration of the Due Diligence Period, financial reports showing among other things information necessary to determine EBITDAR (defined below) for the Facility for the trailing six (6) month annualized operations at any given time. The term "**EBITDAR**" means "earnings before interest, taxes, depreciation, amortization and rent and reserves (reserves meaning additions to capital reserves)."

(vi) Seller shall use its best efforts to prevent the Operator from moving residents from the Facility, except (a) for health treatment purposes or otherwise at the request of the resident, family member or other guardian or (b) upon court order or the request of any governmental authority having jurisdiction over the Facility;

(vii) Seller shall use commercially reasonable efforts to cause the Operator to retain the services and goodwill of the employees of the Operator until the Closing;

(viii) Seller shall maintain in force, or shall cause the Operator to maintain in force, the existing hazard and liability insurance policies, or comparable coverage, for the Facility as are in effect as of the date of this Agreement;

(ix) Seller shall, and shall cause the Operator, to file all returns, reports and filings of any kind or nature, including but not limited to, cost reports referred to in this Agreement, required to be filed by Seller or the Operator on a timely basis and shall timely pay all taxes or other obligations and liabilities or recoupments which are due and payable with respect to the Facility in the ordinary course of business with respect to the periods Seller or Operator operated the Facility;

(x) Seller shall cause the Operator (a) to maintain all required operating licenses in good standing, (b) to operate the Facility in accordance with its current business practices and (c) to promptly notify Buyer in writing of any notices of material violations or investigations received from any applicable governmental authority;

(xi) Seller shall use commercially reasonable efforts to cause the Operator to make all customary repairs, maintenance and replacements required to maintain the Facility in substantially the same condition as on the date of Buyer's inspection thereof, ordinary wear and tear excepted;

(xii) Seller shall promptly notify Buyer in writing of any Material Adverse Change, as defined herein, of which Seller becomes aware in the condition or prospects of the Facility including, without limitation, sending Buyer copies of all surveys and inspection reports of all governmental agencies received after the date hereof and prior to Closing, promptly following receipt thereof by the Operator. For purposes of this Agreement, a "**Material Adverse Change**" shall mean: (a) a decrease in the consolidated adjusted rolling six (6) month EBITDAR of the Facility to less than Two Hundred Forty Thousand Dollars (\$240,000) (b) failure to settle with the appropriate governmental authority, or to satisfy on or before the Closing (either directly with such governmental authority or by funds escrowed by Seller for such purposes) all claims for reimbursements, recoupments, taxes, fines or penalties which may be due to any governmental authority having jurisdiction over the Facility, or (c) the occurrence of a title or survey defect occurring after the date of this Agreement which would reasonably be expected to adversely affect the ability of Buyer to operate an independent senior living facility at the Facility or to obtain financing for the Facility, or (d) the commencement of any third party litigation which interferes with Seller's ability to close the transactions contemplated by this Agreement.

(xiii) Intentionally Omitted.

(xiv) Seller shall, at its cost and on or before Closing, obtain releases of financing statements and tax and judgment liens affecting or relating to the Facility which have been filed or recorded with the Office of the Oregon Secretary of State and the appropriate County Recorder's Office.

(xv) Seller shall promptly comply with any notices of violations received relating to the Facility and shall deliver to Buyer a copy of any such notice received and evidence of compliance with such notice.

(b) Closing. On or before the Closing Date, Seller shall deliver the following documents to Escrow Agent relating to the Facility ("**Closing Documents**"):

(i) One (1) original executed Deed;

(ii) Two (2) original executed counterparts of the Post Closing Lease;

(iii) Two (2) original executed counterparts of the bill of sale for the Personal Property ("**Bill of Sale**"), an assignment of Seller's interest in the Contracts and Leases ("**Assignment of Contracts and Leases**"), and other instruments of transfer and conveyance in form and substance to be agreed upon prior to the expiration of the Due Diligence Period transferring and assigning to Buyer the Real Property, Personal Property and the Intangibles to be transferred as provided herein with respect to the Facility ("**Instruments of Assignment**");

(iv) One (1) original executed certificate executed by Seller confirming that to Seller's actual knowledge on the Closing Date Seller's representations and warranties continue to be true and correct in all material respects, or stating how such representations and warranties are no longer true and correct ("**Seller's Confirmation**");

(v) All contractor's and manufacturer's guaranties and warranties, if any, in Seller's possession relating to the Facility (collectively, the "**Warranties**"), which delivery will be made by leaving such materials at the Facility; and

(vi) Two (2) original executed counterparts of each of the FIRPTA Certificate, and one original or facsimile copy of escrow agreements and other documents required by the Title Company in connection with the transactions contemplated by this Agreement (collectively, the "**Title Company Documents**").

11. Covenants of Buyer. Buyer hereby covenants as follows:

(a) Pre-Closing. Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the consent of Seller, Buyer agrees that Buyer shall not take any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transaction contemplated by this Agreement. Between the date hereof and the Closing Date, Buyer agrees that Buyer shall not (i) make any commitments to any governmental authority, (ii) enter into any agreement or contract with any governmental authority or third parties, or (iii) alter, amend, terminate or purport to terminate in any way any governmental approval or permit affecting the Real Property, Personal Property or the Facility, which would be binding upon Seller, the Facility, the Real Property or Personal Property after any termination of this Agreement.

(b) Closing. On or before the Closing Date, Buyer shall deposit the following with Escrow Agent:

(i) The Purchase Price in accordance with the requirements of this Agreement;

(ii) Two (2) original executed counterparts of the Post Closing Lease;

(iii) Two (2) original executed counterparts of each of the Instruments of Assignment requiring Buyer's signature;

(iv) One (1) original executed certificate executed by Buyer confirming that Buyer's representations and warranties continue to be true and correct in all material respects, or stating how such representations and warranties are no longer true and correct ("**Buyer's Confirmation**"); and

(v) One (1) original executed counterpart of each of the Title Company Documents requiring Buyer's signature.

12. Conditions to Closing.

(a) Conditions to Buyer's Obligations. All obligations of Buyer under this Agreement are subject to the reasonable satisfaction and fulfillment, prior to the Closing Date, of each of the following conditions. Any one or more of such conditions may be waived in writing by Buyer.

(i) Seller's Representations, Warranties and Covenants. Seller's representations, warranties and covenants contained in this Agreement or in any certificate or document delivered in connection with this Agreement or the transactions contemplated herein, shall be true at the date hereof and as of the Closing Date as though such representations, warranties and covenants were then again made, except to the extent that (a) Seller has provided to Buyer, prior to the Closing, with supplemental Schedules in accordance with Section 8(p) herein or (b) Buyer has discovered, or has been provided with written notice from Seller, that a representation is untrue or inaccurate, and Buyer nevertheless elects to close the transaction in the manner provided in Section 8(p) herein despite such inaccuracy, whereupon it will have waived any right of recourse or damages against Seller resulting from such inaccuracy.

(ii) Seller's Performance. Seller shall have performed all of its obligations and covenants under this Agreement that are to be performed prior to or at Closing.

(iii) Damage and Condemnation. Prior to the Closing Date, no portion of the Facility shall have been damaged or destroyed by fire or other casualty where the estimate of damage to the Facility exceeds 20% of the Purchase Price, or proceedings be commenced or threatened to take or condemn any material part of the Real Property or improvements comprising the Facility by any public or quasi-public authority under the power of eminent domain. A proceeding shall be deemed to be "material" if such condemnation or taking (a) relates to the material taking or closing of any right of access to the Real Property or Facility, (b) cause the Real Property or Facility to become non-conforming with then current legal requirements governing such Real Property or Facility, (c) results in the loss of parking that is material to the operation of the Facility, or (d) result in the loss of value in excess of 20% of the Purchase Price, in Buyer's reasonable judgment. If the Facility shall have been so damaged or destroyed, Seller shall deliver prompt written notice of such condemnation, damage or destruction to Buyer. In the event Buyer waives this condition, by written notice to Seller within fifteen (15) business days of receipt of notice of such proceeding, and the Closing occurs, Seller shall assign to Buyer all its right to any insurance proceeds in connection therewith. If proceedings shall be so commenced or threatened to take or condemn the Real Property or the Facility or portion thereof prior to Closing, and if Buyer waives this condition and the Closing occurs, Seller shall pay or assign to Buyer all Seller's right to the proceeds of any condemnation award in connection thereof.

(iv) Absence of Litigation. No action or proceeding shall have been instituted, threatened or, in the reasonable opinion of Buyer, is likely to be instituted before any court or governmental body or authority the result of which could prevent or make illegal the acquisition by Buyer of the Facility, or the consummation of the transaction contemplated hereby, or which could materially and adversely affect the Facility or the business or prospects of the Facility.

(v) Form of Post Closing Lease. Prior to the expiration of the Due Diligence Period, Seller and Buyer shall have agreed upon the form of the post closing lease (the "Post Closing Lease") between Buyer, as landlord, and Seller, or an affiliate of Seller, as tenant, incorporating in the business terms set forth in Exhibit C attached hereto. [**SUMMIT TO PROVIDE BUSINESS TERMS**]

(vi) No Material Adverse Change. No Material Adverse Change shall have occurred in the Facility.

(vii) Removal of Personal Property Liens. Seller shall have removed (or shall have sufficient payoff or other documents to remove such liens at Closing) all personal property liens which are related to the Facility and the Facility at Closing shall be free and clear of all liens, claims and encumbrances other than Permitted Exceptions.

(viii) Title Insurance Policy. Title Company shall be prepared to issue the Owner's Title Insurance Policy for the Facility as of the Closing Date, with coverage in the amount of the Purchase Price, insuring Buyer as owner of the Facility subject only to the Permitted Exceptions.

(b) Conditions to Seller's Obligations. All obligations of Seller under this Agreement are subject to the fulfillment, prior to the Closing Date, of each of the following conditions. Anyone or more of such conditions may be waived by Seller in writing.

(i) Buyer's Representations, Warranties and Covenants. Buyer's representations, warranties and covenants contained in this Agreement or in any certificate or document delivered in connection with this Agreement or the transactions contemplated herein shall be true at the date hereof and as of the Closing Date as though such representations, warranties and covenants were then again made.

(ii) Buyer's Performance. Buyer shall have performed its obligations and covenants under this Agreement that are to be performed prior to or at Closing.

(iii) Absence of Litigation. No action or proceeding shall have been instituted, threatened or, in the reasonable opinion of Seller, is likely to be instituted before any court or governmental body or authority the result of which could prevent or make illegal the acquisition by Buyer of the Facility, or the consummation of the transaction contemplated hereby, or which could materially and adversely affect the Facility or the business or prospects of the Facility.

(iv) No Actions. There shall be no action pending or recommended by the appropriate state or federal agency to revoke, withdraw or suspend any license to operate the Facility or the certification of the Facility, or any action of any other type with regard to licensure or certification.

(v) Form of Post Closing Lease. Prior to the expiration of the Due Diligence Period, Seller and Buyer shall have agreed upon the form of the Post Closing Lease.

### 13. Termination; Defaults.

(a) Termination For Failure of Condition. Either party may terminate this Agreement for non-satisfaction or failure of a condition to the obligation of either party to consummate the transaction contemplated by this Agreement (including, without limitation, Buyer's election to disapprove the condition of the title or Surveys pursuant to Section 14 herein), unless such matter has been satisfied or waived by the date specified in this Agreement or by the Closing Date (as same may be extended by the parties to allow the parties to satisfy or waive conditions to close in the manner provided in this Agreement). In the event of such a termination, Escrow Agent shall promptly return (i) to Buyer, all funds of Buyer in its possession, including the Deposit and all interest accrued thereon, and (ii) to Seller and Buyer, all documents deposited by them respectively, which are then held by Escrow Agent. Thereafter, neither party shall have any continuing obligation or liability to the other party except for any such matters that expressly survive the Closing or termination of this Agreement, as provided herein. The provisions of this Section 13(a) are intended to apply only in the event of a failure of condition, as set forth herein, which is not the result of a default by either party, but which shall not apply in the event the non-terminating party is in default of its obligations under this Agreement.

(b) Termination For Cause.

(i) If the Agreement is terminated by Seller because Buyer fails to consummate the Closing as a result of a default by Buyer under this Agreement, which is not cured within three (3) days after written notice from Seller, Seller's sole and exclusive remedy prior to the Closing Date shall be to terminate this Agreement by giving written notice of termination to Buyer and Escrow Agent, whereupon (a) Escrow Agent shall promptly release to Seller the Deposit, and all interest accrued thereon, (b) Escrow Agent shall return to Buyer and Seller all documents deposited by them respectively, which are then held by Escrow Agent, (c) the parties shall be released and relieved of all obligations to each other under this Agreement, except for provisions that expressly survive termination as provided herein, (d) Buyer shall return to Seller all documents received by it during the course of its Due Diligence and (e) Buyer shall have no further right to purchase the Property or legal or equitable claims against Seller (except for any breach by Seller of provisions that survive termination) and/or the Property. Buyer shall have no liability to Seller under any circumstances for any speculative, consequential or punitive damages. Without limiting the other provisions of this Agreement, Buyer acknowledges that the provisions of this Subsection are a material part of the consideration being given to Seller for entering into this Agreement and that Seller would be unwilling to enter into this Agreement in the absence of the provisions of this Subsection. The provisions of this Subsection shall survive any termination of this Agreement. With respect to any action by Seller against Buyer or by Buyer against Seller commenced after the Closing Date, Seller and Buyer expressly waive any right to any speculative, consequential, punitive or special damages including, without limitation, lost profits. The parties acknowledge and agree that Seller's actual damages as a result of Buyer's default would be difficult or impossible to ascertain and that the deliveries and payments provided for in clause (a) herein constitute reasonable compensation for its actual damages. Promptly following Escrow Agent's receipt of written notice from Seller that this Agreement has been terminated because of a default by Buyer, Escrow Agent shall cancel the Escrow created for this transaction. Seller and Buyer acknowledge that they have read and understand the provisions of this Section 13(b)(i) and by their initials below agree to be bound by its terms.

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Buyer's Initials

(ii) If this Agreement is terminated by Buyer because (i) Seller has defaulted in the performance of its obligations under this Agreement, or (ii) Seller refuses to consummate the Closing, after Buyer has (A) timely met, and continues to meet, all of Buyer's obligations under this Agreement and (B) waived or accepted all conditions of Buyer to the Closing, then unless Buyer has defaulted in its obligations under this Agreement, Buyer's sole and exclusive remedies prior to the Closing Date shall be either: (1) to terminate this Agreement by giving written notice of termination to Seller and Escrow Agent and pursue any and all remedies for Buyer's out-of-pocket costs (including attorneys' fees and court costs), attributable to the termination of this Agreement, provided however, that Seller shall have no liability to Buyer under any circumstances for any speculative, consequential or punitive damages, whereupon (a) Escrow Agent shall promptly return to Buyer the Deposit, and all interest accrued thereon, (b) Escrow Agent shall return to Seller and Buyer all documents deposited by them respectively, which are then held by Escrow Agent, (c) Buyer shall have no further right to purchase the Property or legal or equitable claims against Seller (except for any breach by Seller of provisions that survive termination) and/or the Property; and (d) Buyer shall return to Seller all documents received by it during the course of its Due Diligence, or (2) to pursue the remedy of specific performance of Seller's obligation to perform its obligations under this Agreement, provided, (a) any such suit for specific performance is filed within forty-five (45) days after the then scheduled Closing Date, and (b) Buyer is ready, willing and able to consummate the Closing as required herein. Seller shall have no liability to Buyer under any circumstances for any speculative, consequential or punitive damages. Without limiting the other provisions of this Agreement, Seller acknowledges that the provisions of this Subsection are a material part of the consideration being given to Buyer for entering into this Agreement and that Buyer would be unwilling to enter into this Agreement in the absence of the provisions of this Subsection. The provisions of this Subsection shall survive any termination of this Agreement. With respect to any action by Buyer against Seller or by Seller against Buyer commenced after the Closing Date, Buyer and Seller expressly waive any right to any speculative, consequential, punitive or special damages including, without limitation, lost profits. Seller and Buyer acknowledge that they have read and understand the provisions of this Section 13.2(b) and by their initials below agree to be bound by its terms.

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Buyer's Initials

(c) General.

(i) Upon any termination of this Agreement, Buyer shall return to Seller all of the Due Diligence Items received by Buyer from Seller including all copies thereof prepared by Seller or Buyer; and

(ii) In the event a party elects to terminate this Agreement such party shall deliver a notice of termination to the other party.

14. Surveys and Title Commitments.

(a) Seller has previously ordered a title commitment (the "**Title Commitment**") covering the Real Property and the Facility dated prior to the date of this Agreement, together with legible copies of any and all instruments referred to in the Title Commitments as constituting exceptions to title of the Real Property. Immediately upon execution and delivery of this Agreement, Seller shall order updates of the Title Commitment, together with legible copies of any and all instruments ("**Title Documents**") referred to in the Title Commitment as constituting exceptions to title and shall deliver all such documents to Buyer along with all other Due Diligence Items.

(b) Seller shall have delivered to Buyer a copy of the existing boundary line and/or as built surveys, if any, in Seller's possession for the Facility ("**Survey**") in accordance with Section 10(a)(v) herein. Buyer shall be responsible for obtaining an update of the Survey or new Survey, at Buyer's sole cost ("**New Survey**"). On or before ten (10) business days following receipt of the updated Title Commitment, Title Documents and Survey, Buyer shall notify Seller and the Title Company ("**Buyer's Title Notice**") of any objections which Buyer may have to the Title Commitment and/or Survey. If Buyer objects to any matters (other than the Permitted Exceptions, as defined herein) which, in Buyer's determination, might adversely affect the ability of Buyer to operate the Facility, Seller shall use its reasonable business efforts to cure same, but shall not be obligated to cure matters other than to obtain the release (at Closing) of the existing mortgage and other monetary liens caused by Seller which may be released by payment of the mortgage payoff or lien amount from Seller's Closing proceeds (collectively, "**Monetary Liens**"). If Seller delivers written notice to Buyer ("**Seller's Title Notice**"), on or before ten (10) business days following receipt of the Buyer's Title Notice, that Seller is unable or unwilling to cure such objections, or if, for any reason, Seller is unable to convey title in accordance with the requirements of this Agreement, Buyer shall have an additional period of three (3) business days following its receipt of Seller's Title Notice in which to deliver written notice to Seller ("**Buyer's Second Title Notice**") either (i) to waive such objections (in which event the items objected to and uncured shall be deemed Permitted Exceptions) and to accept such title in the condition that Seller is able to convey, or (ii) terminate this Agreement by written notice to Seller. Failure of Buyer to deliver Buyer's Second Title Notice shall be deemed to constitute Buyer's approval of the state of title. Buyer shall, promptly following the execution of this Agreement, commence to use its best efforts to obtain the New Survey as soon as practicable. Notwithstanding the foregoing provisions of this Subsection (b), Buyer shall have the right to object, promptly upon learning of any such new matters during the Due Diligence Period, to any matters raised in the New Survey which were not addressed in the Survey, and the parties shall cooperate with the Title Company, during the Due Diligence Period and as promptly as possible following the delivery of Buyer's objections to such new matters in the New Survey, to resolve any such matters to Buyer's satisfaction. The Due Diligence Period shall not be extended for resolution of any such matters in the New Survey.

15. Cooperation. Following the execution of this Agreement, Buyer and Seller agree that if any event should occur, either within or without the knowledge or control of Buyer or Seller, which would prevent fulfillment of the conditions to the obligations of any party hereto to consummate the transaction contemplated by this Agreement, each such party shall use reasonably commercial efforts to cure or to cause the cure of the same as expeditiously as possible. In addition, each party shall cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions with respect to, any applications, requests, or actions which are or may be reasonable and necessary to obtain the consent of any governmental instrumentality or any third party or to accomplish the transaction contemplated by this Agreement.

16. Indemnification.

(a) Indemnification Provisions.

(i) Subject to the limitation on damages contained in Section 13(ii)(b) hereof, Seller hereby agrees to indemnify, protect, defend and hold harmless Buyer and its officers, directors, members, shareholders, tenants, successors and assigns, harmless from and against any and all claims, demands, obligations, losses, liabilities, damages, recoveries and deficiencies (including interest, penalties and reasonable attorneys' fees, costs and expenses) which any of them may suffer as a result of: (A) any breach of or inaccuracy in the representations and warranties, or breach, non-fulfillment or default in the performance of any of the conditions, covenants and agreements, of Seller contained in this Agreement or in any certificate or document delivered by Seller pursuant to any of the provisions of this Agreement, unless Seller cures such matter in the manner provided in Section 8(p) herein or (B) the failure to discharge any federal, state or local tax liability, or to pay any other assessments, recoupments, claims, fines, penalties or other amounts or liabilities accrued or payable with respect to any activities of Seller prior to the Closing Date (whether brought before or after the Closing Date), or (C) any obligation which is expressly the responsibility of Seller under this Agreement, or (D) any amounts required to cure citation violations issued by any state or federal health or human services authority on the Facility relating to any period prior to the Closing Date (whether brought before or after the Closing Date), or (E) any claim by any employee of Seller (whether brought before or after the Closing Date), or (F) the existence against the Real Property of any mechanic's or materialmen's claims resulting from the action or inaction of Seller or anyone acting under authority of Seller, or (G) any other cost, claim or liability arising out of or relating to events (other than as a result of the actions of Buyer or Buyer's Consultants) or Seller's ownership, operation or use of the Facility occurring prior to the Closing Date. Any amount due under the aforesaid indemnity shall be due and payable by Seller within thirty (30) days after demand thereof. Seller shall have the right to contest any such claims, liabilities or obligations as provided herein.

(ii) Subject to the limitation on damages contained in Section 13(b)(i) hereof, Buyer hereby agrees to indemnify, protect, defend and hold harmless Seller and its officers, directors, members, shareholders and tenants harmless from and against any and all claims, demands, obligations, losses, liabilities, damages, recoveries and deficiencies (including interest, penalties and reasonable attorneys' fees, costs and expenses) which any of them may suffer as a result of: (A) any breach of or inaccuracy in the representations and warranties, or breach, non-fulfillment or default in the performance of any of the conditions, covenants and agreements, of Buyer contained in this Agreement or in any certificate or document delivered by Buyer pursuant to any of the provisions of this Agreement, unless Buyer cures such matter in the manner provided in Section 8(p) herein, (B) the failure to discharge any federal, state, or local tax liability, or to pay monetary liens or other assessments, recoupments, claims, fines, penalties, or other amounts or liabilities accrued or payable with respect to any activities of Buyer following the Closing Date, or (C) the existence against the Real Property of any mechanic's or materialmen's claims arising from actions of Buyer or Buyer's Consultants, (D) any obligation which is expressly the responsibility of Buyer under this Agreement, or (E) any other cost, claim or liability arising out of or relating to events or Buyer's ownership, operation or use of the Property or the Facility occurring on or after the Closing Date. Any amount due under the aforesaid indemnity shall be due and payable by Buyer within thirty (30) days after demand therefor. Buyer shall have the right to contest any such claims, liabilities or obligations as provided herein.

(iii) The parties intend that all indemnification claims be made as promptly as practicable by the party seeking indemnification (the “**Indemnified Party**”). Whenever any claim shall arise for indemnification hereunder, the Indemnifying Party shall promptly notify the party from whom indemnification is sought (the “**Indemnitor**”) of the claim, and the facts constituting the basis for such claim (the “**Indemnification Claim**”). Failure to notify the Indemnitor will not relieve the Indemnitor of any liability that it may have to the Indemnified Party, except to the extent the defense of such action is materially prejudiced by the Indemnified Party’s failure to give such notice.

(iv) An Indemnitor shall have the right to defend against an Indemnification Claim, with counsel of its choice reasonably satisfactory to the Indemnified Party, if (a) within fifteen (15) days following the receipt of notice of the Indemnification Claim the Indemnitor notifies the Indemnified Party in writing that the Indemnitor will indemnify the Indemnified Party from and against the entirety of any damages the Indemnified Party may suffer resulting from, relating to, arising out of, or attributable to the Indemnification Claim, (b) the Indemnitor provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnitor will have the financial resources to defend against the Indemnification Claim and pay, in cash, all damages the Indemnified Party may suffer resulting from, relating to, arising out of, or attributable to the Indemnification Claim, (c) the Indemnification Claim involves only money damages and does not seek an injunction or other equitable relief, (d) settlement of, or an adverse judgment with respect to, the Indemnification Claim is not in the good faith judgment of the Indemnified Party likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party, and (e) the Indemnitor continuously conducts the defense of the Indemnification Claim actively and diligently.

(v) So long as the Indemnitor is conducting the defense of the Indemnification Claim in accordance with Section 16(a)(iv), then (a) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Indemnification Claim, (b) the Indemnified Party shall not consent to the entry of any order or finalization of any tentative settlement, the only condition of which is the consent of the Indemnified Party thereto, with respect to the Indemnification Claim without the prior written consent of the Indemnitor (not to be withheld unreasonably), and (c) the Indemnitor will not consent to the entry of any order or finalization of any tentative settlement, the only condition of which is the consent of the Indemnified Party thereto, with respect to the Indemnification Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld or delayed, provided that it will not be deemed to be unreasonable for an Indemnified Party to withhold its consent with respect to (1) any breach of any law, order or permit, (2) any violation of the rights of any person, or (3) any matter which Indemnified Party believes could have a material adverse effect on any other actions to which the Indemnified Party or its Affiliates are party or to which Indemnified Party has a good faith belief it may become party. Notwithstanding the foregoing provisions of this Subsection (v), if Indemnified Party refuses its consent to any of the matters set forth in clauses (1) through (3) above, the indemnity amount shall be determined as if such consent had been given and Indemnitor shall pay over to the Indemnified Party such amount and be absolved from any further obligation as to that particular claim; Indemnified Party may then resolve the claim in the manner it sees fit without further recourse against Indemnitor.

(vi) Each party hereby consents to the non-exclusive jurisdiction of any governmental body, arbitrator, or mediator in which an action is brought against any Indemnified Party for purposes of any Indemnification Claim that an Indemnified Party may have under this Agreement with respect to such action or the matters alleged therein, and agrees that process may be served on such party with respect to such claim anywhere in the world, provided however, that any venue relating to any claim or proceeding arising out of this Agreement or any other agreement between Sellers and Buyer shall be the State of Oregon and the laws of the State of Oregon shall apply.

(b) Insurance Proceeds. In determining the amount of damages for which either party is entitled to assert an Indemnification Claim, the amount of any such claims or damages shall be determined after deducting therefrom the amount of any insurance coverage or proceeds or other third party recoveries received by such other party in respect of such damages. If an indemnification payment is received by the Indemnified Party in respect of any damages and the Indemnified Party later receives insurance proceeds or other third party recoveries in respect of such damages, the Indemnified Party shall immediately pay to the Indemnifying Party a sum equal to the lesser of the actual amount of net insurance proceeds or other third party recoveries (remaining after recovery costs and expenses) or the actual amount of the indemnification payment previously paid by or on behalf of the Indemnified Party.

(c) No Incidental, Consequential and Certain Other Damages. An Indemnitor shall not be liable to an Indemnified Party for incidental, consequential, enhanced, punitive or special damages unless such damages are included in a third-party claim and such Indemnified Party is liable to the third party claimant for such damages.

(d) No Waiver of Rights or Remedies.

Each Indemnified Party's rights and remedies set forth in this Agreement shall survive the Closing or other termination of this Agreement, shall not be deemed waived by such Indemnified Party's consummation of the Closing of the sale transactions (unless the Indemnified Party has knowledge of the existence of an Indemnification Claim at Closing and decides to proceed with Closing) and will be effective regardless of any inspection or investigation conducted by or on behalf of such Indemnified Party or by its directors, officers, employees, or representatives or at any time (unless such inspection or investigation reveals the existence of an Indemnified Claim and such party proceeds with Closing), whether before or after the Closing Date.

(e) Other Indemnification Provisions. A claim for any matter not involving a third party may be asserted by notice to the Party from whom indemnification is sought.

17. Dispute Resolution. In any dispute arising out of this Agreement the parties shall proceed as follows:

(a) Mandatory Mediation. In the event there is any dispute between the parties to this Agreement relating in any way to this Agreement, the parties must mediate such dispute before commencement of any legal action. No party to this Agreement can bring legal action against another party to this Agreement without first participating in mediation, unless one party refuses to submit to mediation and legal action is brought to specifically enforce this mandatory mediation provision of this Agreement. If the parties cannot agree upon the person to act as the mediator, then the U.S. Arbitration and Mediation Service of Portland, Oregon shall select a person to act as the mediator. The mediator's charges and expenses shall be split by the parties on a 50/50 basis. The mediation fees and costs do not include each party's attorney fees and costs. Each party shall be responsible for his or her own attorney fees and costs at mediation. Those costs may not be assessed against the other party if the other party is the prevailing party. If the dispute cannot be resolved at mediation either party may then proceed to arbitration as provided in Section 17(b) of this Agreement.

(b) Arbitration. In the event any disagreement, difference or controversy shall arise between or among the parties relating to or arising out of or under this Agreement, including any tort claims, and the parties to the controversy cannot mutually agree upon the resolution thereof, and the mediation provided for herein does not provide a resolution, then such disagreement, difference or controversy shall be determined by arbitration under the rules of the U.S. Arbitration and Mediation Service of Portland, Oregon. Any award made by the arbitrator shall be final, binding and conclusive upon the parties to the arbitration and those claiming under them. The arbitrator shall have no power to make any award inconsistent with or contrary to the terms and provisions of this Agreement. The cost and expenses of any arbitration shall be paid by the parties on a 50/50 basis. Any party to the arbitration may file any final arbitrator award as a judgment in the Circuit Court of the State of Oregon for Marion County and in the appropriate court in any other county of the State of Oregon or any other state where any party to the arbitration maintains such party's residence, principal place of business or real property.

18. Notices. Any notice, request for consent or approval, election or other communication provided for or required by this Agreement shall be in writing and shall be delivered by hand, by air courier service, postage prepaid (certified with return receipt requested), fax transmission or electronic transmission followed by delivery of the hard copy of such communication by air courier service or mail as aforesaid, addressed to the person to whom such notice is intended to be given at such address as such person may have previously furnished in writing to the such party's last known address. Until receipt of written notice to the contrary, the parties' addresses for notices shall be:

To Buyer: Summit Healthcare REIT, Inc.  
2 South Pointe Drive, Suite 100  
Lake Forest, CA 92630  
Attention: Kent Eikanas  
Phone: 949-535-1923  
Email: keikanas@summithealthcarereit.com

With a Copy to: Seubert French Frimel & Warner LLP  
1075 Curtis Street  
Menlo Park, CA 94025  
Attention: Rachel Rosati Warner  
Phone: 650-322-2919  
Email: rachel@sffwlaw.com

To Sellers:

Azevedo and Associates  
10720 Indian Hill Rd  
Auburn, CA 95603  
Attention: Richard Azevedo  
Phone: (530) 889-8070

Sapphire Health Services  
2248 SW Nancy Pl  
Gresham, OR 97080  
Attention: Kevin Ricker  
Phone: (503) 887-7395  
Email: Kricker@sapphirehealthservices.com

19. Sole Agreement. This Agreement constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous oral agreements, understandings representations and statement, and all prior written agreements, understandings, letters of intent and proposals are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

20. Assignment; Successors. Neither party shall assign this Agreement without the prior written consent of the other; provided, however, Buyer may assign all of its rights, title, liability, interest and obligation pursuant to this Agreement to one or more entities owned, controlled by or under common control with Buyer. Subject to the limitations on assignment set forth above, all the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the heirs, successors and assigns of the parties hereto.

21. Severability. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and each such provision shall be valid and remain in full force and effect.

22. Risk of Loss. Until the Closing Date, Seller shall bear the risk of loss for the Facility. From and after the Closing Date, the risk of loss of the Facility shall be governed by the Post Closing Lease.

23. Holidays. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or Legal Holiday. As used herein, the term "Legal Holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Oregon for observance thereof.

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall be deemed to constitute one and the same instrument. Facsimile signature pages or electronically transmitted signature pages shall constitute original counterparts for all purposes.

25. Covenant Not to Compete; Non-Solicitation of Employees. For a period of three (3) years following the Closing Date, Seller, agrees (i) not to own, manage, lease or operate a long term skilled nursing home facility which is located within a five (5) mile radius of the Facility, and (ii) not to solicit the transfer of patients or residents of the Facility to any long term care skilled nursing home facility, assisted living facility and/or residential care facility for the elderly which is managed, leased or operated by any entity owned and/or controlled by Seller or such individual within a five (5) mile radius of the Facility.

26. Intentionally Deleted.

27. Exhibits and Schedules. To the extent that one or more Exhibits or Schedules are not attached to this Agreement at the time this Agreement is executed, Seller and Buyer agree that this Agreement is not rendered unenforceable by reason of such fact. Seller shall provide such exhibits to Buyer during the Due Diligence Period as promptly as possible in order to allow the parties to agree upon such Exhibits and Schedules and to afford Buyer adequate time in which to complete its due diligence review prior to the expiration of the Due Diligence Period.

28. Prevailing Party. Subject to the limitations as otherwise set forth in this Agreement, if an action shall be brought on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

29. Time is of the Essence. Time is of the essence of this Agreement.

30. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

31. Seller's Tax Deferred Exchange. Seller may desire to effect a tax-deferred exchange with respect to its disposition of all or a portion of the Property ("**Seller's Exchange**") pursuant to Section 1031 of the Internal Revenue Code. Seller's Exchange will be structured by Seller at its sole cost and expense and Buyer will have no obligation to acquire or enter into the chain of title to any property other than the Property. Buyer's sole obligation in connection with Seller's Exchange shall be to review and execute certain documentation necessary in order to effectuate Seller's Exchange in accordance with the foregoing and the applicable rules governing such exchanges. Buyer's cooperation with Seller's Exchange shall not affect or diminish Buyer's rights under this Agreement, delay the closing of this Agreement or be construed as Buyer's warranty that Seller's Exchange in fact complies with Section 1031 of the Internal Revenue Code. Buyer shall have the right to review and reasonably approve any documents to be executed by Buyer in connection with Seller's Exchange. Acceptance of title to the Property from Seller's designated intermediary shall not modify Seller's representations, warranties and covenants to Buyer under this Agreement or the survival thereof pursuant to this Agreement. The Warranty Deed and all closing documents shall run directly between Seller and Buyer. Seller shall indemnify and hold Buyer harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees but excluding costs incurred to review the exchange documents) arising from Seller's Exchange (other than what would have been applicable under this Agreement without Seller's Exchange) which indemnification obligation shall survive the Close of Escrow. Seller is relying solely upon the advice and counsel of professionals of Seller's choice in structuring, executing and consummating Seller's Exchange.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by parties legally entitled to do so as of the day and year first set forth above.

**“SELLERS”:**

Bremerton Assisted Living, LLC  
A California limited liability company

By: /s/ Richard Azevedo

Richard Azevedo  
Member

Applewood Holding Company, LLC,  
an Oregon limited liability company

By: /s/ Kevin Ricker

Kevin Ricker  
Member

**“BUYER”:**

SUMMIT HEALTHCARE REIT, INC.,  
a Maryland corporation

By: /s/ Kent Eikanas

Kent Eikanas  
President

**SCHEDULES AND EXHIBITS OMITTED**

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**GENERAL ELECTRIC CAPITAL CORPORATION**  
(as Administrative Agent and a Lender)  
**THE FINANCIAL INSTITUTIONS WHO ARE OR HEREAFTER**  
**BECOME PARTIES TO THIS LOAN AGREEMENT,**  
as Lenders,

and

**HP REDDING, LLC**  
**SUMMIT SALEM, LLC,**  
and  
**SUMMIT PORTLAND, LLC,**  
Each, a Delaware limited liability company,  
(Borrower)

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**LOAN AGREEMENT**

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Dated as of: December 31, 2014

Document Prepared By:

Winston & Strawn LLP  
101 California Street, 34<sup>th</sup> Floor  
San Francisco, California 94111

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[Summit Healthcare]

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## TABLE OF CONTENTS

<b>ARTICLE I DEFINITIONS</b>	<b>1</b>
Section 1.1. Certain Definitions.	1
Section 1.2. Definitions.	20
Section 1.3. Phrases.	21
<b>ARTICLE II LOAN TERMS</b>	<b>21</b>
Section 2.1. The Loan.	21
Section 2.2. Interest Rate; Late Charge; Default Rate.	21
Section 2.3. Terms of Payment; Option to Extend Scheduled Maturity Date.	22
Section 2.4. Prepayment.	23
Section 2.5. Security; Establishment of Funds.	24
Section 2.6. Application of Payments.	26
Section 2.7. Sources and Uses.	27
Section 2.8. Capital Adequacy; Increased Costs; Illegality.	28
Section 2.9. Interest Rate Protection.	29
Section 2.10. Libor Breakage Amount.	29
Section 2.11. Loan Origination Fee.	29
Section 2.12. Evidence of Debt.	30
Section 2.13. Substitution of Lenders.	31
Section 2.14. Defaulting Lenders.	32
Section 2.15. Fees and Expenses.	32
Section 2.16. Withholding Taxes.	33
Section 2.17. Partial Release.	35
<b>ARTICLE III INSURANCE, CONDEMNATION, AND IMPOUNDS</b>	<b>37</b>
Section 3.1. Insurance.	37
Section 3.2. Use and Application of Insurance Proceeds.	40
Section 3.3. Condemnation Awards.	42
Section 3.4. Insurance Impounds.	43
Section 3.5. Real Estate Tax Impounds.	43
<b>ARTICLE IV ENVIRONMENTAL MATTERS</b>	<b>44</b>
Section 4.1. Representations and Warranties on Environmental Matters.	44
Section 4.2. Covenants on Environmental Matters.	44
Section 4.3. Allocation of Risks and Indemnity.	45
Section 4.4. Administrative Agent's Right to Protect Collateral.	46
Section 4.5. No Waiver.	46

ARTICLE V LEASING MATTERS	47
Section 5.1. Representations and Warranties on Leases.	47
Section 5.2. [Reserved].	48
Section 5.3. Covenants.	48
Section 5.4. Tenant Estoppels.	50
Section 5.5. Payment of Rents Under Master Lease.	51
ARTICLE VI REPRESENTATIONS AND WARRANTIES	51
Section 6.1. Organization, Power and Authority; Formation Documents.	51
Section 6.2. Validity of Loan Documents.	52
Section 6.3. Liabilities; Litigation.	52
Section 6.4. Taxes and Assessments.	53
Section 6.5. Other Agreements; Defaults.	53
Section 6.6. Compliance with Law.	53
Section 6.7. Condemnation.	53
Section 6.8. Access.	53
Section 6.9. Location of Borrower.	53
Section 6.10. ERISA; Employees.	54
Section 6.11. Use of Loan Proceeds.	54
Section 6.12. Forfeiture.	54
Section 6.13. Tax Filings.	54
Section 6.14. Solvency.	54
Section 6.15. Full and Accurate Disclosure.	55
Section 6.16. Flood Zone.	55
Section 6.17. Single Purpose Entity/Separateness.	55
Section 6.18. Compliance With International Trade Control Laws and OFAC Regulations.	58
Section 6.19. Borrower's Funds.	58
Section 6.20. Operators' Agreements.	60
Section 6.21. Physical Condition.	60
Section 6.22. Healthcare Representations.	60
Section 6.23. No Change in Facts or Circumstances; Disclosure.	62
ARTICLE VII FINANCIAL REPORTING	62
Section 7.1. Financial Statements.	62
Section 7.2. Additional Reports.	63
Section 7.3. Compliance Certificate.	64
Section 7.4. Accounting Principles.	64
Section 7.5. Other Information; Access.	65
Section 7.6. Annual Budget.	65
Section 7.7. Books and Records/Audits.	65

ARTICLE VIII COVENANTS	65
Section 8.1. Transfers or Encumbrance of Property.	66
Section 8.2. Taxes; Utility Charges.	68
Section 8.3. Management.	69
Section 8.4. Operation; Maintenance; Inspection.	69
Section 8.5. Taxes on Security.	70
Section 8.6. Legal Existence; Name, Etc.	70
Section 8.7. Further Assurances.	71
Section 8.8. Estoppel Certificates Regarding Loan.	71
Section 8.9. Notice of Certain Events.	71
Section 8.10. Indemnification.	71
Section 8.11. [Intentionally Omitted].	72
Section 8.12. Payment For Labor and Materials.	72
Section 8.13. Use and Proceeds, Revenues.	72
Section 8.14. Compliance with Laws and Contractual Obligations.	72
Section 8.15. Operating and Financial Covenants.	73
Section 8.16. Healthcare Laws and Covenants.	73
Section 8.17. Cooperation Regarding Licenses.	76
Section 8.18. Transactions With Affiliates.	76
Section 8.19. Representations and Warranties.	76
Section 8.20. Alterations.	76
Section 8.21. Business and Operations.	77
Section 8.22. Severability of Covenants.	77
Section 8.23. Post-Closing Obligations.	77
Section 8.24. Ground Lease.	77
Section 8.25. Joint Venture.	77
ARTICLE IX EVENTS OF DEFAULT	77
Section 9.1. Payments.	77
Section 9.2. Insurance.	77
Section 9.3. Transfers.	78
Section 9.4. Covenants.	78
Section 9.5. Representations and Warranties.	78
Section 9.6. Other Encumbrances.	78
Section 9.7. Involuntary Bankruptcy or Other Proceeding.	78
Section 9.8. Voluntary Petitions, etc.	78
Section 9.9. Default Under Operators' Agreement.	79
Section 9.10. Certain Covenants.	79
Section 9.11. Financial Information.	79
Section 9.12. Default Under Guaranty.	79
Section 9.13. Criminal Act.	79
Section 9.14. Master Lease.	79
Section 9.15. Ground Lease.	79
Section 9.16. Environmental Indemnity Agreement.	80
Section 9.17. Post-Closing Obligations.	80

Section 9.18.	Death of Guarantor.	80
Section 9.19.	Cash Management Agreement.	80
Section 9.20.	Admissions Restrictions; Special Cure Rights.	80
Section 9.21.	Healthcare Investigations; Special Cure Right with Respect to Operational Defaults.	80
<b>ARTICLE X REMEDIES</b>		<b>81</b>
Section 10.1.	Remedies - Insolvency Events.	81
Section 10.2.	Remedies - Other Events.	82
Section 10.3.	Administrative Agent's Right to Perform the Obligations.	82
<b>ARTICLE XI ADMINISTRATIVE AGENT</b>		<b>83</b>
Section 11.1.	Appointment and Duties.	83
Section 11.2.	Binding Effect.	84
Section 11.3.	Use of Discretion.	84
Section 11.4.	Delegation of Rights and Duties.	84
Section 11.5.	Reliance and Liability.	85
Section 11.6.	Administrative Agent Individually.	86
Section 11.7.	Lender Credit Decision.	86
Section 11.8.	Expenses; Indemnities.	86
Section 11.9.	Resignation of Administrative Agent.	87
Section 11.10.	Additional Secured Parties.	88
<b>ARTICLE XII MISCELLANEOUS</b>		<b>88</b>
Section 12.1.	Notices.	88
Section 12.2.	Amendments and Waivers.	90
Section 12.3.	Assignments and Participations; Binding Effect.	92
Section 12.4.	Indemnities.	95
Section 12.5.	Lender-Creditor Relationship.	95
Section 12.6.	[Reserved].	96
Section 12.7.	Sharing of Payments, Etc.	96
Section 12.8.	Marshaling; Payments Set Aside.	96
Section 12.9.	Limitation on Interest.	97
Section 12.10.	Invalid Provisions.	97
Section 12.11.	Reimbursement of Expenses.	98
Section 12.12.	Approvals; Third Parties; Conditions.	98
Section 12.13.	Administrative Agent and Lenders Not in Control; No Partnership.	99
Section 12.14.	Contest of Certain Claims.	99
Section 12.15.	Time of the Essence.	100
Section 12.16.	Successors and Assigns.	100
Section 12.17.	Renewal, Extension or Rearrangement.	100
Section 12.18.	Waivers.	100
Section 12.19.	Cumulative Rights; Joint and Several Liability.	100
Section 12.20.	Singular and Plural.	100

Section 12.21.	Exhibits and Schedules.	100
Section 12.22.	Titles of Articles, Sections and Subsections.	101
Section 12.23.	Promotional Material.	101
Section 12.24.	Survival.	101
Section 12.25.	WAIVER OF JURY TRIAL.	101
Section 12.26.	Waiver of Punitive or Consequential Damages.	101
Section 12.27.	Governing Law.	102
Section 12.28.	Entire Agreement.	102
Section 12.29.	Counterparts.	102
Section 12.30.	Consents and Approvals.	102
Section 12.31.	[Reserved].	102
Section 12.32.	Effectiveness of Facsimile Documents and Signatures.	102
Section 12.33.	Venue.	103
Section 12.34.	Important Information Regarding Procedures for Requesting Credit.	103
Section 12.35.	Method of Payment.	103
Section 12.36.	Non-Public Information; Confidentiality; Disclosure.	103
Section 12.37.	Post-Closing Obligations of Borrower.	104
Section 12.38.	Release and Waiver Regarding Special Audits.	104
ARTICLE XIII LIMITATIONS ON LIABILITY		105
Section 13.1.	Limitation on Liability.	105
Section 13.2.	Limitation on Liability of Lender's Officers, Employees, etc.	108
ARTICLE XIV cross-guaranty		108
Section 14.1.	Cross-Guaranty.	108
Section 14.2.	Waivers By Borrower.	109
Section 14.3.	Benefit of Guaranty.	109
Section 14.4.	Waiver of Subrogation, Etc.	109
Section 14.5.	Election of Remedies.	110
Section 14.6.	Limitation.	110
Section 14.7.	Contribution with respect to Guarantee Obligations.	110
Section 14.8.	Liability Cumulative.	111

Exhibits and Schedules

Exhibit A	Description of Projects and Operators; Allocated Loan Amounts
Exhibit B	Loan Commitments
Schedule 2.1	Conditions to Advance of Loan Proceeds
Schedule 2.3(a)	Amortization Schedule
Schedule 2.7	Sources and Uses
Schedule 6.1	Organizational Information; Organizational Chart
Schedule 6.22	Disclosures Regarding Healthcare Matters
Schedule 6.22(a)	Third Party Payor Programs
Schedule 6.22(b)	Primary Licenses
Schedule 7.2	Form of Compliance Certificate
Schedule 12.37	Post-Closing Obligations

## LOAN AGREEMENT

This Loan Agreement (this “**Agreement**”) is entered into as of December 31, 2014, by and among GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation (“**GE Capital**”), as Administrative Agent and collateral agent for the Lenders (as defined herein) (in such capacity and together with its successors and permitted assigns, the “**Administrative Agent**”), THE FINANCIAL INSTITUTIONS WHO ARE OR HEREAFTER BECOME PARTIES TO THIS AGREEMENT as Lenders (together with their successors and permitted assigns, each a “**Lender**” and collectively, the “**Lenders**”), and HP REDDING, LLC, a Delaware limited liability company (“**Redding Sundial Borrower**”), SUMMIT SALEM, LLC, a Delaware limited liability company (“**Salem Applewood Borrower**”), and SUMMIT PORTLAND, LLC, a Delaware limited liability company (“**Portland Gateway Borrower**” and, collectively with Redding Sundial Borrower and Salem Applewood Borrower, and each, individually, as the context may require, “**Borrower**”).

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Certain Definitions.** As used herein, the following terms have the meanings indicated:

“**Acceleration Prepayment Premium**” has the meaning assigned in Section 2.4(d).

“**Account Debtor**” means “account debtor”, as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

“**ACH**” has the meaning assigned in Section 2.6(c).

“**Acknowledgement of Property Manager**” means, individually and collectively, each Collateral Assignment, Subordination and Agreement of a Property Manager (whether one or more) executed by a Property Manager in favor of the Administrative Agent (on behalf of itself and the Lenders).

“**Adjusted Expenses**” means actual operating expenses related to the Projects, excluding any rent and interest paid and depreciation recorded by each Master Tenant on a stabilized accrual basis for the period in question (or, if no period is specified, then for the most current previous twelve (12) month period), as reasonably adjusted by Administrative Agent, including: (i) recurring expenses as determined under GAAP, (ii) real estate taxes, (iii) management fees (whether paid or not) in an amount not less than five percent (5%) of effective gross income (or the actual management fee paid, if higher) and (iv) a replacement reserve (whether reserved or not) of not less than Three Hundred Fifty and No/100 Dollars (\$350.00) per Residential Unit per annum.

“**Adjusted Net Operating Income**” or “**ANOI**” means annualized Adjusted Revenue less Adjusted Expenses, based upon the financial reports provided by Borrower under Article 7 and approved by Administrative Agent in its reasonable discretion.

“**Adjusted Revenue**” means revenues generated by the Operators at the Projects for the period in question (and if none specified, then for the most current twelve (12) months), as determined under GAAP, but excluding (a) nonrecurring income and non-property related income (as determined by Administrative Agent in its sole discretion) and income from tenants that is classified as “bad debt” under GAAP, and (b) late fees and interest income; provided, however, if actual occupancy of the Projects, taken as a whole, exceeds 95%, Adjusted Revenue shall be proportionately reduced assuming an occupancy of 95%.

“**Administrative Agent**” has the meaning assigned in the preamble to this Agreement.

“**Affected Lender**” has the meaning assigned in Section 2.13(a).

“**Affiliate**” means, with respect to any Person, (a) any corporation in which such Person or any partner, shareholder, director, officer, member, or manager of such Person directly or indirectly owns or controls more than ten percent (10%) of the beneficial interest, (b) any partnership, joint venture or limited liability company in which such Person or any partner, shareholder, director, officer, member, or manager of such Person is a partner, joint venturer or member, (c) any trust in which such Person or any partner, shareholder, director, officer, member or manager of such Person is a trustee or beneficiary, (d) any Person which is directly or indirectly owned or controlled by such Person or any partner, shareholder, director, officer, member or manager of such Person, (e) any partner, shareholder, director, officer, member, manager or employee of such Person, (f) any Person related by birth, adoption or marriage to any partner, shareholder, director, officer, member, manager, or employee of such Person. Any Borrower Party shall be deemed an Affiliate of Borrower.

“**Affiliated Manager**” means any property manager in which Borrower, or any Affiliate of Borrower has, directly or indirectly, any legal, beneficial or economic interest.

“**Agreement**” means this Loan Agreement, as amended, restated, supplemented, or otherwise modified from time to time.

“**Allocated Loan Amount**” means, with respect to each Project, the amount specified on Exhibit A hereto as the “Allocated Loan Amount” for such Project.

“**Anti-Money Laundering Laws**” means those laws, regulations and sanctions, state and federal, criminal and civil, that (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the Patriot Act, the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1, *et seq.*, the International Emergency Economic Powers Act, 50 U.S.C. Section 1701, *et seq.*, and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

“**Approved Fund**” means, with respect to Administrative Agent or any Lender, any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) is advised or managed by (i) Administrative Agent or such Lender, (ii) any Affiliate of Administrative Agent or such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages Administrative Agent or such Lender.

“**Approved Insurer**” means any insurer (other than Medicaid/Medicare/TRICARE) as may be approved by Administrative Agent from time to time in its sole discretion.

“**Assignment**” means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, pursuant to the terms and provisions of Section 12.3 (with the consent of any party whose consent is required by Section 12.3), accepted by the Administrative Agent, in form and substance satisfactory to Administrative Agent.

“**Assignment of Hedge Agreement**” means one more collateral assignments of Hedge Agreements, as amended, restated, supplemented or otherwise modified from time to time, which may be executed and delivered by Borrower and the counterparty under such Hedge Agreement to Administrative Agent (on behalf of itself and the Lenders), in accordance with Section 2.9 hereof.

“**Assignment of Leases and Rents**” means, individually and collectively, each Assignment of Leases and Rents, executed by a Borrower for the benefit of Administrative Agent (on behalf of itself and the Lenders), as amended, restated, supplemented or otherwise modified from time to time.

“**Assignment of Membership Interests**” means, individually and collectively, each Ownership Pledge of Membership Interests and Security Agreement, executed by the members of a Borrower for the benefit of Administrative Agent (on behalf of the Lenders), and pertaining to the membership interests in such Borrower, as amended, restated, supplemented or otherwise modified from time to time.

“**ASTM**” means the American Society for Testing and Materials.

“**Award**” has the meaning assigned in Section 3.3.

“**Bankruptcy Party**” has the meaning assigned in Section 9.7.

“**Bank Secrecy Act**” means the Bank Secrecy Act, 31 U.S.C. Section 5311, *et seq.*

“**Borrower**” has the meaning assigned in the preamble to this Agreement.

“**Borrower Formation Documents**” has the meaning assigned in Section 6.1(b).

“**Borrower Party**” means any Guarantor, any general partner of any Borrower, and any general partner in any partnership that is a general partner of any Borrower, any manager or managing member of any Borrower, any manager or managing member in any limited liability company that is a managing member of any Borrower and any member of any Borrower that is party to an Assignment of Membership Interests.

“**Borrower’s Knowledge**” means the knowledge of any Borrower after diligent inquiry including, without limitation, review of existing reports (e.g., environmental and property condition reports) regarding the Projects, inquiry of the current operator of each of the Projects.

“**Business Day**” means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the State of Illinois are not open for general banking business.

“**Cash Management Agreement**” means any agreement existing as of the date hereof or from time to time during the term of the Loan among Administrative Agent (on behalf of itself and the Lenders), a Borrower, a Master Tenant (or either of the foregoing) and a bank approved by Administrative Agent regarding the establishment and operation of a lockbox account, blocked account or similar account into which rents and other revenue are to be deposited, and includes the Deposit Account Control Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Casualty**” has the meaning assigned in Section 3.2.

“**Census Report**” means, with respect to the Projects, a report which records the number of licensed beds for the Projects, as well as the number of patients and patient census days by Third Party Payor source.

“**Closing Date**” means the date the Loan is funded by the Lenders.

“**Code**” means the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” means all real and personal property with respect to which Liens in favor of Administrative Agent are executed, identified or purported to be granted pursuant to the Loan Documents and which secure the Obligations described in the Loan Documents and the Secured Hedge Agreement, and includes, without limitation, all of each Borrower’s right, title and interest in, to and under all personal property, real property, and other assets that arise from, are used in connection with, are related to or are located at the Projects, whether now owned by or owing to, or hereafter acquired by or arising in favor of a Borrower (including all personal property and other assets owned or acquired under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from or to, a Borrower, and regardless of where located.

“**Commercial Lease**” means any non-residential Lease of any portion of a Project, but excluding each Master Lease and the Ground Lease.

“**Compliance Certificate**” means the compliance certificate in the form of *Schedule 7.2* attached hereto.

“**CON**” means a certificate of need or similar certificate, license or approval issued by the State Regulator for the requisite number of Residential Units in each of the Projects.

“**Condemnation**” has the meaning assigned in Section 3.3.

“**Contest**” has the meaning assigned in Section 13.1(b).

“**Contract Rate**” means a floating rate of interest equal to four percent (4.00%) per annum in excess of the LIBOR Rate.

“**Control**” or “**controls**” means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract, by its position with such Person as general partner or managing member, or otherwise; and the terms “Controlling” and “Controlled” have the meanings correlative to the foregoing.

“**Debt**” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“**Debt Service**” means, for any particular period, the aggregate interest, fixed principal (if applicable), and other payments due during such period under the Loan and under any other permitted Debt relating to the Projects expressly approved by Administrative Agent (but not including payments applied to escrows or reserves required by Administrative Agent or the Lenders). In the event that Debt Service for a period of twelve (12) months (or other calculation period) is not available, Administrative Agent shall annualize the Debt Service for such period of time as is available.

“**Debt Service Coverage Ratio**” means the ratio of (i) Adjusted Net Operating Income for the Projects for a particular period, to (ii) Debt Service for such period.

“**Default Rate**” means the lesser of (a) the maximum rate of interest allowed by applicable law, and (b) five percent (5%) per annum in excess of the Contract Rate.

“**Defaulting Lender**” means a Lender that (a) has given written notice to Borrower, Administrative Agent, or any other Lender that it will fail to fund any amounts to be funded by such Lender after the Closing Date under this Agreement or otherwise fails to fund such amount under this Agreement; (b) is in default for failing to make payments under one or more syndicated credit facilities (unless subject to a good faith dispute); (c) has declared (or the holding company of such Lender has declared) bankruptcy or is otherwise involved in a liquidation proceeding and Administrative Agent has determined such Lender is reasonably likely to become a Defaulting Lender or (d) is the subject of a receivership.

“**Deposit Account**” means a “**deposit account**” (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of a Borrower.

“**Deposit Account Bank**” means each bank in which any Borrower maintains a Deposit Account.

“**Deposit Account Control Agreement**” means an agreement, in form and substance satisfactory to Administrative Agent, among Administrative Agent, a Borrower and the Deposit Account Bank, which agreement provides that (a) such bank shall comply with instructions originated by Administrative Agent directing disposition of the funds in such Deposit Account without further consent by Borrower, and (b) such bank shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of commercially reasonable fees and other items, in each such case expressly consented to by Administrative Agent, and containing such other terms and conditions as Administrative Agent may require, as amended, restated, supplemented or otherwise modified from time to time.

“**Determination Date**” has the meaning assigned in Section 8.15(a).

“**Dollars**” and the sign “\$” each mean the lawful money of the United States of America.

“**Electronic Transmission**” means any process of communication that does not directly involve the physical transfer of paper and that is suitable for the retention, retrieval and reproduction of information by the recipient.

“**Environmental Indemnity Agreement**” means that certain Hazardous Materials Indemnity Agreement dated of even date hereof in favor of Administrative Agent (for itself and on behalf of the Lenders) executed by Borrower and Guarantor with respect to the Projects, as amended, restated, supplemented or otherwise modified from time to time.

“**Environmental Laws**” means any federal, state or local law (whether imposed by statute, ordinance, rule, regulation, administrative or judicial order, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including, without limitation, such laws (a) governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials, (b) governing or regulating the transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of such property, or (c) requiring notification or disclosure of releases of Hazardous Materials or other environmental conditions whether or not in connection with a transfer of title to or interest in property.

“**ERISA**” means the Employment Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations promulgated thereunder.

“**ERISA Affiliate**” means each Restricted Party and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control that, together with such Restricted Party, are (or were at any time in the past six years) treated as a single employer under Section 414 of the Internal Revenue Code.

“**Event of Default**” has the meaning assigned in Article 9.

“**Extended Maturity Date**” means December 31, 2018.

“**Extension Request**” has the meaning assigned in Section 2.3(c).

“**FATCA**” means Sections 1471, 1472, 1473 and 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantially comparable and not materially more onerous to comply with), current or future United States Treasury Regulations promulgated thereunder and published guidance with respect thereto, any agreements entered into pursuant to Section 1741(b)(1) of the Code and any applicable intergovernmental agreements with respect thereto.

“**Federal Bankruptcy Code**” means Chapter 11 of Title II of the United States Code (11 U.S.C. § 101, *et seq.*), as amended.

“**Financial Institution**” means a United States Financial Institution as defined in 31 U.S.C. 5312, as amended from time to time.

“**FIRREA**” has the meaning assigned in *Schedule 2.1*.

“**Funds**” means, collectively, the Replacement Escrow Fund, the Governmental Loan Holding Fund and the Master Lease Fund.

“**GAAP**” means general accepted accounting principles of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board that are applicable on the date so indicated and consistently applied.

“**GE Capital**” has the meaning assigned in the Preamble to this Agreement.

“**GECB**” has the meaning specified in Section 12.3.

“**Governmental Account Debtor**” means any Account Debtor that is a Governmental Authority, including, without limitation, Medicare and Medicaid.

“**Governmental Approvals**” means, collectively, all consents, licenses and permits and all other authorizations or approvals required from any Governmental Authority to operate the Projects.

“**Governmental Authority**” means any federal, state, county or municipal government or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body (including, without limitation, the State Regulator), or any court, administrative tribunal, or public body.

**“Governmental Lender”** means the Federal National Mortgage Association, the United States Department of Housing and Urban Development or any similar Governmental Authority that provides or guaranties real estate debt financing secured by independent living, assisted living, skilled nursing or other senior housing facilities.

**“Governmental Loan”** means a loan to be advanced to a Borrower by a lender insured by a Governmental Lender.

**“Governmental Loan Commitment”** means a commitment letter or letter of intent entered into on or before January 31, 2017, to a Borrower by a lender insured by a Governmental Lender and Borrower that contemplates the funding of a Governmental Loan, in an amount sufficient to repay the Partial Release Price in full on or before the Initial Maturity Date.

**“Governmental Loan Holding Fund Conditions”** means (a) no Event of Default has occurred and is continuing; (b) Borrower has delivered the Governmental Loan Commitment to Administrative Agent; (c) the Governmental Loan Commitment remains in full force and effect; and (d) the Governmental Loan Commitment has not been amended or modified in a manner that would reduce the funds available to Borrower to repay the Loan to be less than the amount required to repay the Obligations in full.

**“Governmental Loan Holding Fund”** has the meaning assigned in Section 2.5.

**“Ground Lease”** means that certain Ground Lease, dated as of July 1, 1992, as amended by that certain Amendment of Ground Lease, dated December 13, 1996, made by Ground Lessor, as lessor, and Redding Sundial Borrower, as assignee of Redding Assisted Living Corp. pursuant to that certain Assignment of Lease, having an effective date of December 18, 2013, which is itself the assignee of Hilltop Joint Venture, as lessee, pursuant to that certain Assignment of Lease, having an effective date of April 18, 1996, all of which is evidenced by that certain Memorandum of Lease and recorded on July 7, 1992, in Book 2881, Page 130, of the official records of Shasta County, California, as affected by that certain Memorandum of Assignment of Lease, dated as of April 18, 1996, and recorded on April 18, 1996, as Document No. 13478 of the official records of Shasta County, California, as affected by that certain Memorandum of Assignment of Ground Lease, dated as of December 18, 2013, and recorded on December 19, 2013, as Document Number 2013-0043524 of the official records of Shasta County, California as the same may be further amended, restated, supplemented and otherwise modified from time to time.

**“Ground Lessor”** means D. Thomas McGregor and Ella McGregor, as co-trustees of The McGregor Family Trust under Declaration of Trust dated February 18, 1992, and any successor in interest thereto.

**“Guarantor”** means individually and collectively, (a) Summit Healthcare REIT, Inc. and (b) each other Person who executes and delivers a Recourse Guaranty Agreement with respect to the Obligations of a Borrower under Section 13.1.

**“Hazardous Materials”** means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by product thereof, (b) asbestos or asbestos containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, (h) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any Governmental Authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws, (i) any excessive moisture, mildews, mold or other fungi in quantities and/or concentrations that could reasonably be expected to pose a risk to human health or the environment, or negatively impact the value of the Projects or (j) any elements, material, compounds, mixtures, chemicals, wastes, pollutants, contaminants or substances known to cause cancer or reproductive toxicity, that, because of its quantity, concentration or physical or chemical characteristics, exposure is limited or regulated by any Governmental Authority having jurisdiction over human health and safety, natural resources or the environment, or which poses a significant present or potential hazard to human health and safety, or to the environment, if released into the workplace or the environment.

**“Healthcare Investigations”** means any inquiries, investigations, probes, audits or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of a Borrower, Guarantor or any Operator (including, without limitation, inquiries involving the Comprehensive Error Rate Testing and any inquiries, investigations, probes, audit or procedures initiated by Fiscal Intermediary/Medicare Administrator Contractor, Medicaid Integrity Contractor, Recovery Audit Contractor, Program Safeguard Contractor, Zone Program Integrity Contractor, Attorney General, Office of Inspector General, Department of Justice or similar governmental agencies or contractors for such agencies).

**“Healthcare Laws”** means all applicable state and federal statutes, codes, ordinances, orders, rules, regulations, and guidance relating to patient healthcare and/or patient healthcare information, including HIPAA, accreditation standards of the State Regulator, the Health Information Technology for Economic Clinical Health Act provisions of the American Recovery and Investment Act of 2009 and the respective rules and regulations promulgated thereunder, and all other applicable state and federal laws regarding the privacy and security of protected health information and other confidential patient information; the establishment, construction, ownership, operation, licensure, use or occupancy of the Projects or any part thereof as an independent living, assisted living, memory care, skilled nursing or other healthcare or senior living facility, as applicable, and all conditions of participation pursuant to Medicare and/or Medicaid certification; fraud and abuse, including without limitation, Section 1128B(b) of the Social Security Act, as amended, 42 U.S.C. Section 1320a-7(b) (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the **“Federal Anti-Kickback Statute,”** and the Social Security Act, as amended, Section 1877, 42 U.S.C. Section 1395nn (Prohibition Against Certain Referrals), commonly referred to as the **“Stark Statute,”** 31 U.S.C Section 3729-33, and the **“False Claims Act”**.

**“Hedge Agreement”** means, collectively, any and all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements or other similar agreements intended to provide protection against to fluctuations in interest rates or currency exchange rates, now or hereafter entered into by or on behalf of any Borrower pursuant to Section 2.9 of this Agreement, as the same may be renewed, extended, amended or replaced from time to time.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended.

“**HIPAA Compliance Plan**” has the meaning assigned in Section 8.16(a).

“**HIPAA Compliance Date**” has the meaning assigned in Section 8.16(b).

“**HIPAA Compliant**” has the meaning assigned in Section 8.16(a).

“**Indebtedness**” means all payment obligations of Borrower or any Borrower Party to Administrative Agent or to any Lender under the Loan or any of the Loan Documents, including, without limitation, any and all interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post petition interest is allowed in any such proceeding.

“**Indemnitee**” has the meaning assigned in Section 11.3.

“**Initial Maturity Date**” means December 31, 2017.

“**Insurance Impound**” has the meaning assigned in Section 3.4.

“**Insurance Premiums**” has the meaning assigned in Section 3.1(c).

“**Interest Only Period**” means the first twenty-four (24) Payment Dates commencing with the first Payment Date on February 1, 2015, and ending on the Payment Date on January 1, 2017.

“**Land**” means the real property described in Exhibit A attached hereto.

“**Laws**” means, collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations and guidances and judicial opinions or presidential authority in the applicable jurisdiction, including quality and safety standards, accreditation standards and requirements of any Governmental Authority or State Regulator having jurisdiction over Borrower or the ownership, use, occupancy or operations of a Project, each as it may be amended from time to time.

“**Lease Party**” means the party to any Lease that grants to the other party the right to use or occupy any portion of a Project, whether it be Borrower or any Operator.

“**Leases**” means all leases of, subleases of and occupancy agreements affecting a Project or any part thereof now existing or hereafter executed (including all patient and resident care agreements and service agreements which include an occupancy agreement) and all amendments, modifications or supplements thereto.

“**Lender**” has the meaning assigned in the preamble to this Agreement. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral and the benefit of any guarantees of the Obligations as more fully set forth in this Agreement and the other Loan Documents, the term “**Lender**” shall include Secured Hedge Providers. For the avoidance of doubt, any Person to whom any Obligations in respect of a Secured Hedge Agreement are owed and which does not hold any portion of the Loan or commitments hereunder shall not be entitled to any other rights as a “**Lender**” under this Agreement or the other Loan Documents.

“**Lender Transferee**” has the meaning assigned in Section 12.3(f).

“**Liabilities**” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“**Libor Breakage Amount**” means an amount, as reasonably calculated by any Lender, equal to the amount of any losses, expenses and liabilities (including, without limitation, any loss (including interest paid) and lost opportunity cost in connection with the re-employment of such funds) that such Lender or any of its Affiliates may sustain as a result of any payment of the Loan (or any portion thereof) on any day that is not the last day of the Libor Interest Period applicable thereto (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise).

“**Libor Business Day**” means a Business Day on which banks in the City of London are generally open for interbank or foreign exchange transactions.

“**Libor Interest Period**” means each period commencing on the first day of a calendar month and ending on the last day of such month; provided, any Libor Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date.

“**Libor Rate**” means the greater of (a) five tenths percent (0.50%) per annum or (b) for each Libor Interest Period, the rate determined by the Administrative Agent to be the offered rate for ninety (90) day deposits in Dollars appearing on the Reuters Screen LIBOR01 page as of 11:00 a.m. (London time) two (2) Business Days prior to the next preceding first day of each Libor Interest Period. In the event that such rate does not appear on the Reuters Screen LIBOR01 page at such time, the “**Libor Rate**” shall be determined by reference to such other comparable publicly available service for displaying the offered rate for deposit in Dollars in the London interbank market as may be selected by the Administrative Agent and, in the absence of availability, such other method to determine such offered rate as may be selected by the Administrative Agent in its sole discretion.

“**Lien**” means any interest, or claim thereof, in a Project securing an obligation owed to, or a claim by, any Person other than the owner of such Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “**Lien**” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting such Project.

“**Loan**” means the loan made by the Lenders to Borrower under this Agreement, together with all other amounts secured by the Loan Documents.

“**Loan Commitment**” means, with respect to each Lender, the commitment of such Lender to make its Pro Rata Share of the Loan to Borrower, which commitment is in the amount set forth opposite such Lender’s name on **Exhibit B** under the caption “**Lender’s Loan Commitment**.” The aggregate amount of the Loan Commitments on the date hereof is \$13,400,000.00.

“**Loan Documents**” means: (a) this Agreement, (b) each Note, (c) each Mortgage, (d) each Assignment of Leases and Rents, (e) Uniform Commercial Code financing statements, (f) such assignments of management agreements, contracts and other rights as may be required under the Term Sheet or otherwise requested by Administrative Agent or the Lenders, (g) the Business Associate Agreement, (h) each Recourse Guaranty Agreement, (i) each Collateral Assignment of Membership Interests, (j) the Security Agreement, (k) each Cash Management Agreement, (l) [Reserved], (m) each Acknowledgment of Property Manager, (n) any Secured Hedge Agreement, (o) all other documents evidencing, securing, governing or otherwise pertaining to the Loan, (p) any letter of credit provided to Administrative Agent (for itself and on behalf of the Lenders) in connection with the Loan, and (q) all amendments, modifications, renewals, substitutions and replacements of any of the foregoing; provided however, in no event shall the term “**Loan Documents**” include the Environmental Indemnity Agreement.

“**Lockout Period**” means the period beginning on the Closing Date and ending on the last day of the calendar month that is twelve (12) months thereafter.

“**Management Agreement**” means, individually or collectively, as the context may require, each agreement, in the form approved by Administrative Agent, between a Borrower and a Property Manager or a Master Tenant and a Property Manager pursuant to which such Property Manager is engaged to manage a Project.

“**Master Lease**” means, individually and collectively, as the context may require, each lease, in the form approved by Administrative Agent, between a Borrower, as landlord, and a Master Tenant, as tenant, demising a Project in its entirety, together with all amendments, restatements, supplements and modifications thereto permitted under **Section 5.3(b)** hereof.

“**Master Lease Fund**” has the meaning assigned in **Section 2.5**.

“**Master Lease Subordination Agreement**” means, individually and collectively, as the context may require, a Subordination, Non-Disturbance and Attornment Agreement (whether one or more), in the form approved by Administrative Agent, executed by a Master Tenant, a Borrower and Administrative Agent with respect to a Master Lease.

“**Master Tenant**” means, individually or collectively as the context may require, each Person identified on **Exhibit A** as the “Master Tenant” of a Project.

“**Material Action**” means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have a Borrower or any Borrower Party be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against a Borrower or any Borrower Party, to file a petition seeking, or consent to, reorganization or relief with respect to a Borrower or any Borrower Party under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for a Borrower or any Borrower Party or a substantial part of its respective property, to make any assignment for the benefit of creditors of a Borrower or any Borrower Party, the admission in writing such Borrower’s or any Borrower Party of such Person’s inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

**“Material Adverse Change”** or **“material adverse change”** means, in Administrative Agent’s reasonable discretion, the business prospects, operations or financial condition of a Person or property has changed in a manner which could impair the value of the Collateral, prevent timely repayment of the Loan or otherwise prevent the applicable Person from timely performing any of its material obligations under the Loan Documents or Environmental Indemnity Agreement.

**“Material Adverse Effect”** or **“material adverse effect”** means, in Administrative Agent’s reasonable discretion, a material adverse effect on (i) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of a Borrower, (ii) the ability of a Borrower to perform any material obligation under the Loan Documents, (iii) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents, (iv) the ability of a Borrower or an Operator to operate all or a material portion of the Projects owned by such Borrower or operated by such Operator or (v) the ability of a Master Tenant to make the required rental payments under a Master Lease.

**“Maturity Date”** means, as applicable, the earlier of (a) the Scheduled Maturity Date and (b) the date on which the Obligations are required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.

**“Medicaid”** means Title XIX of the Social Security Act, which was enacted in 1965 to provide a cooperative federal-state program for low income and medically indigent persons, which is partially funded by the federal government and administered by the states.

**“Medicare”** means Title XVIII of the Social Security Act, which was enacted in 1965 to provide a federally funded and administered health program for the aged and certain disabled persons.

**“Mortgage”** means, individually and collectively, each deed of trust, mortgage, deed to secure debt or similar security agreement securing the Obligations that is executed by a Borrower in favor of, or for the benefit of, Administrative Agent, as amended, restated, supplemented or otherwise modified from time to time.

**“Non-U.S. Lender Party”** means each of the Administrative Agent, the Lenders and each participant, in each case that is not a Domestic Person.

**“Note”** and **“Notes”** means, respectively, (a) each Promissory Note executed at any time by a Borrower and payable to the order of a Lender in evidence of the Loan of such Lender and (b) all such Promissory Notes, together with all renewals, modifications and extensions thereof and any replacement or additional notes executed by any Borrower pursuant to the terms hereof.

“**Obligations**” means the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents, including, without limitation, any obligations under any Secured Hedge Agreements.

“**OFAC**” means the Office of Foreign Assets Control, Department of the Treasury.

“**Operational Default**” has the meaning assigned in Section 9.21(b).

“**Operational Default Forbearance Period**” has the meaning assigned in Section 9.21(b).

“**Operator**”, individually, and “**Operators**”, collectively, means the applicable Property Manager, Master Tenant, property sublessee and/or operator under any Operating Agreement, approved by Administrative Agent and any successor to such Operator approved by Administrative Agent. If there exists a Property Manager, Master Tenant and a property sublessee, or any combination thereof, with respect to a Project, then “**Operator**” shall refer to all such entities, collectively and individually as applicable and as the context may require.

“**Operators’ Agreements**” means, collectively, the Master Lease, the Management Agreement and/or other similar agreement regarding the management and operation of a Project between a Borrower and a Master Tenant or a Master Tenant and a Property Manager.

“**Other Taxes**” has the meaning assigned in Section 2.16(c).

“**Partial Release**” has the meaning assigned in Section 2.17.

“**Partial Release Price**” means an amount equal to the aggregate Allocated Loan Amount for both the Portland Gateway Project and the Salem Applewood Project.

“**Partial Release Principal Reduction Payment**” shall mean a payment of a principal amount that, if it had been made and applied to the principal balance of the Loan on the last day of the applicable fiscal quarter, would have reduced the principal balance of the Loan to an amount that would have enabled the Retained Project Debt Yield and the Retained Project Debt Service Coverage Ratio to be in compliance with the requirements specified in Section 2.17(a).

“**Partial Release Projects**” means the Portland Gateway Project and the Salem Applewood Project.

“**Patriot Act**” means the USA Patriot Act of 2001, Pub. L. No. 107-56.

“**Payment Date**” means the first (1<sup>st</sup>) day of each calendar month.

“**Permit**” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate (including certificates of occupancy), concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Permitted Exceptions**” means the exceptions to title contained in the Title Policy insuring the liens created pursuant to the Mortgages and any other title matter to which Administrative Agent consents in writing.

“**Permitted Member**” means a Delaware limited liability company of which (A) Union Life (or another entity that is not an Affiliate of Union Life approved by Administrative Agent in its sole discretion) holds, directly or indirectly, 90% of the membership interests and (B) Guarantor and its Affiliates hold, directly or indirectly, 10% of the membership interests.

“**Permitted Transfer**” means (a) a Transfer expressly permitted under Section 8.1(c) or (b) a Prohibited Transfer approved by the Required Lenders pursuant to Section 8.1(a) or (d).

“**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

“**Portland Gateway Borrower**” has the meaning assigned in the preamble to this Agreement.

“**Portland Gateway Project**” means the Project described on Part 1 of Exhibit A.

“**Post-Closing Obligations**” means the post closing obligations described on *Schedule 12.37*.

“**Potential Default**” means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Primary Licenses**” means, with respect to a Project or Person operating a Project, as the case may be, the CON, permit or license to operate as an assisted living, memory care or skilled nursing facility, as applicable, and each Medicaid/Medicare/TRICARE provider agreement.

“**Prohibited Transfer**” has the meaning assigned in Section 8.1(a).

“**Projects**” means the Land, and facilities located thereon, and all related facilities, amenities, fixtures and personal property owned by Borrower and any improvements now or hereafter located on such Land, and any other real property and facilities owned by Borrower that may from time to time be encumbered by a Mortgage. Each Project is more particularly described on Exhibit A hereto.

“**Project Yield**” means the ratio, as of any particular date, expressed as a percentage, of (a) annualized Adjusted Net Operating Income from the Projects, as determined by Administrative Agent as of such date, to (b) the outstanding principal balance of the Loan as of such date.

“**Property Condition Report**” has the meaning assigned in *Schedule 2.1*.

“**Property Manager**” means, individually or collectively as the context may require, each Person identified on Exhibit A as the “Property Manager” of a Project, together with any successor thereto approved by Administrative Agent.

“**Pro Rata Outstandings**” means, with respect to any Lender at any time, the outstanding principal amount of the Loan owing to such Lender at such time.

“**Pro Rata Share**” means, with respect to any Lender at any time (a) on or prior to the Closing Date, the percentage obtained by dividing (i) the Loan Commitment of such Lender then in effect by (ii) the sum of the Loan Commitments and (b) after the making of the Loan, the percentage obtained by dividing (i) the Pro Rata Outstandings of such Lender by (ii) the total outstanding principal amount of the Loan; provided, however, that, if there are no Loan Commitments and no Pro Rata Outstandings, such Lender’s Pro Rata Share shall be determined based on the Pro Rata Share most recently in effect, after giving effect to any subsequent assignment and any subsequent non-pro rata payments of any Lender pursuant to the terms of this Agreement.

“**Prorated Interest**” has the meaning assigned in Section 2.4(b).

“**Recipient**” has the meaning assigned in Section 12.38.

“**Recourse Guaranty Agreement**” means that certain Guaranty of Recourse Obligations executed by Guarantor, as amended, restated, supplemented or otherwise modified from time to time.

“**Redding Sundial Borrower**” has the meaning assigned in the preamble to this Agreement.

“**Redding Sundial Project**” means the Project described on Part 2 of Exhibit A.

“**Register**” has the meaning specified in Section 2.12(b).

“**Related Persons**” means, with respect to any Person, each of such Person’s Affiliates, officers, directors, employees, agents, trustees, representatives, attorneys, accountants, and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates, together with, if such Person is the Administrative Agent, each other Person or individual designated, nominated or otherwise mandated by or helping the Administrative Agent pursuant to and in accordance with Section 11.4 or any comparable provision of any Loan Document.

“**Replacement Escrow Fund**” has the meaning assigned in Section 2.5.

“**Reports**” has the meaning assigned in Section 12.38.

“**Required Lenders**” means, at any time, Lenders whose Pro Rata Shares at such time are in excess of 50% in the aggregate; provided, however, the Loan Commitment of, and the portion of the Obligations held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**“Requirements of Law”** means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Residential Units”** means, collectively, (a) each skilled nursing bed, Alzheimer’s unit and/or assisted living unit authorized under the Primary Licenses and (b) each independent living unit comprising the Projects.

**“Restoration Threshold”** means, as of any date, the lesser of (a) two and one-half percent (2.5%) of the replacement value of the improvements at the affected Project as of such date, and (b) \$500,000.00.

**“Restricted Party”** means Borrower, any Affiliated Manager, Guarantor or any shareholder, partner, member or non-member manager of Borrower or of any Affiliated Manager, or of any direct or indirect legal or beneficial owner of Borrower, of any Affiliated Manager or of any shareholder, partner, member or any non-member manager hereof.

**“Retained Project Adjusted Expenses”** means actual operating expenses (as adjusted by Administrative Agent) related to the Redding Sundial Project on a stabilized accrual basis for the twelve (12) month period ending on a particular date, including: (i) recurring expenses as determined under GAAP, (ii) real estate taxes, (iii) Insurance Premiums, (iv) management fees (whether paid or not) in an amount not less than five percent (5%) of effective gross income (or the actual management fee paid, if higher) and (v) a replacement reserve (whether reserved or not) of not less than Three Hundred Fifty and No/100 Dollars (\$350.00) per Residential Unit per annum.

**“Retained Project Adjusted Net Operating Income”** means the Retained Project Adjusted Revenue less the Retained Adjusted Expenses, based upon the financial reports provided by Borrowers under Article 7 and approved by Administrative Agent in its reasonable discretion.

**“Retained Project Adjusted Revenue”** means revenues (as adjusted by Administrative Agent) generated by the operation of the Redding Sundial Project for any particular period, as determined under GAAP, but excluding (a) nonrecurring income and non-property related income (as determined by Administrative Agent in its sole discretion) and income from tenants that is classified as “bad debt” under GAAP, and (b) late fees and interest income; provided, however, if actual occupancy of the Redding Sundial Project exceeds 95%, Retained Project Adjusted Revenue shall be proportionately reduced assuming an occupancy of 95%.

“**Retained Project Debt Service**” means, for any particular period, (1) the aggregate interest, fixed principal, and other payments due during such period under the Loan and under any other permitted Debt relating to the Redding Sundial Project expressly approved by Administrative Agent (but not including payments applied to escrows or reserves required by Administrative Agent or Lenders) minus (2) the aggregate interest, fixed principal and other payments due during such period under the Loan that would not have been due had the Partial Release Price been paid immediately prior to the commencement of such period. In the event that Retained Project Debt Service for a period of twelve (12) months is not available, Administrative Agent shall annualize the Retained Project Debt Service for such period of time as is available.

“**Retained Project Debt Service Coverage Ratio**” means, as of any particular date, the ratio of (i) the Retained Project Adjusted Net Operating Income for the twelve (12) calendar month period ending on such date, to (ii) Retained Project Debt Service for the twelve (12) calendar month period ending on such date.

“**Retained Project Debt Yield**” means the ratio, as of any particular date, expressed as a percentage, of (a) Retained Project Adjusted Net Operating Income, as determined by Administrative Agent for the twelve (12) calendar month period ending on such date, to (b) the outstanding principal balance of the Loan (determined on a pro forma basis after deducting the Partial Release Price therefrom) as of such date.

“**Salem Applewood Borrower**” has the meaning assigned in the preamble to this Agreement.

“**Salem Applewood Project**” means the Project described on Part 3 of **Exhibit A**.

“**Scheduled Maturity Date**” means the Initial Maturity Date or, if the Initial Maturity Date has been extended in accordance with **Section 2.3(c)**, the Extended Maturity Date.

“**Secured Hedge Agreement**” means any Hedge Agreement between a Borrower (or Affiliate of Borrower) and a Secured Hedge Provider.

“**Secured Hedge Provider**” means (i) a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Hedge Agreement) who has entered into a Hedge Agreement with any Borrower, or (ii) a Person with whom Borrower has entered into a Hedge Agreement provided or arranged by GE Capital or an Affiliate of GE Capital or for which GE Capital or an Affiliate of GE Capital has provided credit enhancement through either an assignment right or a letter of credit in favor of such Person, and any assignee thereof.

“**Secured Parties**” means the Lenders and the Administrative Agent and each such Person’s Related Persons.

“**Security**” means all of the real and personal property securing the Obligations described in the Loan Documents and the Secured Hedge Agreements.

“**Security Agreement**” means, collectively, the Security Agreement(s) executed by Borrower in favor of Administrative Agent (for itself and on behalf of the Lenders) covering certain personal property described therein, as amended, restated, supplemented or otherwise modified from time to time.

“**Security Deposits**” means any and all security deposits and entrance fees from any tenant or occupant of a Project collected or held by Borrower or any Operator.

“**Single Purpose Entity**” means a Person (other than an individual, a government or any agency or political subdivision thereof), which exists solely for the purpose of owning and leasing the Projects, observes corporate, company or partnership formalities, as applicable, independent of any other entity, and which otherwise complies with the covenants set forth in Section 6.17 hereof.

“**Site Assessment**” means an environmental engineering report for each Project prepared at Borrower’s expense by an engineer engaged by Borrower or by Administrative Agent on behalf of Borrower, and approved by Administrative Agent, and in a manner reasonably satisfactory to Administrative Agent, based upon an investigation relating to and making appropriate inquiries concerning the existence of Hazardous Materials on or about such Project, and the past or present discharge, disposal, release or escape of any such substances, all consistent with ASTM Standard E1527-05 (or any successor thereto published by ASTM) and good customary and commercial practice.

“**Social Security Act**” means 42 U.S.C. 401 *et seq.*, as enacted in 1935, and amended, restated or otherwise supplemented thereafter from time to time and all rules and regulations promulgated thereunder.

“**Specially Designated National and Blocked Persons**” means those Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC.

“**State Regulator**” has the meaning assigned in Section 8.14(a).

“**Substitute Lender**” has the meaning assigned in Section 2.13(a).

“**Survey**” has the meaning assigned in *Schedule 2.1*.

“**Tax Impound**” has the meaning assigned to such term in Section 3.5.

“**Taxes**” has the meaning assigned in Section 8.2.

“**Tenant**” means any tenant or occupant of a Project under a Lease.

“**Term Sheet**” means that certain letter agreement dated November 12, 2014, from Administrative Agent and accepted by and on behalf of Borrower on November 12, 2014.

“**Third Party Payor Programs**” means any participation or provider agreements with any third party payor, including Medicare, Medicaid, TRICARE and any Approved Insurer, and any other private commercial insurance managed care and employee assistance program, to which Borrower or any Operator may be subject with respect to any Project.

“**Title Policy**” has the meaning assigned in *Schedule 2.1*.

“**Transfer**” means any direct or indirect sale, transfer, conveyance, mortgage, grant of lien or other interest, bargain, installment sale, master lease, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of all or any portion of the direct or indirect legal or beneficial ownership of, or any interest in, (a) the Projects or any part thereof or (b) any Restricted Party including any agreement to transfer or cede to another Person any voting management or approved rights, or any other rights, appurtenant to such legal or beneficial ownership or other interest.

“**Transferee**” has the meaning assigned in Section 8.1(d).

“**TWEA**” has the meaning assigned in Section 6.19(f).

“**UCC**” means the Uniform Commercial Code as from time to time in effect in the State of Illinois; provided, however, that, in the event that, by reason of mandatory provisions of any applicable Requirement of Law, any of the attachment, perfection or priority of Administrative Agent’s or any other Lender’s security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of Illinois, “**UCC**” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

“**Union Life**” Union Life Insurance Co., Limited.

“**U.S. Lender Party**” means each of Administrative Agent, the Lenders, and each participant of a Lender, in each case that is a U.S. Person.

“**U.S. Person**” means any United States citizen, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories.

“**Withholding Taxes**” has the meaning assigned in Section 2.16.

“**Zoning Report**” has the meaning assigned in *Schedule 2.1*.

**Section 1.2. Definitions.** All terms defined in Section 1.1 above or otherwise in this Agreement shall, unless otherwise defined therein, have the same meanings when used in any other Loan Document or Environmental Indemnity Agreement, or any certificate or other document made or delivered pursuant hereto. The words “**hereof**”, “**herein**”, and “**hereunder**” and words of similar import when used in this Agreement shall refer to this Agreement as a whole. The words “**include**” and “**include(s)**” when used in this Agreement and the other Loan Documents or Environmental Indemnity Agreement means “**include(s), without limitation,**” and the word “**including**” means “**including, but not limited to.**”

**Section 1.3. Phrases.** When used in this Agreement and the other Loan Documents or Environmental Indemnity Agreement, the phrases “satisfactory to Administrative Agent,” “satisfactory to Lenders,” and “satisfactory to Required Lenders” shall mean “in form and substance satisfactory to the applicable Person in all respects”, the phrases “with Administrative Agent’s consent,” “with the Lenders’ consent,” and “with the Required Lenders’ consent,” or “with Administrative Agent’s approval,” “with the Lenders’ approval,” and “with the Required Lenders’ approval” shall mean such consent or approval at such Person’s sole discretion, and the phrases “acceptable to Administrative Agent,” “acceptable to Lenders,” and “acceptable to the Required Lenders” shall mean “acceptable to such Person at such Person’s sole discretion” unless otherwise specified in this Agreement.

## ARTICLE II

### LOAN TERMS

**Section 2.1. The Loan.** Upon satisfaction of all the terms and conditions set forth in the Term Sheet and *Schedule 2.1* attached hereto, each Lender severally, but not jointly, agrees to make its Pro Rata Share of the Loan in Dollars to Borrower in the amount of such Lender’s Loan Commitment, which shall be funded in one advance on the Closing Date and repaid in accordance with the terms of this Agreement and the Notes. Each Borrower hereby agrees to accept the Loan on the Closing Date, subject to and upon the terms and conditions set forth herein. The Loan is not a revolving credit loan, and Borrower is not entitled to any readvances of any portion of the Loan that is repaid or prepaid.

**Section 2.2. Interest Rate; Late Charge; Default Rate.**

(a) Interest Rate. The outstanding principal balance of the Loan shall bear interest, commencing on the Closing Date, at a floating rate of interest equal to the Contract Rate.

(b) Late Charge. If any Borrower fails to pay any installment of interest or principal within five (5) days after the date on which the same is due excluding the final installment due on the Maturity Date, Borrower shall pay to Administrative Agent, for the account of the Lenders (other than any Defaulting Lender), a late charge on such past due amount, as liquidated damages and not as a penalty, equal to five percent (5%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law. The Administrative Agent shall pay to each Lender (other than any Defaulting Lender) of the Loan its portion of the late charge based on each Lender’s Pro Rata Share of the Loan in accordance with Section 2.6. The foregoing late charge is intended to compensate each Lender for the expenses incident to handling any such delinquent payment and for the losses incurred by each Lender as a result of such delinquent payment. Borrower agrees that, considering all of the circumstances existing on the date this Agreement is executed, the late charge represents a reasonable estimate of the costs and losses each Lender will incur by reason of late payment. Borrower and each Lender further agree that proof of actual losses would be costly, inconvenient, impracticable and extremely difficult to fix. Acceptance of the late charge shall not constitute a waiver of the Event of Default arising from the overdue installment, and shall not prevent any Lender from exercising any other rights or remedies available to such Lender with respect to such Event of Default.

(c) Default Rate. While any Event of Default exists, the Loan shall bear interest at the Default Rate.

**Section 2.3. Terms of Payment; Option to Extend Scheduled Maturity Date**. The Loan shall be payable as follows:

(a) Principal and Interest.

(i) Borrower shall pay to Administrative Agent, for the account of Lenders, from the proceeds of the Loan on the Closing Date a payment of interest only on the principal balance of the Loan for the period from the Closing Date through the last day of the month in which the Closing Date occurs, computed at the Contract Rate.

(ii) Commencing on February 1, 2015, and continuing on each Payment Date thereafter during the Interest Only Period, Borrower shall pay to Administrative Agent for the account of the Lenders (other than a Defaulting Lender), interest only in arrears computed at the Contract Rate on the outstanding principal balance of the Loan.

(iii) Thereafter, commencing on February 1, 2017, and continuing on each Payment Date thereafter through and including the Payment Date immediately prior to the Maturity Date, Borrower shall pay to Administrative Agent for the account of the Lenders (other than a Defaulting Lender) (A) interest in arrears computed at the Contract Rate on the outstanding principal balance of the Loan and (B) installments of principal in accordance with the amortization schedule attached hereto as **Schedule 2.3(a)**. Each of such payments shall be applied (i) to the payment of interest computed at the Contract Rate and (ii) the balance applied toward reduction of the principal sum. The constant payment required hereunder is based on a twenty-five (25) year amortization schedule with an assumed interest rate of 6.0% per annum.

(b) Maturity. On the Maturity Date, Borrower shall pay to Administrative Agent, for the account of the Lenders (other than a Defaulting Lender), all outstanding principal, accrued and unpaid interest, default interest, late charges, the Acceleration Prepayment Premium (if applicable) and any and all other amounts due under the Loan Documents.

(c) Option to Extend Scheduled Maturity Date. Borrower may elect to extend the Scheduled Maturity Date from the Initial Maturity Date to the Extended Maturity Date upon satisfaction of each the following conditions, as determined by Administrative Agent in its reasonable discretion:

(i) Borrower shall have delivered to Administrative Agent a written notice of its request to extend the Scheduled Maturity Date (the "**Extension Request**") at least thirty (30) but no more than ninety (90) days before the then applicable Scheduled Maturity Date;

(ii) Concurrently with delivery of the Extension Request, Borrower shall have delivered to Administrative Agent a certificate in form and substance satisfactory to Administrative Agent certifying that (A) no Potential Default (other than Potential Defaults that Borrower is proceeding with diligence to cure, which cure shall be completed prior to the then-current Scheduled Maturity Date) or Event of Default is in existence, and (B) as of the last day of the most recently ended month for which financial statements are required to have been delivered pursuant to Section 7.1(a)(i), the Project Yield was equal to or greater than 16.0% based upon Adjusted Net Operating Income for the twelve (12) month period ending on the last day of such month, which certificate shall be accompanied by operating statements for the Project sufficient for Administrative Agent to verify compliance with the foregoing;

(iii) Within five (5) Business Days following deliver of the Extension Request, Borrower shall have paid to Administrative Agent, for the benefit of Lenders, an extension fee in an amount equal to one-quarter of one percent (0.25%) of the then outstanding principal balance of the Loan;

(iv) Borrower shall have executed and delivered to Administrative Agent such documents as Administrative Agent shall request (A) evidencing the extension of the Scheduled Maturity Date, (B) confirming that it has no claims, defenses or offsets with respect to the Obligations, (C) releasing any potential claims, known or unknown, against Administrative Agent and Lenders and (D) containing Guarantor's reaffirmation of its obligations under its guaranty agreement entered into in connection with the Loan;

(v) On the Initial Maturity Date, as of the last day of the most recently ended month for which financial statements are required to have been delivered pursuant to Section 7.1(a)(i), the Project Yield was equal to or greater than 16.0% based upon Adjusted Net Operating Income for the twelve (12) month period ending on the last day of such month; and

(vi) If requested by Administrative Agent, Borrower shall have delivered to Administrative Agent an endorsement to each Title Policy insuring the absence of intervening liens (excluding ad valorem taxes, a lien not yet payable).

#### **Section 2.4. Prepayment.**

(a) **Lock-Out Period.** Except as set forth herein, the Loan is closed to prepayment in whole or in part. Notwithstanding the foregoing, the Loan may be prepaid in whole, but not in part, at any time following the expiration of the Lockout Period without payment of any Acceleration Prepayment Premium, provided Borrower pays with such prepayment all accrued interest and all other outstanding amounts then due and unpaid under the Loan Documents.

(b) **Reserved.**

(c) **Prepayment Not Made on a Payment Date.** If for any reason the Loan or any portion thereof is prepaid on a day other than a scheduled monthly Payment Date, interest shall be prorated through the date of prepayment (the "**Prorated Interest**"). On the prepayment date, Borrower shall pay to Administrative Agent, for the account of Lenders, the outstanding principal balance of the Loan, Prorated Interest and Libor Breakage Amount, and any other amounts, if any, required under this Agreement.

(d) **Involuntary Prepayment.** If the Loan is accelerated for any reason other than casualty or condemnation, and the Loan is otherwise closed to prepayment, Borrower shall pay to Administrative Agent, for the account of the Lenders, in addition to all other amounts outstanding under the Loan Documents, a prepayment premium equal to the sum of (i) the Libor Breakage Amount and (ii) two percent (2%) of the outstanding balance of the Loan (the "**Acceleration Prepayment Premium**").

(e) **Prepayment Due to Casualty or Condemnation.** In the event of a prepayment resulting from the application of insurance or condemnation proceeds pursuant to Article 3 hereof, no prepayment penalty or premium shall be imposed.

(f) **Character of Acceleration Prepayment Premium.** The Acceleration Prepayment Premium does not constitute a penalty, but rather represents the reasonable estimate, agreed to between Borrower and each Lender, of fair compensation for the loss that may be sustained by such Lender due to the payment of the principal Indebtedness prior to the Maturity Date and/or the increased cost and expense to such Lender resulting from an acceleration of the Loan. Any Acceleration Prepayment Premium shall be paid without prejudice to the right of any Lender to collect on its behalf any of the amounts owing under the Note, this Loan Agreement or the other Loan Documents or otherwise, to enforce any of its rights or remedies arising out of an Event of Default.

(g) **Partial Prepayment.** If, notwithstanding Section 2.4(a), Administrative Agent permits the Loan to be prepaid in part, Borrower shall pay, in addition to the principal amount prepaid, pro-rated interest on the amount of such prepayment plus any Libor Breakage Amount applicable to such principal being prepaid. Partial prepayments may be made following the expiration of the Lockout Period to the extent permitted under Section 2.17.

**Section 2.5. Security; Establishment of Funds.**

(a) **Security.** The Loan shall be secured by the Mortgage creating a first lien on the Projects, the Assignment of Leases and Rents and the other Loan Documents.

(b) **Establishment of Funds; Disbursement of Funds.**

(i) Borrower shall deposit with Administrative Agent on each Payment Date, the product of Thirty Dollars (\$30) multiplied by the number of Residential Units in the Projects, which shall be held by Administrative Agent for replacements and repairs required to be made to the Projects during the term of the Loan (the "**Replacement Escrow Fund**").

(ii) Administrative Agent shall make disbursements from the Replacement Escrow Fund as requested by Borrower, and approved by Administrative Agent in its reasonable discretion, on a monthly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Administrative Agent's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Administrative Agent, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Administrative Agent may require an inspection of the Projects at Borrower's expense prior to making a monthly disbursement in order to verify completion of replacements and repairs for which reimbursement is sought.

(c) **Establishment of Governmental Loan Holding Fund.** If, on or before January 31, 2017, Borrower provides Administrative Agent with a Governmental Loan Commitment, then Administrative Agent shall place, following receipt thereof, each scheduled installment of principal paid by Borrower pursuant to Section 2.3(a) into a reserve (the “**Governmental Loan Holding Fund**”) in lieu of releasing such installment to Lenders for application to the outstanding principal balance of the Loan, provided the Governmental Loan Holding Fund Conditions are satisfied on such date. If, on or before the Initial Maturity Date, the Obligations are repaid in full, the funds contained in the Governmental Loan Holding Fund shall be released to Borrower in connection with such repayment. If the Obligations are not repaid in full on or before the Initial Maturity Date, or if at any time the Governmental Loan Holding Fund Conditions cease to be satisfied, the funds then contained in the Governmental Loan Holding Fund shall be released to Lenders and applied to the outstanding principal balance of the Loan on the Initial Maturity Date or, if sooner, at any time following the date upon which the Governmental Loan Holding Conditions cease to be satisfied. For avoidance of doubt, the outstanding principal balance of the Loan, unreduced by the funds contained in Governmental Loan Holding Fund, shall bear interest in accordance with Section 2.2.

(d) **Establishment of Master Lease Fund.** Each Borrower hereby agrees to the establishment of a reserve for each Project (each, a “**Master Lease Fund**”), into which, during any period in which a Project is not in compliance with the “Minimum Rent Coverage” (as defined under the Master Lease applicable to such Project) specified for such Project in the applicable Master Lease, the applicable Borrower shall deposit an amount equal to the additional monthly deposit required under such Master Lease to be deposited with Borrower by the Master Tenant thereunder, to the extent such deposit is made by the Master Tenant. Upon such time as the applicable Borrower delivers evidence reasonably satisfactory to Administrative Agent (and Administrative Agent confirms to its reasonable satisfaction) that such Project has been in compliance with the “Minimum Rent Coverage” applicable thereto for a period of six (6) consecutive months, and provided no Event of Default is then in existence, the funds contained in the applicable Master Lease Fund shall be released to the applicable Borrower.

(e) **Funds, Generally; Pledge of Security Interest.** Borrower hereby pledges to Administrative Agent and the Lenders, and grants a security interest in, any and all monies now or hereafter deposited in the Funds as additional security for the payment of the Loan. Administrative Agent shall hold the Funds, and any and all other impounds or reserves otherwise provided for in this Agreement, for the benefit of all Lenders. The Lenders and Borrower acknowledge and agree that the Funds may be commingled with Administrative Agent’s own funds at financial institutions selected by Administrative Agent in its reasonable discretion and, except as otherwise expressly provided herein, shall be held without interest in Administrative Agent’s name. Upon the occurrence of an Event of Default, Administrative Agent may (and at the direction of the Required Lenders shall) apply any sums then present in the Funds to the payment of the Loan in any order in the reasonable discretion of Administrative Agent. Until expended or applied as above provided, the Funds shall constitute additional security for the Loan. Administrative Agent shall have no obligation to release any of the Funds while any Event of Default or Potential Default exists or any Material Adverse Change has occurred in Borrower or any Borrower Party or the Projects. All costs and expenses reasonably incurred by Administrative Agent in the disbursement of any of the Funds shall be paid by Borrower promptly upon demand or, at Administrative Agent’s sole discretion, deducted from the Funds.

**Section 2.6. Application of Payments.**

(a) **Waterfall.** Prior to the occurrence of an Event of Default, all payments received by Administrative Agent under the Loan Documents shall be applied, (i) first, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Administrative Agent pursuant to this Agreement or any Loan Document, (ii) second, to pay interest then due and payable to the Lenders (other than a Defaulting Lender) calculated at the Contract Rate, (iii) third, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Lenders (other than a Defaulting Lender) in respect of the Loan pursuant to this Agreement or any Loan Document, (iv) fourth, subject to Section 2.5(b), to principal payments due under the Loan owing to the Lenders (other than a Defaulting Lender) and to the Obligations under the Secured Hedge Agreements, (v) fifth, to any reserves, escrows or other impounds required to be maintained pursuant to the Loan Documents, (vi) sixth, to the ratable payment of all other Obligations (other than Obligations owing to a Defaulting Lender); and (vii) seventh, to repay all other Obligations owing to a Defaulting Lender. Upon the occurrence of an Event of Default, all payments shall be applied in such order as the Administrative Agent shall determine in its sole discretion. Notwithstanding anything herein to the contrary, if at any time following an Event of Default or acceleration of the Obligations or on or after the Maturity Date, the Administrative Agent applies any payments received or the proceeds of any Collateral to principal payments on the Loan, the Administrative Agent shall apply such payments or proceeds pro rata between such principal payments on the Loan and the Obligations under the Secured Hedge Agreements based on the outstanding principal balance of the Loan and the Obligations under Secured Hedge Agreements.

(b) **Application of Payments Generally.** All repayments of the Loan shall be applied to reduce ratably the remaining installments of such outstanding principal amounts of the Loan in the inverse order of maturity. If sufficient amounts are not available to repay all outstanding Obligations described in any priority level set forth in this Section 2.6, the available amounts shall be applied, unless otherwise expressly specified herein, to such Obligations ratably based on the proportion of the Secured Parties' interest in such Obligations. Any priority level set forth in this Section 2.6 that includes interest shall include all such interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding. All prepayments of principal shall be applied in the inverse order of maturity.

(c) **Payments and Computations.** Borrower shall make each payment under any Loan Document not later than 1:00 p.m. (Eastern Standard or Daylight Savings time) on the day when due to the Administrative Agent by wire transfer or Automated Clearing House ("ACH") transfer (which shall be the exclusive means of payment hereunder), which payments shall be initiated by Administrative Agent, at its election, to the following account (or at such other account or by such other means to such other address as the Administrative Agent shall have notified Borrower in writing within a reasonable time prior to such payment) in immediately available Dollars and without setoff or counterclaim:

Bank:	Deutsche Bank Trust Co. New York, New York
ABA No.:	021001033
Account Number:	50-256-477

Account Name: GE HFS - GEMSA  
Reference Loan No.: 07- 0004596

The Administrative Agent shall cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in Section 2.6(a) promptly after receipt or deemed receipt, but no later than one Business Day following receipt (or deemed receipt) by Administrative Agent. Administrative Agent shall have no obligation to make any payments to a Lender except out of amounts received or applied by Administrative Agent with respect to the Loan, and only if and to the extent payable in accordance with Section 2.6(a). Payments received by the Administrative Agent after 1:00 p.m. (Eastern Standard or Daylight Savings time) shall be deemed to be received on the next Business Day.

(d) **Computations of Interest and Fees.** All computations of interest and of fees shall be made by the Administrative Agent on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator of which is the actual number of days elapsed from the Closing Date or the date of the preceding Payment Date, as the case may be, to the date of the next Payment Date or the Maturity Date. Each determination of an interest rate or the amount of a fee hereunder shall be made by the Administrative Agent and shall be conclusive, binding and final for all purposes, absent manifest error.

(e) **Payment Dates.** Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day without any increase in such payment as a result of additional interest or fees.

(f) **Advancing Payments.** Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due hereunder that Borrower will not make such payment in full, the Administrative Agent may assume that Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent that Borrower shall not have made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent on demand such amount distributed to such Lender together with interest thereon (at the Contract Rate) for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent.

**Section 2.7. Sources and Uses.** The sources and uses of funds for the contemplated transaction are as described on *Schedule 2.7* attached hereto. Borrower shall deliver such information and documentation as Administrative Agent shall request to verify that the sources and uses are as indicated on *Schedule 2.7*. A reduction in the amounts necessary for any of the uses may, at Administrative Agent's election, shall result in an equal reduction in the amount of the Loan. The proceeds of the Loan are intended and will be used for agricultural, business and/or commercial purposes and are not intended and will not be used for personal, family or household purposes.

**Section 2.8. Capital Adequacy; Increased Costs; Illegality.**

(a) If any Lender determines that any law, treaty, governmental (or quasi-governmental) rule, regulation, guideline or order regarding capital adequacy, reserve requirements or similar requirements or compliance by such Lender with any request or directive regarding capital adequacy, reserve requirements or similar requirements (whether or not having the force of law), in each case, adopted after the Closing Date, from any central bank or other Governmental Authority increases or would have the effect of increasing the amount of capital, reserves or other funds required to be maintained by Lender and thereby reducing the rate of return on such Lender's capital as a consequence of its obligations hereunder, then Borrower shall from time to time upon demand by such Lender, pay to Lender, additional amounts sufficient to compensate Lender for such reduction. A certificate as to the amount of that reduction and showing the basis of the computation thereof submitted by the affected Lender to Borrower shall, absent manifest error, be final, conclusive and binding for all purposes. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, such Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrower pursuant to this Section 2.8(a).

(b) If, due to either (i) the introduction of or any change in any law or regulation (or any change in the interpretation thereof) (other than changes in income taxes) or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), in each case adopted after the Closing Date, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining the Loan, then Borrower shall from time to time, upon demand by such Lender, pay to such Lender, additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to Borrower by such Lender, shall be conclusive and binding on Borrower for all purposes, absent manifest error. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, such Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrower pursuant to this Section 2.8(b).

(c) Notwithstanding anything to the contrary contained herein, if the introduction of or any change in any law or regulation (or any change in the interpretation thereof) shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender to agree to make or to make or to continue to fund or maintain any Loan bearing interest computed by reference to the Libor Rate, then, unless such Lender is able to make or to continue to fund or to maintain the Loan at another office of such Lender without, in such Lender's opinion, adversely affecting it or its Loan or the income obtained therefrom, on notice thereof and demand therefor by such Lender to Borrower, (i) the obligation of such Lender to agree to make or to make or to continue to fund or maintain the Loan shall terminate and (ii) Borrower shall prepay in full such Lender's Pro Rata Share of the Loan, together with interest accrued thereon, but without payment of any Acceleration Prepayment Premium, within thirty (30) days following such Lender's demand for payment unless such Lender determines a replacement index and spread to approximate the Contract Rate before such change in law or regulation. Each Lender will use its best efforts to determine such replacement index and spread and will notify Borrower of the index and spread to be used and the same shall be applied to the Loan effective as of the date such Lender determined that the Libor Rate was no longer available.

(d) Notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be deemed to be a change in a Requirement of Law under subsection (b) above and/or a change in capital adequacy requirements under subsection (a) above, as applicable, regardless of the date enacted, adopted or issued.

**Section 2.9. Interest Rate Protection.** Borrower, at its sole cost and expense, may obtain and maintain, at its option and otherwise in compliance with this Section, an interest rate cap for the benefit of Borrower pursuant to one or more Hedge Agreements reasonably satisfactory to the Administrative Agent. The Hedge Agreement shall, at Administrative Agent's request, be collaterally assigned to Administrative Agent (for the benefit of Lenders). Any such Hedge Agreement shall be provided by either Administrative Agent or any Lender (or an Affiliate of such Person) or a bank or other financial institution whose long-term debt rating is equal to or greater than "A". Upon repayment of the Obligations in full, Administrative Agent shall assign the Hedge Agreement back to Borrower or an Affiliate of Borrower. Except in connection with a Secured Hedge Agreement, the Projects shall not be pledged or encumbered in any manner to secure any obligation under the Hedge Agreement. Borrower shall not enter into any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement pertaining to fluctuations in interest rates, or any swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in currency exchange rates, either generally or under specific contingencies, other than the Hedge Agreement contemplated by this Section 2.9, and not for speculative purposes.

**Section 2.10. Libor Breakage Amount.** Upon any payment of the Loan (or any portion thereof) on any day that is not the last day of the Libor Interest Period applicable thereto (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), Borrower shall pay to Administrative Agent, for the account of Lenders (other than a Defaulting Lender) the Libor Breakage Amount. For purposes of calculating the Libor Breakage Amount payable to a Lender under this Section 2.10, each Lender shall be deemed to have actually funded the Loan through the purchase of a deposit bearing interest at the Libor Rate in an amount equal to the amount of the Loan and having a maturity and repricing characteristics comparable to the relevant Libor Interest Period; provided, however, that each Lender may fund its Pro Rata Share of the Loan in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section 2.10.

**Section 2.11. Loan Origination Fee.** Borrower agrees to pay to the Administrative Agent for the benefit of the Lenders on the Closing Date a loan origination fee in an amount equal to 0.95% of the amount of the Loan, which fee shall be fully earned, due and payable and non-refundable on the Closing Date.

**Section 2.12. Evidence of Debt.**

(a) **Records of Lenders.** Each Lender shall maintain in accordance with its usual practice accounts evidencing the Indebtedness of Borrower to each Lender resulting from the Pro Rata Share of the Loan of such Lender from time to time outstanding, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, with respect to each Lender having sold a participation interest in any of the Obligations owing to it, such Lender, acting as agent of Borrower solely for this purpose and solely for tax purposes, shall establish and maintain at its address referred to in Section 12.1 (or at such other address as Administrative Agent shall notify Borrower) a record of ownership, in which such Lender shall register by book entry (A) the name and address of each such participant (and each change thereto, whether by assignment or otherwise) and (B) the rights, interest or obligation of each such participant in any Obligation owing to such Lender, in any Loan Commitment or any portion of the Loan and in any right of such Lender to receive any payment hereunder.

(b) **Records of Administrative Agent.** The Administrative Agent, acting as agent of Borrower solely for tax purposes and solely with respect to the actions described in this Section 2.12, shall establish and maintain at its address referred to in Section 12.1 (or at such other address as the Administrative Agent may notify Borrower) (i) a record of ownership (the “**Register**”) in which the Administrative Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of each Lender in the Loan and the Pro Rata Outstandings, and any assignment of any such interest, obligation or right and (ii) accounts in the Register in accordance with its usual practice in which it shall record (A) the names and addresses of the Lenders (and each change thereto pursuant to Section 2.13 (Substitution of Lenders) and Section 12.3 (Assignments and Participations; Binding Effect)), (B) the Loan Commitments of each Lender, (C) the amount of each of the Pro Rata Outstandings and any assignment of a Lender’s Pro Rata Share of the Loan, (D) the amount of any principal or interest due and payable or paid, and (E) any other payment received by the Administrative Agent from Borrower and its application to the Obligations.

(c) **Registered Obligations.** Notwithstanding anything to the contrary contained in this Agreement, the Loan (including any Notes evidencing the Loan) shall constitute a registered obligation, the right, title and interest of the Lenders and their assignees in and to the Loan shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.12 and Section 12.3 shall be construed so that the Loan is at all times maintained in “**registered form**” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(d) **Prima Facie Evidence.** The entries made in the Register and in the accounts maintained pursuant to clauses (a) and (b) of this Section 2.12 shall, to the extent permitted by applicable Requirements of Law, be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, however, that no error in such account and no failure of any Lender or the Administrative Agent to maintain any such account shall affect the obligations of Borrower or any Borrower Party to repay the Loan in accordance with its terms. In addition, Borrower, the Administrative Agent, and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for access by Borrower, the Administrative Agent and such Lender at any reasonable time and from time to time upon reasonable prior notice. No Lender shall have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender unless otherwise agreed by the Administrative Agent.

**Section 2.13. Substitution of Lenders.**

(a) In the event that any Lender that is not an Affiliate of the Administrative Agent (an “**Affected Lender**”), (i) makes a claim under Section 2.8 or notifies Borrower and the Administrative Agent pursuant to Section 2.8 that it becomes illegal for such Lender to continue to fund or maintain its Pro Rata Share of the Loan using the Libor Rate or (ii) does not consent to any amendment, waiver or consent to any Loan Document or the Environmental Indemnity Agreement for which the consent of the Required Lenders is obtained but that requires the consent of other Lenders, Borrower may, without regard to the Lockout Period, either pay in full such Affected Lender with respect to amounts due with the consent of the Administrative Agent or substitute for such Affected Lender any Lender or any Affiliate or Approved Fund of any Lender or any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent (in each case, a “**Substitute Lender**”).

(b) To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, Borrower shall deliver a notice to the Administrative Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to the Administrative Agent by Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (including those that will be owed because of such payment and all Obligations that would be owed to such Lender if it was solely a Lender), and (ii) in the case of a substitution, (A) payment by the Substitute Lender of the assignment fee set forth in Section 12.3 and (B) an assumption agreement in form and substance satisfactory to the Administrative Agent whereby the Substitute Lender shall, among other things, agree to be bound by the terms of the Loan Documents and assume the Loan Commitment of the Affected Lender.

(c) Upon satisfaction of the conditions set forth in clause (b) above, the Administrative Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full, such Affected Lender’s Loan Commitments shall be terminated and (ii) in the case of any substitution, (A) the Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents with respect to the Loan, except that the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Loan Commitments, (B) the Substitute Lender shall become a “**Lender**” hereunder having a Loan Commitment in the amount of such Affected Lender’s Loan Commitment and (C) the Affected Lender shall execute and deliver to the Administrative Agent an Assignment to evidence such substitution and deliver any Note in its possession; provided, however, that the failure of any Affected Lender to execute any such Assignment or deliver any such Note shall not render such sale and purchase (or the corresponding assignment) invalid.

**Section 2.14. Defaulting Lenders.**

(a) **Cure of Defaulting Lender Status.** A Defaulting Lender may regain its status as a non-defaulting Lender hereunder upon satisfaction of each of the following conditions, as applicable: (i) payment by such Defaulting Lender of all amounts owing hereunder (whether to the Administrative Agent for indemnity purposes or otherwise); (ii) receipt by Administrative Agent of (A) a written revocation by Defaulting Lender of any written notice by Defaulting Lender to Borrower, Administrative Agent, or any other Lender that such Defaulting Lender will fail to fund under this Agreement, or (B) evidence satisfactory to Administrative Agent (in consultation with the Required Lenders) that such Defaulting Lender has publicly revoked any public announcement of the same; (iii) evidence satisfactory to Administrative Agent (in consultation with the Required Lenders) that such Defaulting Lender is no long in default for failing to make payments under one or more syndicated credit facilities; and (iv) evidence satisfactory to Administrative Agent (in consultation with the Required Lenders) that such Defaulting Lender (or the holding company of such Defaulting Lender) is no longer the subject of a bankruptcy proceeding and is not otherwise involved in any liquidation proceeding, and Administrative Agent has determined such Defaulting Lender is able to meet its obligations hereunder.

(b) **Right of Offset.** Anything herein to the contrary notwithstanding, upon receipt of any payment from Borrower hereunder for the account of the Lenders, Administrative Agent may, in its discretion, offset against a Defaulting Lender's Pro Rata Share of such payment, the amount of any unfunded reimbursement obligations of such Defaulting Lender.

(c) **Replacement of Defaulting Lender.** If any Lender is a Defaulting Lender, the Administrative Agent may, upon notice to such Lender and Borrower, replace such Lender by causing such Lender to assign its Loan (with the related assignment fee to be paid by such Defaulting Lender) pursuant to Section 12.3 to one or more Persons eligible under such Section procured by the Administrative Agent. Borrower shall pay in full all principal, interest, fees and other amounts owing to such Defaulting Lender through the date of replacement. Any Defaulting Lender being replaced under this Section 2.14(c) shall execute and deliver an Assignment with respect to such Lender's Loan.

**Section 2.15. Fees and Expenses.** Borrower agrees to pay to the Administrative Agent for the benefit of the Lenders the fees and expenses provided in the Term Sheet.

**Section 2.16. Withholding Taxes.**

(a) **Payments Free and Clear of Withholding Taxes.** Except as otherwise provided in this Section 2.16, each payment by Borrower under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (and without deduction for any of them) (collectively, but excluding the taxes set forth in clauses (i) and (ii) below, the “**Withholding Taxes**”) other than for (i) taxes measured by net income (including branch profits taxes) and franchise taxes imposed in lieu of net income taxes, in each case imposed on any Lender as a result of a connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any Lender having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document), (ii) taxes that are directly attributable to the failure (other than as a result of a change in any Requirement of Law) by any Lender to deliver the documentation required to be delivered pursuant to clause (f) below, (iii) Withholding Taxes to the extent that the obligation to withhold amounts existed on the date that such Lender became a “Lender” under this Agreement in the capacity under which such Lender makes a claim under this clause (b), except in each case to the extent such Lender is a direct or indirect assignee (other than pursuant to Section 2.13 (Substitution of Lenders)) of any other Lender that was entitled, at the time the assignment of such other Lender became effective, to receive additional amounts under Section 2.16(b) or (iv) any United States federal withholding Taxes imposed under FATCA.

(b) **Gross-Up.** If any Withholding Taxes shall be required by any Requirements of Law to be deducted from or in respect of any amount payable under any Loan Document or the Environmental Indemnity Agreement to any Lender and such Taxes are Withholding Taxes (i) such amount shall be increased as necessary to ensure that, after all required deductions for Withholding Taxes are made (including deductions applicable to any increases to any amount under this Section 2.16), such Lender receives the amount it would have received had no such deductions been made, (ii) Borrower shall make such deductions, (iii) the relevant Lender shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, Borrower shall deliver to Administrative Agent an original or certified copy of a receipt evidencing such payment; provided, however, that no such increase shall be made with respect to, and Borrower shall not be required to indemnify any such Lender pursuant to clause (d) below for, Withholding Taxes to the extent that the obligation to withhold amounts existed on the date that such Lender became a “**Lender**” under this Agreement in the capacity under which such Lender makes a claim under this clause (b), except in each case to the extent such Lender is a direct or indirect assignee (other than pursuant to Section 2.13 (Substitution of Lenders)) of any other Lender that was entitled, at the time the assignment of such other Lender became effective, to receive additional amounts under this clause (b).

(c) **Other Taxes.** In addition, Borrower agrees to pay or cause to be paid, and authorizes Administrative Agent to pay in its name, any stamp, documentary, excise or property tax, charges or similar levies imposed by any applicable Requirement of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, “**Other Taxes**”). Within thirty (30) days after the date of any payment of Withholding Taxes or Other Taxes by Borrower, Borrower shall furnish to Administrative Agent, at its address referred to in Section 12.1, the original or a certified copy of a receipt evidencing payment thereof.

(d) **Indemnification.** Borrower shall reimburse and indemnify, within thirty (30) days after receipt of demand therefor (with copy to Administrative Agent), each Lender for all Withholding Taxes and Other Taxes (including any Withholding Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.16) paid by such Lender and any Liabilities arising therefrom or with respect thereto, whether or not such Withholding Taxes or Other Taxes were correctly or legally asserted. A certificate of the Lender (or of Administrative Agent on behalf of such Lender) claiming any compensation under this clause (d), setting forth the amounts to be paid thereunder and delivered to Borrower with copy to Administrative Agent, shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, Administrative Agent and such Lender may use any reasonable averaging and attribution methods.

(e) **Mitigation.** Any Lender claiming any additional amounts payable pursuant to this Section 2.16 shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its lending office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(f) **Tax Forms.**

(i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States Withholding Tax or, after a change in any Requirement of Law, is subject to such Withholding Tax at a reduced rate under an applicable tax treaty, shall (w) on or prior to the date such Non-U.S. Lender Party becomes a “**Non-U.S. Lender Party**” hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by Borrower or Administrative Agent (or, in the case of a participant, the relevant Lender), provide Administrative Agent and Borrower (or, in the case of a participant, the relevant Lender) with two completed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty), W-8IMY or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to Administrative Agent that such Non-U.S. Lender Party is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless Borrower and Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, Borrower and Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(ii) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a “U.S. Lender Party” hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (f) and (D) from time to time if requested by Borrower or Administrative Agent (or, in the case of a participant, the relevant Lender), provide Administrative Agent and Borrower (or, in the case of a participant, the relevant Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding tax) or any successor form.

(iii) Each Lender having sold a participation in any of its Obligations shall collect from such participant the documents described in this clause (f) and provide them to Administrative Agent.

(iv) If a payment made to a Non-U.S. Lender Party would be subject to United States federal withholding Tax imposed by FATCA if such Non-U.S. Lender Party fails to comply with the applicable reporting requirements of FATCA, such Non-U.S. Lender Party shall deliver to Agent and Borrowers’ Agent any documentation under any Requirements of Law or reasonably requested by Administrative Agent or Borrowers’ Agent sufficient for Administrative Agent or Borrowers to comply with their obligations under FATCA and to determine that such Non-U.S. Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(g) **Refunds.** If a Lender has received a refund of (or tax credit with respect to) any Withholding Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund (or the benefit realized as a result of such tax credit) to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.16 with respect to the Withholding Taxes or Other Taxes giving rise to such refund), net of all out of pocket expenses of the Lender (including any Withholding Taxes imposed with respect to such refund) as is determined by the Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that Borrower, upon the request of the Lender, agree to repay as soon as reasonably practicable the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender in the event the Lender is required to repay such refund to such Governmental Authority. This Section 2.16 shall not be construed to require the Lender to make available its tax returns (or any other information relating to its Withholding Taxes or Other Taxes which it deems in good faith to be confidential) to Borrower or any other person.

**Section 2.17. Partial Release.**

(a) **Partial Release - Conditions.** Borrower shall have a one-time right to obtain the release of both the Partial Release Projects from the Lien of the related Mortgage and the other Loan Documents, provided that all of the following terms and conditions are satisfied (such release herein called the “**Partial Release**”):

(i) Following completion of the Partial Release, Redding Sundial Borrower shall be the sole Borrower and the Redding Sundial Project shall be the sole Project subject to a Mortgage.

(ii) The Partial Release shall occur in connection with the funding of one or more Governmental Loans obtained by Portland Gateway Borrower and/or Salem Applewood Borrower, which Governmental Loans will be secured by one or both of the Partial Release Projects, the proceeds of which are used to partially refinance the Loan.

(iii) No Potential Default or Event of Default shall be in existence at the time the request for the Partial Release is made or at the time the Partial Release occurs, and no Material Adverse Change shall have occurred (or be reasonably expected to occur in connection with the Partial Release).

(iv) Portland Gateway Borrower and Salem Applewood Borrower shall provide to Administrative Agent, at least thirty (30) days prior to the contemplated closing date of the Partial Release, written notice specifying the date on which the Partial Release is anticipated to occur, which notice shall be accompanied by a certification that no Potential Default or Event of Default is in existence as of the date of such notice or will be in existence immediately after giving effect to the Partial Release and the execution and delivery of all documents connected therewith.

(v) Administrative Agent shall have confirmed that, as of the date of the most recent financial statements required to be delivered pursuant to Section 7.1(a)(i), the Retained Project Debt Yield was equal to or greater than 16.0% and the Retained Project Debt Service Coverage Ratio was equal to or greater than 1.25 to 1.00.

(vi) Borrower shall provide Administrative Agent, promptly following Administrative Agent's request therefor, all information and documents relating to the contemplated transaction that will result in the Partial Release.

(vii) Administrative Agent shall have determined, and, if requested by Administrative Agent, shall obtain, contemporaneously with the closing of the Partial Release, an endorsement to the Title Policy for the Redding Sundial Project insuring, that the Partial Release will not affect the priority of Mortgage encumbering the Redding Sundial Project.

(viii) Administrative Agent shall receive reasonable assurances that the Environmental Indemnity Agreement shall remain in full force and effect with respect to the remaining Security and the Partial Release Projects, provided that with respect to the Partial Release Projects, such indemnity will apply only to claims or violations or alleged violations for the period of time prior to the date of the Partial Release.

(ix) Borrower shall pay all reasonable expenses of Administrative Agent, including reasonable attorneys fees and expenses, title insurance premiums, recording costs and similar costs in connection with the Partial Release.

(x) Borrower shall pay to Administrative Agent, for the account of Lenders, an amount equal to the Partial Release Price, plus the interest accrued thereon through the date such payment is made, plus the pro rata portion of any applicable Libor Breakage Amount required and calculated on the Partial Release Price.

(b) Partial Release Principal Reduction Payment. If Borrower is unable to complete the Partial Release solely because the Retained Project Debt Yield or the Retained Project Debt Service Coverage Ratio does not meet the threshold required to exercise such option, Borrower, following receipt from Administrative Agent of written notice setting forth the Partial Release Principal Reduction Payment and the amount of the applicable LIBOR Breakage Amount (if any), may pay to Administrative Agent, for the benefit of Lenders, the applicable Partial Release Principal Reduction Payment.

(c) Effect of Partial Release; Reamortization of Loan. Upon satisfaction of the requirements contained in this Section 2.17, in addition to releasing the Partial Release Projects from the Lien of the applicable Mortgage, Assignment of Leases and Rents and other Loan Documents specific to the Partial Release Projects, Administrative Agent shall also partially-release all obligations of the Portland Gateway Borrower and the Salem Applewood Borrower under the other Loan Documents as, but only to the extent, they relate to the Partial Release Projects. Following the Partial Release, the monthly principal payments required under Section 2.3(a) shall be recalculated based upon the outstanding principal balance of the Loan after the Partial Release Payment (and Partial Release Principal Reduction Payment, if made) is applied by Lenders and assuming a 25-year amortization period, less the full or partial months elapsed since the Closing Date. Such recalculated monthly payment shall be due and payable commencing on the first Payment Date following the month in which the Partial Release occurs.

### ARTICLE III

#### INSURANCE, CONDEMNATION, AND IMPOUNDS

**Section 3.1.** Insurance. Borrower shall maintain (or cause to be maintained) insurance as follows:

(a) **Casualty; Business Interruption.** Borrower shall keep (or cause to be kept) the Projects insured against damage by fire and the other hazards covered by a standard extended coverage and all-risk insurance policy for the full insurable value thereof on a replacement cost claim made basis with a deductible not to exceed \$25,000, except for wind/named storms and earthquake, which shall not provide for a deductible in excess of five percent (5%) of the total insurable value of the Project, without reduction, in any case, for depreciation or co-insurance and without any exclusions or reduction of policy limits for acts of domestic and foreign terrorism and other specified action/inaction, and shall maintain boiler and machinery insurance, acts of domestic and foreign terrorism endorsement coverage and such other casualty insurance as reasonably required by Administrative Agent, and, if Borrower changes insurance carriers while the Loan is outstanding, Borrower shall provide coverage for an extended reporting period in form and substance acceptable to Administrative Agent. Administrative Agent reserves the right to require from time to time the following additional insurance: flood; earthquake/sinkhole; windstorm; worker's compensation; and/or building law or ordinance. Borrower shall keep a Project insured against loss by flood if such Project is located currently or at any time in the future in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994 (as such acts may from time to time be amended) in an amount at least equal to the lesser of (i) the portion of the Loan allocated to such Project by Administrative Agent, acting in its reasonable discretion or (ii) the maximum limit of coverage available under said acts. Any such flood insurance policy shall be issued in accordance with the requirements and current guidelines of the Federal Insurance Administration. Borrower shall maintain business interruption insurance, including use and occupancy, rental income loss and extra expense, for all periods covered by Borrower's property insurance for a limit equal to twelve (12) calendar months' exposure, all without any exclusions or reduction of policy limits for acts of domestic and foreign terrorism or other specified action/inaction. Borrower shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise reasonably satisfactory to Administrative Agent in all respects. The proceeds of insurance paid on account of any damage or destruction to any Project shall be paid to Administrative Agent, on behalf of the Lenders, to be applied as provided in Section 3.2.

(b) **Liability.** Borrower shall maintain (or cause to be maintained) (i) commercial general liability insurance with respect to the each Project providing for limits of liability in the amount approved by Administrative Agent for both injury to or death of a person and for property damage per occurrence, (ii) umbrella liability coverage in the amount and to the extent required by Administrative Agent, and (iii) other liability insurance as reasonably required by Administrative Agent. In addition, Borrower shall cause each Operator to maintain (A) worker's compensation insurance and employer's liability insurance covering employees at the Projects employed by such Operator (in the amounts required by applicable Requirements of Law) and (B) professional liability insurance. In no event shall Borrower consent to any decrease in the amount or scope of coverage or increase the deductibles from those previously approved by Administrative Agent.

(c) **Form and Quality.** All insurance policies shall be endorsed in form and substance acceptable to Administrative Agent to name Administrative Agent (on behalf of Lenders) as an additional insured, loss payee or mortgagee thereunder, as its interest may appear, with loss payable to Administrative Agent, without contribution, under a standard New York (or local equivalent) mortgagee clause and shall not contain a Protective Safeguard Endorsement. Administrative Agent shall act on behalf of the Lenders in respect of insurance matters. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the state in which the applicable Project is located, with a rating of "A-X" or better as established by Best's Rating Guide with respect to property and casualty insurance and a rating of "A-X" or better as established by Best's Rating Guide or "A" or better by Standard & Poor's Ratings Group with respect to liability insurance. Each policy shall provide that such policy may not be canceled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to Administrative Agent and that no act or thing done by Borrower shall invalidate any policy as against Administrative Agent. Blanket policies shall be permitted only if (i) Administrative Agent receives appropriate endorsements and/or duplicate policies containing Administrative Agent's right to continue coverage on a pro rata pass-through basis and that coverage will not be affected by any loss on other properties covered by the policies and (ii) the policy contains a sublimit equal to the replacement cost of the Projects in an amount approved by Administrative Agent which is expressly allocated for each Project, and any such policy shall in all other respects comply with the requirements of this Section. Borrower authorizes Administrative Agent to pay the premiums for such policies (the "**Insurance Premiums**") from the Insurance Impound as the same become due and payable annually in advance. If Borrower fails to deposit funds into the Insurance Impound sufficient to permit Administrative Agent to pay the Insurance Premiums when due, Administrative Agent may obtain such insurance and pay the premium therefor and Borrower shall, on demand, reimburse Administrative Agent for all expenses incurred in connection therewith.

(d) **Assignment; Delivery of Certificates and Policies.** Borrower shall assign (or cause to be assigned) the policies or proofs of insurance to Administrative Agent (for the benefit of the Lenders), in such manner and form that Administrative Agent and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. With respect to the property and casualty insurance required under this Section 3.1, each Borrower shall provide (i) on or before the Closing Date, an ACORD 25 along with a policy binder which is valid for at least 60 days following the Effective Date, (ii) endorsements required by Administrative Agent within thirty (30) days following the Closing Date if not provided on or before the Closing Date and (iii) a copy of the full policy within sixty (60) days following the Closing Date or prior to expiration of the binder. With respect to the liability insurance required under this Section 3.1, Borrower shall provide (i) on or before the Closing Date, an ACORD 25 along with evidence of 30-day notice of cancellation of coverage, (ii) endorsements required by Administrative Agent within thirty (30) days following the Closing Date if not provided on or before the Closing Date and (c) a copy of the full policy within sixty (60) days following the Closing Date. If Borrower elects to obtain any insurance which is not required under this Agreement, all related insurance policies shall be endorsed in compliance with Section 3.1(c), and such additional insurance shall not be canceled without prior notice to Administrative Agent. From time to time upon Administrative Agent's request, Borrower shall identify to Administrative Agent all insurance maintained by Borrower or Operator with respect to the Projects. The proceeds of insurance policies coming into the possession of Administrative Agent shall not be deemed trust funds, and Administrative Agent shall be entitled to apply such proceeds as herein provided.

(e) **Adjustments.** Borrower shall give (or cause to be given) immediate written notice of any loss to the insurance carrier and to Administrative Agent. Borrower hereby irrevocably authorizes and empowers Administrative Agent, as attorney in fact for Borrower coupled with an interest, to notify any of Borrower's insurance carriers to add Administrative Agent (for itself and the benefit of the Lenders) as a loss payee, mortgagee insured or additional insured, as the case may be, to any policy maintained by Borrower (regardless of whether such policy is required under this Agreement), to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent's reasonable expenses incurred in the collection of such proceeds. Nothing contained in this Section 3.1(e), however, shall require Administrative Agent to incur any expense or take any action hereunder.

(f) **WARNING REGARDING RIGHT OF ADMINISTRATIVE AGENT TO PURCHASE INSURANCE:** If Borrower fails to provide Administrative Agent with evidence of the insurance coverages required by this Agreement, Administrative Agent may purchase insurance at Borrower's expense to protect the interest of Administrative Agent and Lenders. This insurance may, but need not, also protect Borrower's interest. If the Collateral becomes damaged, the coverage Administrative Agent purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that the required property coverage was purchased elsewhere. Borrower is responsible for the cost of any insurance purchased pursuant to this provision and such cost is payable on demand; if Borrower fails to pay such cost, it may be added to the Indebtedness and bear interest at the Default Rate. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage. The coverage Administrative Agent purchases may be considerably more expensive than insurance Borrower can obtain and may not satisfy any need for property damage coverage or any mandatory liability insurance imposed by applicable Laws.

(g) **Illinois Disclosure.** The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless Borrower provides evidence of the insurance coverage required by this Loan Agreement, the Administrative Agent may purchase such insurance at Borrower's expense to protect the Administrative Agent's and Lenders' interests in the Collateral. This insurance may, but need not, protect Borrower's interests. The coverage that the Administrative Agent purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Collateral. Borrower may later cancel any insurance purchased by the Administrative Agent, but only after providing evidence that each Borrower has obtained insurance as required by the Loan Documents. If the Administrative Agent purchases insurance for the Collateral, Borrower will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that the Administrative Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations of Borrower. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on Borrower's own.

### **Section 3.2. Use and Application of Insurance Proceeds.**

(a) **Notice; Repair Obligation.** If any of the Projects shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt notice thereof to Administrative Agent. Following the occurrence of a Casualty, Borrower, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law.

(b) **Application of Insurance Proceeds.** Subject, with respect to the Redding Sundial Project only, to any applicable provisions of the Ground Lease, Administrative Agent shall make insurance proceeds available to Borrower for application to the costs of restoring the affected Project or to the payment of the Loan as follows:

(i) if the loss is less than or equal to the Restoration Threshold, Administrative Agent shall make the insurance proceeds available to Borrower, which proceeds shall be used by Borrower for the restoration of the damaged Project provided (A) no Event of Default or Potential Default exists, and (B) Borrower promptly commences and is diligently pursuing restoration of the damaged Project;

(ii) if the loss exceeds the Restoration Threshold but is not more than 25% of the replacement value of the improvements constructed on the damaged Project, Administrative Agent shall disburse the insurance proceeds to Borrower, which proceeds shall be used by Borrower for the restoration of the damaged Project provided that (A) at all times during such restoration no Event of Default or Potential Default exists; (B) Administrative Agent determines throughout the restoration that there are sufficient funds available to restore and repair the Project to a condition approved by Administrative Agent and if the Administrative Agent reasonably determines there is any such insufficiency, Borrower provides additional security to address such insufficiency to Administrative Agent's satisfaction; (C) Administrative Agent determines that the Adjusted Net Operating Income of the Projects (including the damaged Projects) during restoration, taking into account rent loss or business interruption insurance, will be sufficient to pay Debt Service; (D) Administrative Agent determines that the ratio of the outstanding principal balance of the Loan to appraised value of the Projects after restoration of the damaged Project will not exceed 75%; (E) Administrative Agent determines that after restoration of the damaged Project and Borrower will comply with the financial covenants in Section 8.15; (F) Administrative Agent determines that restoration and repair of the damaged Project to a condition approved by Administrative Agent will be completed within six months after the date of loss or casualty and in any event ninety (90) days prior to the Maturity Date; (G) Borrower promptly commences and is diligently pursuing restoration of the damaged Project; and (H) the damaged Project after the restoration will be in compliance with and permitted under all applicable zoning, building and land use laws, rules, regulations and ordinances; and

(iii) if the conditions set forth in (i) and (ii) above are not satisfied or the loss exceeds the maximum amount specified in Section 3.2(b)(ii) above, (A) if no Event of Default exists hereunder, in Required Lenders' reasonable discretion, Required Lenders may direct Administrative Agent to apply any insurance proceeds Administrative Agent receives as a prepayment of the Loan pursuant to Section 2.4(e), or allow all or a portion of such proceeds to be used for the restoration of the damaged Project and (B) if an Event of Default exists hereunder, Administrative Agent shall apply any insurance proceeds Administrative Agent receives as a prepayment of the Loan pursuant to Section 2.4(e), unless the Required Lenders otherwise consent in writing to allow all or a portion of the proceeds to be used for the restoration of the damaged Project.

(c) **Disbursement of Insurance Proceeds.** Insurance proceeds received by Administrative Agent and to be applied to restoration pursuant to the terms of this Section 3.2 will be disbursed by Administrative Agent to Borrower on a monthly basis, commencing within ten (10) Business Days following receipt by Administrative Agent of plans and specifications, contracts and subcontracts, schedules, budgets, lien waivers and architects' certificates all in form reasonably satisfactory to Administrative Agent, and otherwise in accordance with prudent commercial construction lending practices for construction loan advances (including appropriate retainages to ensure that all work is completed in a workmanlike manner).

**Section 3.3. Condemnation Awards.** Borrower shall promptly give Administrative Agent written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting any Project (a “**Condemnation**”) and shall deliver to Administrative Agent copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether any award or compensation (an “**Award**”) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable Requirements of Law. Administrative Agent may participate in any such proceeding (for itself and on behalf of the Lenders) and Borrower will deliver to Administrative Agent all instruments necessary or required by Administrative Agent to permit such participation. Without Administrative Agent’s prior consent, Borrower (a) shall not agree to any Award, and (b) shall not take any action or fail to take any action which would cause the Award to be determined. All Awards for the taking or purchase in lieu of condemnation of the a Project or any part thereof are hereby assigned to and shall be paid to Administrative Agent. Administrative Agent is hereby irrevocably appointed as Borrower’s attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Award and to make any compromise or settlement in connection with any such Condemnation and to give proper receipts and acquittances therefor, and in Administrative Agent’s sole discretion (in consultation with the Required Lenders) to apply the same toward the payment of the Loan, notwithstanding that the Loan may not then be due and payable, or to the restoration of the applicable Project; provided, however, if the Award is less than or equal to \$100,000 and Borrower requests that such proceeds be used for nonstructural site improvements (such as landscape, driveway, walkway and parking area repairs) required to be made as a result of such Condemnation, Administrative Agent will apply the Award to such restoration in accordance with disbursement procedures applicable to insurance proceeds provided there exists no Potential Default or Event of Default and, with respect to the Redding Sundial Project only, the Ground Lease remains in full force and effect. Borrower, upon request by Administrative Agent, shall execute all instruments requested to confirm the assignment of the Awards to Administrative Agent, free and clear of all liens, charges or encumbrances. Anything herein to the contrary notwithstanding, if a Potential Default or Event of Default exists, Administrative Agent is authorized to adjust such Award without the consent of Borrower and to collect such Award in the name of Administrative Agent (on behalf of itself and the Lenders) and Borrower.

**Section 3.4. Insurance Impounds.** Borrower shall deposit (or cause to be deposited) with Administrative Agent, monthly on each Payment Date, a sum of money (the “**Insurance Impound**”) equal to one-twelfth (1/12th) of the annual charges for the Insurance Premiums. At or before the initial advance of the Loan, Borrower shall deposit (or cause to be deposited) with Administrative Agent a sum of money which together with the monthly installments will be sufficient to make each of such payments thirty (30) days prior to the date any delinquency or penalty becomes due with respect to such payments. Deposits shall be made on the basis of Administrative Agent’s estimate from time to time of the Insurance Premiums for the current year. All funds so deposited shall be held by Administrative Agent. These sums may be commingled with the general funds of Administrative Agent, and shall not be deemed to be held in trust for the benefit of Borrower. Borrower hereby grants to Administrative Agent (for its benefit and the benefit of the Lenders) a security interest in all funds so deposited with Administrative Agent for the purpose of securing the Loan. Until an Event of Default exists, Administrative Agent shall apply the funds deposited to pay Insurance Premiums as provided herein. While an Event of Default exists, the funds deposited may be applied in payment of the Insurance Premiums for which such funds have been deposited, or to the payment of the Loan or any other charges affecting the security of Administrative Agent, as Administrative Agent may elect, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Administrative Agent. Borrower shall furnish Administrative Agent with bills for the Insurance Premiums for which such deposits are required at least thirty (30) days prior to the date on which the Insurance Premiums first become payable. If at any time the amount on deposit with Administrative Agent, together with amounts to be deposited by Borrower or Operator before such Insurance Premiums are payable, is insufficient to pay such Insurance Premiums, Borrower shall deposit (or cause to be deposited) any deficiency with Administrative Agent immediately upon demand. Administrative Agent shall pay such Insurance Premiums when the amount on deposit with Administrative Agent is sufficient to pay such Insurance Premiums and Administrative Agent has received a bill for such Insurance Premiums. On the Maturity Date, the monies then remaining on deposit with Administrative Agent under this Section 3.4 shall, at Administrative Agent’s option, be applied against the Indebtedness or if no Event of Default exists hereunder, returned to Borrower. Notwithstanding the foregoing, if the Insurance Premiums are paid via a premium financing arrangement to which Administrative Agent has given its written consent, then (i) the amount to be escrowed with Administrative Agent at any given time in respect of such Insurance Premiums shall be three months or payments under the premium finance arrangement, (ii) Borrowers shall tender to Administrative Agent each month (on such schedule as Administrative Agent shall reasonably request) evidence that Borrowers (or the owner of the policy if the Borrowers share in a blanket policy) have paid the applicable premium finance amount due for the preceding month, and (iii) Administrative Agent shall have no obligation to remit such escrowed sums in payment of the premium finance amounts.

**Section 3.5. Real Estate Tax Impounds.** Borrower shall deposit (or cause to be deposited) with Administrative Agent, monthly on each Payment Date, a sum of money (the “**Tax Impound**”) equal to one-twelfth (1/12th) of the annual Taxes. At or before the initial advance of the Loan, Borrower shall deposit (or cause to be deposited) with Administrative Agent a sum of money which together with the monthly installments will be sufficient to make each of such payments thirty (30) days prior to the date any delinquency or penalty becomes due with respect to such payments. Deposits shall be made on the basis of Administrative Agent’s estimate from time to time of the Taxes for the current year (after giving effect to any reassessment or, at Administrative Agent’s election, on the basis of the Taxes for the prior year, with adjustments when the Taxes are fixed for the then current year). All funds so deposited shall be held by Administrative Agent. Borrower and Lenders acknowledge and agree that these sums may be commingled with Administrative Agent’s general funds and shall not be deemed to be held in trust for the benefit of Borrower. Borrower hereby grants to Administrative Agent (for its benefit and the benefit of the Lenders) a security interest in all funds so deposited with Administrative Agent for the purpose of securing the Loan. Until an Event of Default exists, Administrative Agent shall apply the funds deposited to pay the Taxes as provided herein. While an Event of Default exists, the funds deposited may be applied in payment of the charges for which such funds have been deposited, or to the payment of the Loan or any other charges affecting the security of Administrative Agent, as Administrative Agent may elect, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Administrative Agent. Borrower shall furnish Administrative Agent with bills for the Taxes for which such deposits are required at least thirty (30) days prior to the date on which the Taxes first become payable. If at any time the amount on deposit with Administrative Agent, together with amounts to be deposited by Borrower before such Taxes are payable, is insufficient to pay such Taxes, Borrower shall deposit (or cause to be deposited) any deficiency with Administrative Agent immediately upon demand. Administrative Agent shall pay such Taxes when the amount on deposit with Administrative Agent is sufficient to pay such Taxes and Administrative Agent has received a bill for such Taxes. The obligation of Borrower to pay the Taxes, as set forth in the Loan Documents, is not affected or modified by the provision of this paragraph; provided, however, that Borrower shall not be in default under the Loan for failure to pay Taxes if and to the extent there are sufficient funds on deposit in the Tax Impound to timely pay such Taxes. On the Maturity Date, the monies then remaining on deposit with Administrative Agent under this Section 3.5 shall, at Administrative Agent’s option, be applied against the Indebtedness or if no Event of Default exists hereunder, returned to Borrower.

## ARTICLE IV

### ENVIRONMENTAL MATTERS

**Section 4.1. Representations and Warranties on Environmental Matters.** To Borrower's Knowledge, except as set forth in the Site Assessment, (a) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, treated, discharged, disposed of or otherwise present at or about the Projects or any property adjacent to a Project (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Projects in full compliance with Environmental Laws) and no Hazardous Material was removed or transported from any Project, (b) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of each Project does not, and did not previously, violate any Environmental Laws, (c) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding is pending or threatened, nor have any settlements been reached by or with any parties or any liens imposed in connection with any Project concerning Hazardous Materials or Environmental Laws; (d) no underground storage tanks exist on any part of any Project; and (e) Borrower has not received and no prior owner or current or prior tenant, subtenant, or other occupant of all or any part of the Projects has received, any notice from any Person, public or private, alleging any violation of or potential liability under any Environmental Law with regard to the Projects, nor has Borrower, nor have any of the third-parties described above, received any administrative order or entered into any administrative consent order with any governmental agency with respect to Hazardous Materials on or at the Projects.

**Section 4.2. Covenants on Environmental Matters.**

(a) Borrower shall (i) comply strictly and in all respects with applicable Environmental Laws; (ii) notify Administrative Agent immediately upon Borrower's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting any Project; (iii) promptly remove such Hazardous Materials and remediate the applicable Project in full compliance with Environmental Laws or as reasonably required by Administrative Agent based upon the recommendations and specifications of an independent environmental consultant approved by Administrative Agent; and (iv) promptly forward to Administrative Agent copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Material or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect any Project or Borrower.

(b) Borrower shall not cause and shall prohibit any other Person from (i) causing any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about any Project or the transportation of any Hazardous Materials to or from any Project (except for cleaning and other products used in connection with routine maintenance or repair of such Project in full compliance with Environmental Laws), (ii) installing any underground storage tanks at any Project, or (iii) conducting any activity that requires a permit or other authorization under Environmental Laws.

(c) Borrower shall provide to Administrative Agent, at Borrower's expense promptly upon the written request of Administrative Agent from time to time, a Site Assessment or, if required by Administrative Agent, an update to any existing Site Assessment for the applicable Project, to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within such Project. Borrower shall pay the cost of no more than one such Site Assessment or update for a Project in any twelve (12) month period, unless Administrative Agent's request for a Site Assessment is based on information provided under Section 4.2(a), a reasonable suspicion of Hazardous Materials at or near such Project, a breach of representations under Section 4.1, or an Event of Default, in which case any such Site Assessment or update shall be at Borrower's expense.

(d) Each Borrower covenants and agrees that it shall comply in all material respects with the terms and conditions of each operation and maintenance program, if any, reasonably required by the Administrative Agent and/or Lenders to be maintained with respect to any Project.

**Section 4.3. Allocation of Risks and Indemnity.** As between Borrower and Administrative Agent and each Lender, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Projects, shall lie solely with Borrower. Accordingly, Borrower shall bear all risks and costs associated with any loss (including any loss in value attributable to Hazardous Materials), damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required by Administrative Agent or by law. Borrower shall indemnify, defend and hold Administrative Agent and each Lender and their respective shareholders, directors, officers, employees and agents harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense and consultant fees, investigation and laboratory fees, court costs, and other litigation expenses) arising out of or associated, in any way, with (a) the non-compliance with Environmental Laws, or (b) the existence of Hazardous Materials in, on, or about the Projects, (c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials; (d) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, (e) a breach of any representation, warranty or covenant contained in this Article 4, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, or (f) the imposition of any environmental lien encumbering the Projects; provided, however, Borrower shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from such indemnified Person's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Borrower's obligations under this Section 4.3 shall arise whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment and shall continue notwithstanding the repayment of the Loan or any transfer or sale of any right, title and interest in any Project (by foreclosure, deed in lieu of foreclosure or otherwise).

**Section 4.4. Administrative Agent's Right to Protect Collateral.** If any discharge of Hazardous Materials or the threat of any discharge of Hazardous Materials affecting any Project occurs or Borrower fails to comply with any Environmental Laws and Borrower has not, within ten (10) Business Days of the occurrence of such event, taken commercially reasonable steps to begin the remediation of such condition as required by Section 4.3, Administrative Agent may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable at the expense of Borrower in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Any amounts payable to Administrative Agent by reason of the application of this Section 4.4 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Administrative Agent until paid. The obligations and liabilities of Borrower under this Section 4.4 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure.

**Section 4.5. No Waiver.** Notwithstanding any provision in this Article 4 or elsewhere in the Loan Documents, or any rights or remedies granted by the Environmental Indemnity Agreement or the Loan Documents, neither Administrative Agent nor any Lender waives and each of them expressly reserves all rights and benefits now or hereafter accruing to Administrative Agent and the Lenders under the "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Administrative Agent or any Lender pursuant to the Environmental Indemnity Agreement or the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "security interest exception."

**ARTICLE V**  
**LEASING MATTERS**

**Section 5.1. Representations and Warranties on Leases.**

(a) **Leases.** Each Borrower represents and warrants to Administrative Agent and the Lenders with respect to the Leases for residential occupancy, (i) the rent roll or Census Report for each Project delivered to Administrative Agent is true and correct; (ii) such Leases are valid and in full force and effect; and (iii) the interests of the landlord and the rents under such Leases have not been assigned or pledged. Borrower represents and warrants to Administrative Agent and Lenders with respect to the Commercial Leases, if any, (i) the rent roll with respect to such Commercial Leases, if any, delivered to Administrative Agent is true and correct; (ii) such Commercial Leases are in full force and effect; (iii) the Commercial Leases (including amendments) are in writing, and there are no oral agreements with respect thereto; (iv) the copies of the Leases delivered to Administrative Agent are true and complete; (v) neither the landlord nor any tenant is in default under any of the Commercial Leases; (vi) Borrower has no knowledge of any notice of termination or default with respect to any Commercial Lease; (vii) Borrower has not assigned or pledged any of the Commercial Leases, the rents or any interests therein except to Administrative Agent and the Lender; (viii) no Tenant or other party has an option to purchase all or any portion of Projects; (ix) no Tenant has the right to terminate its Commercial Lease prior to expiration of the stated term of such Commercial Lease; (x) no Tenant has prepaid more than one month's rent in advance (except for bona fide security deposits not in excess of an amount equal to two months' rent); and (xi) all existing Commercial Leases are subordinate to the Mortgage either pursuant to their terms or a recorded subordination agreement.

(b) **Master Lease.** Each Borrower represents and warrants to Administrative Agent and the Lenders with respect to the Master Lease to which such Borrower is party that: (i) such Master Lease is valid and in full force and effect; (ii) such Master Lease (including amendments) is in writing, and there are no oral agreements with respect thereto; (iii) the copy of such Master Lease delivered to Administrative Agent is true and complete; (iv) neither such Borrower nor the Master Tenant party to such Master Lease is (or as to the other party is, to such party's knowledge), in default under such Master Lease; (v) neither such Borrower nor the Master Tenant party to such Lease has any knowledge of any notice of termination or default with respect to such Master Lease; (vi) such Borrower has not assigned or pledged such Master Lease, the rents or any interests therein, except to Administrative Agent and the Lenders or except in connection with a Permitted Transfer; (vii) except as set forth in such Master Lease, the Master Tenant party thereto does not have an option to purchase all or any portion of the Project demised thereunder; (viii) except as set forth in such Master Lease, the Master Tenant party thereto does not have the right to terminate such Master Lease prior to expiration of the stated term of such Master Lease (unless due to casualty or condemnation of the Project demised thereunder); and (ix) the Master Tenant party to such Master Lease has not prepaid more than one month's rent in advance.

(c) **Ground Lease.** Redding Sundial Borrower represents and warrants to Administrative Agent and the Lenders that (i) a true, complete and correct copy of the Ground Lease, together with all amendments thereto, has been delivered to Administrative Agent; (ii) the Ground Lease is valid and in full force and effect; (iii) the interests of Redding Sundial Borrower under the Ground Lease has not been assigned or pledged, other than pursuant to a Mortgage, and is not subject to any Lien, other than the Lien of the applicable Mortgage; (iv) Redding Sundial Borrower's interest under the Ground Lease is assignable to Administrative Agent without the written consent of Ground Lessor, and is further assignable by Administrative Agent without Ground Lessor's consent; (v) under the terms of the Ground Lease and this Agreement, taken together, any insurance proceeds and Awards paid with respect to the Redding Sundial Project or the interest of Redding Sundial Borrower therein will be applied either to the repair or restoration of all or a portion of the Redding Sundial Project, with Administrative Agent having the right to hold and disburse the proceeds as the repair or restoration progresses, or to the payment of the Obligations; (vi) [reserved]; (vii) neither Redding Sundial Borrower nor Ground Lessor is in default under the Ground Lease, nor is there any event or circumstance that, with the giving of notice or passage of time, would constitute a default under the Ground Lease; (viii) no notice of termination or default has been given or received by Redding Sundial Borrower under the Ground Lease; and (ix) Redding Sundial Borrower has paid all sums payable and Redding Sundial Borrower has performed all obligations required to be performed by Redding Sundial Borrower thereunder..

**Section 5.2.     [Reserved].**

**Section 5.3.     Covenants.**

(a)     **Leases.** Borrower shall (or cause Operator to) (i) perform the obligations which any Lease Party is required to perform under the Leases; (ii) enforce the obligations to be performed by the Tenants under the Leases; (iii) promptly furnish to Administrative Agent any notice of default or termination received by Borrower from any Tenant under a Commercial Lease, and any notice of default or termination given by any Borrower to any Tenant under a Commercial Lease; (iv) not collect any rents for more than one month in advance of the time when the same shall become due, except for bona fide Security Deposits not in excess of an amount equal to two month's rent; (v) not enter into any ground lease or master lease of any part of the Projects other than the Master Lease to which such Borrower is party and, with respect to Redding Sundial Borrower only, the Ground Lease; (vi) not further assign or encumber any Lease; (vii) not, except with Administrative Agent's prior written consent, cancel or accept surrender or termination of any Commercial Lease; (viii) not, except with Administrative Agent's prior written consent, modify or amend any Lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the Lease); and (ix) assign to Administrative Agent any letter of credit evidencing a security deposit on such terms as may be required by Administrative Agent and shall deliver the original of such letter(s) of credit to Administrative Agent. Any action in violation of clauses (v), (vi), (vii), or (viii) of this Section 5.3(a) shall be void at the election of Administrative Agent. Borrower and Operator, as applicable, will not suffer or permit any breach or default to occur in any of any Lease Party's obligations under any of the Leases, nor suffer or permit the same to terminate by reason of any failure of Lease Party to meet any requirement of any Lease.

(b) **Master Lease.** Each Borrower shall (i) perform the obligations which such Borrower is required to perform under the Master Lease to which such Borrower is party; (ii) enforce the material obligations to be performed by the Master Tenant under the Master Lease to which such Borrower is party; (iii) promptly furnish to Administrative Agent any notice of default or termination received by such Borrower from the Master Tenant, and any notice of default or termination given by such Borrower to such Master Tenant, under the Master Lease to which such Borrower is party; (iv) not collect any rents for more than one month in advance of the time when the same shall become due under the Master Lease to which such Borrower is party, except for bona fide security deposits not in excess of an amount equal to two months rent; (v) not enter into any ground lease or master lease of any part of the Projects other than the Master Lease to which such Borrower is party and, with respect to Redding Sundial Borrower only, the Ground Lease; (vi) not further assign or encumber the Master Lease to which such Borrower is party; (vii) not, except with Administrative Agent's prior written consent, cancel or accept surrender or termination of the Master Lease to which such Borrower is party; and (viii) not, except with Administrative Agent's prior written consent, modify or amend the Master Lease to which such Borrower is party, and any action in violation of clauses (v), (vi), (vii), or (viii) of this Section 5.3(b) shall be void at the election of Administrative Agent. For avoidance of doubt, Administrative Agent may withhold its consent to any amendment or modification of any Master Lease that would provide for a reduction in the amount of base rent payable thereunder. No Borrower will suffer or permit any breach or default to occur in any of such Borrower's obligations under the Master Lease to which such Borrower is party nor suffer or permit the same to terminate by reason of any failure of such Borrower to meet any requirement under the Master Lease to which such Borrower is party.

(c) **Ground Lease.**

(i) Redding Sundial Borrower will (A) pay on or before the due dates thereof all rents and other amounts payable under the Ground Lease; (B) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Redding Sundial Borrower, as tenant thereunder, to be performed and observed at least five (5) days prior to the expiration of any applicable grace period therein provided; and (C) enforce the material obligations to be performed by Ground Lessor under the Ground Lease.

(ii) Redding Sundial Borrower shall not sublease (other than pursuant to the Master Lease to which it is party), assign, or encumber (other than pursuant to a Mortgage securing the Obligations) its interest under the Ground Lease, and any action in violation of this Section 5.3(c)(ii) shall be void at the election of Administrative Agent.

(iii) Redding Sundial Borrower will (A) deliver to Administrative Agent a copy of any notice of default sent by Redding Sundial Borrower under the Ground Lease contemporaneously with the delivery thereof to Ground Lessor; and (B) deliver to Administrative Agent a copy of any notice of default received by Redding Sundial Borrower under the Ground Lease within one (1) Business Day following receipt thereof. For purposes of determining whether a default under the Ground Lease exists, Administrative Agent shall be entitled to rely on, and accept as correct, any notice of default delivered by Ground Lessor. If Redding Sundial Borrower fails to promptly cure any default under the Ground Lease, or fails to cure any default within five (5) days prior to the expiration of any cure period, if there is a cure period under the Ground Lease, Administrative Agent shall have the right (but shall not be obligated) to take any action to prevent or to cure any such default by Redding Sundial Borrower under the Ground Lease, and any sums of money advanced by Administrative Agent to cure any such default shall become part of the Indebtedness, shall bear interest at the Default Rate until repaid by Borrower, and shall be repayable by Borrower to Administrative Agent within five (5) days after receipt of written demand.

(a) Redding Sundial Borrower will not, whether or not in accordance with the Ground Lease, do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will be grounds for terminating the Ground Lease prior to its stated termination date (including voluntarily terminating the Ground Lease) or declaring a default thereunder or a forfeiture thereof, without first obtaining the prior written consent of Administrative Agent.

(b) Redding Sundial Borrower will not surrender any of its rights, title or interest under the Ground Lease, nor terminate or cancel the Ground Lease, nor accept or permit any of the foregoing, prior to its stated termination date (whether voluntarily or otherwise) and Redding Sundial Borrower will not, without the express written consent of Administrative Agent, modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, or enter into any agreement modifying, supplementing or amending the Ground Lease.

(c) Redding Sundial Borrower shall not subordinate the Ground Lease or its leasehold estate to any mortgage, deed of trust or other encumbrance of, or lien on, the fee interest of any owner of the Mortgaged Property. Any such attempted subordination shall be void and of no force or effect.

(d) Redding Sundial Borrower will not waive, excuse, condone or in any way release or discharge Ground Lessor of or from the obligations, covenants and agreements by Ground Lessor to be done and performed under or in relation to the Ground Lease. Redding Sundial Borrower, at Borrower's expense, will enforce the performance by Ground Lessor of Ground Lessor's obligations under or related to the Ground Lease.

(e) Redding Sundial Borrower shall notify Administrative Agent promptly in writing of any request made by either party to the Ground Lease for arbitration or appraisal proceedings relating to the Ground Lease and of the institution of any such arbitration or appraisal proceeding, as well as of all proceedings thereunder, and shall promptly deliver to Administrative Agent a copy of the determination of the arbitrators in any such proceeding. Administrative Agent shall have the right (but not the obligation), following delivery of written notice to Borrower, to participate in the appointment of any arbitrator or appraiser to be appointed by Borrower and (to the extent permitted under the Ground Lease) to participate in such arbitration or appraisal proceedings in association with Borrower or on its own behalf as an interested party. Borrower shall notify Administrative Agent of any legal proceedings involving obligations under the Ground Lease, and Administrative Agent may intervene in any such legal proceeding and be made a party. Redding Sundial Borrower shall promptly provide Administrative Agent with a copy of any decision rendered in any such proceeding.

(f) Without the prior written consent of Administrative Agent, Borrower will not exercise any purchase option under the Ground Lease, which consent will not be unreasonably withheld and if granted shall be subject to such terms and conditions as may reasonably be imposed by Administrative Agent.

#### **Section 5.4. Tenant Estoppels.**

(a) **Leases.** At Administrative Agent's request, Borrower shall obtain and furnish (or cause Operator to obtain and furnish) to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by Tenants under Commercial Leases in excess of 3,000 square feet of a Project and confirming the term, rent, and other provisions and matters relating to such Commercial Leases.

(b) **Master Lease.** Promptly upon demand by Administrative Agent, Borrower shall use reasonable efforts to obtain from Master Tenant and furnish to Administrative Agent an estoppel certificate, in form and substance satisfactory to Administrative Agent, executed by Master Tenant and confirming the term, rent and other provisions and matters relating to the Master Lease.

(c) **Ground Lease.** Promptly upon demand by Administrative Agent, Redding Sundial Borrower shall use reasonable efforts to obtain from Ground Lessor and furnish to Administrative Agent an estoppel certificate stating the date through which rent has been paid, whether or not there are any defaults under the Ground Lease, the specific nature of any claimed defaults, and such other matters as may be reasonably requested by Administrative Agent.

**Section 5.5. Payment of Rents Under Master Lease.**

(a) Commencing on the Closing Date and continuing so long as the Loan are outstanding, Borrower shall direct Master Tenant to make all payments of rent and all other amounts due under the Master Lease (such net amount herein called the “**Master Lease Payments**”) to the Deposit Account Bank for deposit in the account subject to the Deposit Account Control Agreement. So long as no Potential Default or Event of Default is continuing, Deposit Account Bank shall be authorized to transfer on a daily basis the funds in the account to the operating account of Borrower, excluding the Security Deposit and any supplements thereto and amounts deposited by the Master Tenant in connection with future payments of Taxes and insurance premiums, which shall remain on deposit in a Deposit Account subject to a Deposit Account Control Agreement.

(b) If a Potential Default or an Event of Default exists, Administrative Agent shall have the right in its sole discretion to direct the Deposit Account Bank to disburse all amounts in the account held by the Deposit Account Bank to Administrative Agent or as otherwise directed by Administrative Agent, and to the extent disbursed to Administrative Agent. Administrative Agent shall apply such amounts to the Obligations, in such order as Administrative Agent, in its sole discretion, may elect.

**ARTICLE VI**

**REPRESENTATIONS AND WARRANTIES**

Borrower and Master Tenant, as applicable represents, warrants and covenants to Administrative Agent and Lenders unless otherwise specified, as of the Closing Date and as of the date of each Compliance Certificate delivered to Administrative Agent pursuant to Section 7.2 hereof that:

**Section 6.1. Organization, Power and Authority; Formation Documents.**

(a) **Organization, etc.** Borrower and each Borrower Party (a) is duly organized, validly existing and in good standing under the laws of the state of its formation or existence and is in compliance with all legal requirements applicable to doing business in each state in which a Project is located. Borrower is not a “foreign person” within the meaning of §1445(f)(3) of the Code. Borrower and each Borrower Party has only one state of incorporation or organization. All other information regarding Borrower and each Borrower Party contained in *Schedule 6.1*, including the ownership structure of Borrower and its constituent entities, is true and correct as of the Closing Date.

(b) **Formation Documents.** A true and complete copy of the formation documents creating Borrower and each Borrower Party and any and all amendments thereto (collectively, the "**Borrower Formation Documents**") has been furnished to Administrative Agent. The Borrower Formation Documents constitute the entire agreement regarding Borrower and each Borrower Party among the members of Borrower and shareholders of each Borrower Party and are binding upon and enforceable against each of the members or shareholders, as applicable, in accordance with their terms. No breach exists under the Borrower Formation Documents and no condition exists which, with the giving of notice or the passage of time would constitute a breach under the Borrower Formation Documents.

**Section 6.2. Validity of Loan Documents.** The execution, delivery and performance by Borrower and each Borrower Party of the Loan Documents and the Environmental Indemnity Agreement: (a) are duly authorized and do not require the consent or approval of any other party or Governmental Authority which has not been obtained; and (b) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Loan Documents and/or the Environmental Indemnity Agreement. The Loan Documents and/or the Environmental Indemnity Agreement constitute the legal, valid and binding obligations of Borrower and each Borrower Party who is a party to the Loan Documents and/or the Environmental Indemnity Agreement, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

**Section 6.3. Liabilities; Litigation.**

(a) **Financial Statements.** The financial statements delivered by Borrower and each Borrower Party are true and correct as of the date prepared with no significant change since the date of preparation. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting any Project, Borrower or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to Borrower's Knowledge, threatened, against any Project, Borrower or any Borrower Party which if adversely determined could have a Material Adverse Effect on such party, any Project or the Loan.

(b) **Contemplated Actions.** None of Borrower or any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and none of Borrower, or any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

**Section 6.4. Taxes and Assessments.** There are no unpaid or outstanding real estate or other taxes or assessments on or against the Projects or any part thereof, except general real estate taxes not due or payable. Each Project is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower's Knowledge, proposed, special or other assessments for public improvements or otherwise affecting any Project, nor are there any contemplated improvements to any Project that may result in such special or other assessments.

**Section 6.5. Other Agreements; Defaults.** None of Borrower or any Borrower Party is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which might adversely affect any Project or the business, operations, or condition (financial or otherwise) of Borrower or any Borrower Party. None of Borrower or any Borrower Party is in violation of any agreement which violation could reasonably be expected to have a Material Adverse Effect on Borrower or any Borrower Party or Borrower's or any Borrower Party's business, properties, or assets, operations or condition, financial or otherwise.

**Section 6.6. Compliance with Law.** Borrower has all requisite Permits to own and lease the Projects and carry on its business and to Borrower's Knowledge each Operator has all requisite Primary Licenses and Permits to operate the Projects and carry on its business. Except as described in each Zoning Report and Property Condition Report delivered to Administrative Agent prior to the Closing Date, each Project in compliance with all applicable zoning and building requirements and is free of structural defects. Except as described in the Property Condition Report delivered to Administrative Agent prior to the Closing Date, all of the building systems contained in each Project are in good working order, subject to ordinary wear and tear. Except as set forth in the Zoning Report, no Project constitutes, in whole or in part, a legally non-conforming use under applicable legal requirements.

**Section 6.7. Condemnation.** No condemnation has been commenced or, to Borrower's Knowledge, is contemplated with respect to all or any portion of the Projects or for the relocation of roadways providing access to any Project.

**Section 6.8. Access.** Each Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of each Project are located in the public right-of-way abutting the applicable Project, and all such utilities are connected so as to serve such Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefitting such Project. All roads necessary for the full utilization of each Project for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

**Section 6.9. Location of Borrower.** Borrower's principal place of business and chief executive offices are located at the address stated in Schedule 6.1, and, except as otherwise set forth in Schedule 6.1, Borrower at all times has maintained its principal place of business and chief executive office at such location or at other locations within the same state.

**Section 6.10. ERISA; Employees.**

(a) As of the Closing Date and throughout the term of the Loan, (i) Borrower is not and will not be an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (ii) the assets of Borrower do not and will not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA.

(b) As of the Closing Date and throughout the term of the Loan (i) Borrower is not and will not be a “governmental plan” within the meaning of Section 3(3) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

(c) No Borrower has any employees.

**Section 6.11. Use of Loan Proceeds.** The proceeds of the Loan are intended and will be used for agricultural, business and/or commercial purposes and are not intended and will not be used for personal, family or household purposes. No part of proceeds of the Loan will be used for purchasing or acquiring any “margin stock” within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

**Section 6.12. Forfeiture.** There has not been and shall never be committed by Borrower or any other person in occupancy of or involved with the operation or use of a Project any act or omission affording the federal government or any state or local government the right of forfeiture as against such Project or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents or the Environmental Indemnity Agreement. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

**Section 6.13. Tax Filings.** Borrower and each Borrower Party have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and each Borrower Party, respectively. Borrower and each Borrower Party believe that their respective tax returns properly reflect the income and taxes of Borrower and each Borrower Party, respectively, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

**Section 6.14. Solvency.** After giving effect to the Loan, the fair saleable value of Borrower’s assets exceeds and will, immediately following the making of the Loan, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower’s assets is and will, immediately following the making of the Loan, be greater than Borrower’s probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured, and Borrower’s assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). Except as expressly disclosed to Administrative Agent in writing, no petition in bankruptcy has been filed against Borrower or any Borrower Party in the last seven (7) years, and neither Borrower nor any Borrower Party in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrower nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

**Section 6.15. Full and Accurate Disclosure.** No statement of fact made by or on behalf of Borrower or any Borrower Party in this Agreement, in any of the other Loan Documents or the Environmental Indemnity Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed to Administrative Agent which adversely affects, nor as far as Borrower can foresee, might adversely affect, any Project or the business, operations or condition (financial or otherwise) of Borrower or any Borrower Party. All information supplied by Borrower regarding any other Collateral is accurate and complete in all material respects. All evidence of Borrower's and each Borrower Party's identity provided to Administrative Agent and Lenders is genuine, and all related information is accurate.

**Section 6.16. Flood Zone.** No portion of the improvements comprising the Projects is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.1 hereof.

**Section 6.17. Single Purpose Entity/Separateness.** Borrower represents, warrants and covenants, from and after the Closing Date and for so long as any obligation under the Loan Documents remains outstanding, as follows:

(a) **Limited Purpose.** The sole purpose conducted or promoted by Borrower is to engage in the following activities:

(i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Projects (or an undivided interest therein) and to contract for the operation, maintenance, management and development of the Projects;

(ii) to enter into and perform its obligations under the Loan Documents and Environmental Indemnity Agreement;

(iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Projects to the extent permitted under the Loan Documents; and

(iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of its jurisdiction of formation that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

(b) **Limitations on Debt, Actions.** Notwithstanding anything to the contrary in the Loan Documents or in any other document governing the formation, management or operation of Borrower, Borrower shall not:

(i) guarantee any obligation of any Person, including any Affiliate, or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;

(ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Section 6.17;

(iii) incur, create or assume any Debt other than (A) the Loan and (B) unsecured trade payables incurred in the ordinary course of its business that are related to the ownership and operation of the Projects and which shall (1) not exceed two percent (2%) of the outstanding balance of the Loan, (2) not be evidenced by a note, (3) be paid within sixty (60) days, and (4) otherwise expressly be permitted under the Loan Documents;

(iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that Borrower may invest in those investments permitted under the Loan Documents;

(v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of Borrower's business;

(vi) buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities);

(vii) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity;

(viii) own any asset or property other than the Projects (or an undivided interest therein) and incidental personal property necessary for the ownership or operation of the Projects; or

(ix) take any Material Action without the unanimous written approval of all members of Borrower.

(c) **Separateness Covenants.** In order to maintain its status as a separate entity and to avoid any confusion or potential consolidation with any Affiliate, Borrower represents and warrants that in the conduct of its operations since its organization it has observed, and covenants that it will continue to observe, the following covenants:

(i) maintain books and records and bank accounts separate from those of any other Person;

(ii) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;

- (iii) comply with all organizational formalities necessary to maintain its separate existence;
- (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (v) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; except that Borrower's assets may be included in a consolidated financial statement of its Affiliate so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of Borrower from such Affiliate and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person;
- (vi) other than with respect to the consolidated tax return of its Affiliates, prepare and file its own tax returns separate from those of any Person to the extent required by applicable Requirements of Law, and pay any taxes required to be paid by applicable Requirements of Law;
- (vii) allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates;
- (viii) not enter into any transaction with any Person owned or controlled by an Affiliate of Borrower except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements;
- (ix) conduct business in its own name, and use separate stationery, invoices and checks;
- (x) not commingle its assets or funds with those of any other Person other than as required or permitted by this Agreement;
- (xi) not assume, guarantee or pay the debts or obligations of any other Person;
- (xii) correct any known misunderstanding as to its separate identity;
- (xiii) not permit any Affiliate to guarantee or pay its obligations (other than limited guarantees and indemnities set forth in the Loan Documents and in the Environmental Indemnity Agreement);
- (xiv) not make loans or advances to any other Person;
- (xv) pay its liabilities and expenses out of and to the extent of its own funds;
- (xvi) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;

(xvii) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require any equity owner to make additional capital contributions to Borrower;

(xviii) cause the managers, officers, employees, agents and other representatives of Borrower to act at all times with respect to Borrower consistently and in furtherance of the foregoing and in the best interests of Borrower;

(xix) not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Indebtedness and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Indebtedness is insufficient to pay such obligation;

(xx) not pledge its assets for the benefit of any other Person other than to Administrative Agent and Lenders in connection with the Loan; and

(xxi) observe all partnership, corporate or limited liability company formalities, as applicable.

Failure of Borrower to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of Borrower as a separate legal entity.

**Section 6.18. Compliance With International Trade Control Laws and OFAC Regulations.** Borrower represents, warrants and covenants to Administrative Agent and Lenders that:

(a) No Borrower Party and no Person who owns a direct interest in Borrower is now nor shall be at any time until after the Loan is fully repaid, a Person with whom a U.S. Person, including a Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under U.S. law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(b) Each Borrower Party and Person who owns a direct interest in Borrower is now, and Borrower will remain, in compliance (and will cause each Borrower Party and Person who owns a direct interest in Borrower to remain in compliance) in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by OFAC and all applicable Anti-Money Laundering Laws.

**Section 6.19. Borrower's Funds.** Borrower represents, warrants and covenants to each Lender and the Administrative Agent that:

(a) It has taken, and shall continue to take until after the Loan is fully repaid, such measures as are required by law to verify that the funds invested in Borrower are derived (i) from transactions that do not violate U.S. law and, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under U.S. law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(b) To Borrower's Knowledge, no Borrower Party, nor any Person who owns a direct interest in Borrower, nor any Person providing funds to Borrower (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; and (iii) has had any of its/his/her funds seized or forfeited in any action under any Anti-Money Laundering Laws.

(c) Borrower shall make payments on the Loan using funds invested in Borrower, Adjusted Revenues or insurance proceeds unless otherwise agreed to by Administrative Agent.

(d) To Borrower's Knowledge, as of the Closing Date and at all times during the term of the Loan, all revenues arising from the Projects are and will be derived from lawful business activities of Tenants of the Projects or other permissible sources under U.S. law.

(e) On the Maturity Date, Borrower will take reasonable steps to verify that funds used to repay the Loan in full (whether in connection with a refinancing, asset sale or otherwise) are from sources permissible under U.S. law and to the extent such funds originate outside the United States, permissible under the laws of the jurisdiction in which they originated.

(f) Each Borrower Party and Person who owns a direct interest in Borrower is now, and Borrower will remain in compliance (and will cause each Borrower Party and Person who owns a direct interest in Borrower to remain in compliance) with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act ("TWEA"), 50 U.S.C. App. Section 1 *et seq.*, and the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. Section 1701 *et seq.*, as the TWEA and the IEEPA may apply to Borrower's activities;

(g) Each Borrower Party and Person who owns a direct interest in any Borrower is now, and Borrower will remain in compliance (and will cause each Borrower Party and Person who owns a direct interest in any Borrower to remain in compliance) with (i) the Patriot Act and all rules and regulations promulgated under the Patriot Act applicable to Borrower and (ii) other federal or state laws relating to "know your customer" and other anti-money laundering rules and regulations; and

(h) Each Borrower Party and Person who owns a direct interest in any Borrower (i) is not now, nor has ever been, under investigation by any Governmental Authority for, nor has been charged with or convicted for a crime under, 18 U.S.C. Sections 1956 or 1957 or any predicate offense thereunder, or a violation of the Bank Secrecy Act; (ii) has never been assessed a civil penalty under any Anti-Money Laundering Laws or predicate offenses thereunder; (iii) has not had any of its funds seized, frozen or forfeited in any action relating to any Anti-Money Laundering Laws or predicate offenses thereunder; (iv) has taken such steps and implemented such policies as are reasonably necessary to ensure that such party is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally derived property, or of money or monetary instruments which are (or which such party suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (v) has taken such steps and implemented such policies as are reasonably necessary to ensure that such party is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, and that such steps include the development and implementation of an anti money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent any such party is required to develop such programs under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act.

**Section 6.20. Operators' Agreements.** A true, correct and complete copy of each of the Operators' Agreements, together with all amendments thereto, have been delivered to Administrative Agent; and the Operators' Agreements and all amendments thereto are in full force and effect as of the Closing Date.

**Section 6.21. Physical Condition.** Except as specifically set forth in the Property Condition Report, to Borrower's Knowledge, (a) the Projects, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; and (b) there exists no structural or other material defects or damages in any Project, whether latent or otherwise. Borrower has not received written notice from any insurance company or bonding company of any defects or inadequacies in any Project, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

**Section 6.22. Healthcare Representations.** Borrower represents and warrants to Administrative Agent and Lenders that:

(a) Each Project (i) is being operated as an independent living, skilled nursing, memory care or assisted living facility, having the number of Residential Units as set forth on Exhibit A, attached hereto, (ii) if applicable, has a current provider agreement that is in full force and effect under Medicare and Medicaid, and (iii) is in all material respects in compliance with all applicable Requirements of Law (and, to the extent that failure to comply with any such Requirements of Law would materially and adversely affect the operation of a Project, is in compliance with such Requirement of Law) including (A) staffing requirements, (B) health and fire safety codes, including quality and safety standards, (C) accepted professional standards and principles that apply to professionals providing services at the Projects; (D) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (E) insurance, reimbursement and cost reporting requirements, (F) government payment program requirements and disclosure of ownership and related information requirements, (G) requirements of applicable Governmental Authorities, including those relating to the Projects' physical structure and environment, licensing, quality and adequacy of medical care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies and services and fee splitting, and (H) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Operator with respect to the Projects. There is no threatened in writing, existing or pending revocation, suspension, termination, probation, restriction, limitation, or nonrenewal proceeding by any third-party payor under a Third Party Payor Program. The Third Party Payor Programs to which Borrower or any Operator may presently be subject with respect to any Project are listed on *Schedule 6.22(a)*.

(b) All Primary Licenses necessary for using and operating the Projects for the uses described in clause (a), above are listed on **Schedule 6.22(b)**, are either held by, or will be held by, Borrower or the applicable Operator, as required under applicable Law, and are in full force and effect.

(c) Except as set forth on **Schedule 6.22** hereof, with respect to any Project, there are no inquiries, investigations, probes, audits or proceedings by any Governmental Authority or notices thereof, or any other third party or any patient, employee or resident (including whistleblower suits, or suits brought pursuant to federal or state “**false claims acts**” and Medicaid, Medicare or state fraud and/or abuse laws) that are reasonably likely directly or indirectly, or with the passage of time (i) to have a material adverse impact on Operators’ ability to accept and/or retain patients or residents or operate such Project for its current use or result in the imposition of a fine, a sanction, a lower rate certification or a lower reimbursement rate for services rendered to eligible patients or residents, (ii) to modify, limit or result in the transfer, suspension, revocation or imposition of probationary use of any of the Primary Licenses, (iii) to affect any Operator’s continued participation in the Medicaid or Medicare programs or any other Third-Party Payor Programs, or any successor programs thereto at then current rate certifications, or (iv) result in any other civil or criminal penalty or remedy, or which could result in the appointment of a receiver.

(d) With respect to any Project, except as set forth on **Schedule 6.22**, no Project has received a notice of violation at a level that under applicable Law requires the immediate or accelerated filing of a plan of corrections, and no statement of charges or deficiencies has been made or penalty enforcement action has been undertaken against any Project, no Operator currently has outstanding any violation, and no statement of charges or deficiencies has been made or penalty enforcement action has been undertaken each that remain outstanding against any Project, any Operator or against any officer, director, partner, member or stockholder of any Operator, by any Governmental Authority, and there have been no violations threatened against any Project’s, or any Operator’s certification for participation in Medicare or Medicaid or the other Third-Party Payor Programs that remain open or unanswered.

(e) With respect to any Project, there are no current, pending or outstanding Third-Party Payor Programs reimbursement audits, appeals or recoupment efforts actually pending at the Project, and there are no years that are subject to an open audit in respect of any Third-Party Payor Program that would, in each case, adversely affect any Operator, other than customary audit rights pursuant to Medicare/Medicaid/TRICARE programs or other Approved Insurer’s programs that would materially adversely affect Operators or Borrower.

(f) Neither Borrower nor any Operator has received federal funds authorized under the Hill-Burton Act (42 U.S.C. 291, *et seq.*), as it may be amended.

(g) With respect to each Project, substantially all of the patient and resident care agreements with respect to such Project conform in all material respects with the form patient or resident care agreements that have been delivered to Administrative Agent and all such agreements are in compliance with Healthcare Laws.

(h) Borrower's and Operator's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third party insurance accounts receivable with respect to the Projects are free of any Liens and neither Borrower nor Operators have pledged any of their respective receivables as collateral security for any loan or indebtedness.

(i) Neither Borrower nor Operator is a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Projects and there are no threatened or pending labor disputes at the Projects.

**Section 6.23. No Change in Facts or Circumstances; Disclosure.** To Borrower's Knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects the business operations or the financial condition of Borrower or the Projects.

## ARTICLE VII

### FINANCIAL REPORTING

**Section 7.1. Financial Statements.** Borrower shall furnish to Administrative Agent and shall cause each Borrower Party to furnish to Administrative Agent such financial statements and other financial information as may be required pursuant to this Article 7 and such other financial information as Administrative Agent may require pursuant to this Article 7 and such other financial information as Administrative Agent may reasonably request from time to time. All such financial statements shall be in Excel format, shall reflect all material contingent liabilities in accordance with GAAP and shall accurately and fairly present the results of operations and the financial condition of Borrower at the dates and for the period indicated and shall be sufficient to permit Administrative Agent and Lenders to calculate and/or verify Borrower's calculation of Debt Service Coverage Ratio, Project Yield and Adjusted Net Operating Income.

(a) Financial Information. In furtherance of the foregoing, Borrower will furnish to Administrative Agent (or cause to be furnished to Administrative Agent) the following financial information and reports with respect to each Borrower, each Project and/or each Operator (as applicable), in each case in form and format and providing information satisfactory to Administrative Agent in its discretion:

(i) within forty-five (45) days after the end of each calendar month, (A) internally prepared monthly financial statements (including income statements and balance sheets) prepared for each Borrower and each Project which fairly present the financial condition for each Borrower and each Project for such period and year-to-date and (B) a current Census Report for each Project;

(ii) within sixty (60) days after the end of each fiscal year, internally prepared annual financial statements (including income statements and balance sheets) prepared for each Borrower and each Project in accordance with GAAP (except for the absence of footnotes and year-end adjustments) and based on an accrual basis of accounting consistent with industry standards;

(iii) within one hundred twenty (120) days after the end of each fiscal year, annual consolidated audited financial statements for each Borrower and each Project (which may be on a consolidated basis with respect to each Master Tenant), prepared in accordance with GAAP on an accrual basis and prepared by a firm of independent public accountants reasonably satisfactory to Administrative Agent;

(iv) copies of state and local health inspection and regulatory surveys (including complaint surveys), to be provided within twenty-five (25) days after the completion of such surveys;

(v) within forty-five (45) days after the end of each fiscal quarter, internally prepared monthly financial statements (including income statements and balance sheets) prepared for Guarantor which fairly present the financial condition of Guarantor for such period;

(vi) within one hundred twenty (120) days after the end of each fiscal year, annual consolidated audited financial statements prepared for Guarantor in accordance with GAAP and prepared by a firm of independent public accountants reasonably satisfactory to Administrative Agent; and

(vii) such additional information, reports or statements regarding the Borrower, the Projects, Guarantor or Operator as Administrative Agent may from time to time reasonably request.

(b) *Certification of Financial Statements*. Each financial statement provided hereunder shall be in scope and detail reasonably satisfactory to Administrative Agent and certified by the chief financial representative of each Borrower or its manager. Borrower will maintain a system of accounting established and administered in accordance with sound business practices to (i) permit preparation of financial statements on an accrual basis consistent with industry standards and substantially in accordance with GAAP, and (ii) provide the information required to be delivered to Administrative Agent hereunder.

**Section 7.2. Additional Reports.** Borrower shall deliver to Administrative Agent:

(a) Within thirty (30) days following the request of Administrative Agent, a description of the type and amount of all capital expenditures at the Projects during the prior calendar year;

(b) Within thirty (30) days following the request by Administrative Agent, evidence satisfactory to Administrative Agent that all federal and state taxes, including, without limitation, payroll taxes, that are due have been paid in full by each Borrower, and each other Borrower Party, to be delivered to Administrative Agent (A) with respect to federal and state taxes (other than payroll taxes), within ten (10) days after the required filing date of the applicable tax return and (B) with respect to payroll taxes, within thirty-five (35) days following the end of each calendar month;

(c) Upon the request of Administrative Agent, a copy of Borrowers' or Guarantor's income tax filings for the prior calendar year within thirty (30) days after the filing thereof;

(d) Within forty-five (45) days after Administrative Agent's request therefor, including, if requested by Administrative Agent, (A) cash flow statements for the Borrowers or Operators (which may be prepared on a consolidated basis) and (B) an accounts receivable and accounts payable aging report for each of the Projects.

(e) As soon as reasonably available but in no event later than thirty (30) days after such items become available to Borrower in final form, copies of any final engineering or environmental reports prepared for Borrower with respect to any Project;

(f) Immediately upon receipt thereof, a copy of any notice received by Borrower from any Governmental Authority with respect to an environmental condition existing or alleged to exist or emanate from or at any Project;

(g) From time to time, if any Lender determines that obtaining appraisals is necessary in order for such Lender to comply with applicable Requirements of Law (including any appraisals required to comply with FIRREA), Borrower shall furnish to Administrative Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Administrative Agent stating the then current fair market value of each Project; provided, however, that such report shall not be required during the term of the Loan unless (A) a Potential Default or Event of Default exists, (B) any Lender is required to obtain such report under applicable Law more frequently than once during the term of the Loan or (C) Administrative Agent or any Lender elects to obtain such report at its cost and expense;

(h) Immediately upon receipt or delivery thereof, notice of any alleged default under the Ground Lease.

**Section 7.3. Compliance Certificate.** Within forty-five (45) days after the end of each calendar quarter, Borrower shall deliver and shall cause Guarantor to deliver such financial reports and information as Administrative Agent shall require evidencing compliance with the applicable financial covenants, together with a fully completed Compliance Certificate executed by an officer of Borrower or Guarantor (or an officer of its manager, managing member or general partner), and, if requested by Administrative Agent, back-up documentation as Administrative Agent shall reasonably require evidencing compliance.

**Section 7.4. Accounting Principles.** All financial statements shall be prepared in accordance with GAAP (or such other accounting basis reasonably acceptable to Administrative Agent). Notwithstanding the foregoing, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

**Section 7.5. Other Information; Access.** Borrower shall deliver to Administrative Agent such additional information regarding Borrower, its subsidiaries, its business, any Borrower Party, and the Projects within thirty (30) days after Administrative Agent's request therefor, including, if requested by Administrative Agent, (a) copies of the regular monthly bank statements provided to Borrower or Operator and such other information relating to the Borrower's operating accounts as shall reasonably be requested by Administrative Agent, in each case, to the extent such bank has the operational ability to do so, by providing Administrative Agent with internet access to such statements or information, (b) cash flow statements for the Operator and (c) an accounts receivable and accounts payable aging report. Borrower shall permit Administrative Agent to examine such records, books and papers of Borrower which reflect upon its financial condition and the income and expenses of the Projects. In the event that Borrower fails to forward the financial statements required in this Article 7 within thirty (30) days after written request, Administrative Agent shall have the right to audit such records, books and papers at Borrower's expense.

**Section 7.6. Annual Budget.** At least thirty (30) days prior to the commencement of each fiscal year, Borrower will provide to Administrative Agent the Operator's proposed annual operating and capital improvements budget for the Projects for such fiscal year for review by Administrative Agent.

**Section 7.7. Books and Records/Audits.** Borrower shall keep and maintain or cause to be kept and maintained at all times at the Projects, or such other place as Administrative Agent may approve in writing, complete and accurate books of accounts and records adequate to reflect the results of the operation of the Projects and to provide the financial statements required to be provided to Administrative Agent pursuant to Section 7.1 above and copies of all written contracts, material correspondence, and other material documents affecting the Projects. Administrative Agent and its designated agents shall have the right to inspect and copy any of the foregoing, subject to compliance with Healthcare Laws. Additionally, if a Potential Default or Event of Default exists or if Administrative Agent or any Lender has a reasonable basis to believe that Borrower's records are materially inaccurate, Administrative Agent and each Lender may, subject to compliance with Healthcare Laws conduct a joint audit, at Borrower's expense, and determine, in such Person's reasonable discretion, the accuracy of Borrower's records and computations.

## ARTICLE VIII

### COVENANTS

Borrower covenants and agrees with each Lender and Administrative Agent as follows:

**Section 8.1. Transfers or Encumbrance of Property.**

(a) Borrower shall not cause or permit a Transfer of any Project or any part thereof or any legal or beneficial interest therein nor permit a Transfer of an interest in any Restricted Party (in each case, a “**Prohibited Transfer**”) without the prior written consent of the Administrative Agent, other than pursuant to Leases of space in the improvements to Tenants or a Lease of each Project in its entirety pursuant to a Master Lease, in each case to the extent permitted under Article V.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sale agreement wherein Borrower agrees to sell any Project or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of any Project for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any rents (other than pursuant to the Master Lease); (iii) if a Restricted Party is a corporation, any merger, consolidation or Transfer of such corporation’s stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Transfer of the membership interest of any member or any profits or proceeds relating to such membership interest; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Transfer of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; (vii) the removal or the resignation of the Property Manager (including an Affiliated Manager) other than in accordance with Section 8.3; or (viii) a Transfer that, with respect to the Redding Sundial Project, could result in a default under the Ground Lease.

(c) Notwithstanding the provisions of Section 8.1(b), any of the following transfers shall not be deemed to be a Prohibited Transfer, provided that, with respect to the Redding Sundial Project, the same would not result in a default under the Ground Lease: (i) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party; or (ii) the Transfer, in one or a series of transactions after the date hereof, of not more than forty-nine percent (49%) of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, any such transfer shall be subject to the following additional conditions: (A) no such transfers shall result in a change in Control in the Restricted Party or change in control of any Project, (B) no transfer shall be made to any Person that is not in compliance with Section 6.18, and (C) Administrative Agent shall receive not less than thirty (30) days prior written notice of such proposed transfer; or (iii) any Transfer of the stock in any publicly traded company whose shares are listed on the New York Stock Exchange or such other nationally recognized stock exchange. Notwithstanding the foregoing, any transfer that results in any Person owning in excess of forty-nine percent (49%) of the ownership interest in a Restricted Party must comply with the requirements of Section 8.1(d) hereof.

(d) In connection with a Transfer to Union Life, Guarantor, notwithstanding the provisions of Section 8.1(b), may cause the sole member of Portland Gateway Borrower and Salem Applewood Borrower to Transfer 100% of its membership interests in such Borrower, provided that:

- (i) no Event of Default shall be in existence;
  - (ii) following such Transfer, all of the membership interests of such Borrower shall be held by a Permitted Member;
  - (iii) Administrative Agent shall have received and approved, in its reasonable discretion, the organizational documents of each Permitted Member, which organizational documents shall include the covenants set forth in Sections 6.17(a), (b) and (c) hereof, modified for the sole member of a Borrower, and each new Guarantor;
  - (iv) if required by Administrative Agent, Administrative Agent shall have received satisfactory tax, lien and judgment searches, authority documents and evidence of good standing with respect to the Permitted Member;
  - (v) Administrative Agent shall have received an Assignment of Membership Interests from the Permitted Member of each Borrower; and
  - (vi) Administrative Agent shall have received such information as Administrative Agent may require to satisfy its OFAC, anti-money laundering and know your customer requirements, shall have completed such requirements and shall be satisfied with the results thereof.
- (e) In connection with a Transfer to a Person other than Union Life, Guarantor, notwithstanding the provisions of Section 8.1(b), may cause the sole member of Portland Gateway Borrower and Salem Applewood Borrower to transfer 100% of its membership interests in such Borrower, provided that:
- (i) no Event of Default shall be in existence;
  - (ii) at least fifteen (15) days prior to such Transfer, Borrower provides written notice to Administrative Agent disclosing the identity of the proposed investor, the terms of such conveyance;
  - (iii) Administrative Agent shall have received such information as Administrative Agent may require to satisfy its OFAC, anti-money laundering and know your customer requirements, shall have completed such requirements and shall be satisfied with the results thereof;
  - (iv) the proposed investor and its principals, owners, officers and directors meet all of the eligibility, credit, management and other standards customarily applied by Administrative Agent and the Required Lenders at the time of the proposed transfer to the approval of borrowers in connection with the origination loans similar to the Loan on healthcare facilities, to be determined by Administrative Agent in its sole discretion, including any standards with respect to (A) previous relationships between Administrative Agent or any Lender and the Transferee and its principals, (B) the reputation for integrity, honesty and veracity of the Transferee and its principals, owners, officers and directors, and (C) OFAC, money-laundering, anti-terrorism, SEC and other similar regulations and activities;

(v) following such Transfer, all of the membership interests of such Borrower shall be held by a Permitted Member;

(vi) Administrative Agent shall have received and approved, in its reasonable discretion, the organizational documents of each Permitted Member, which organizational documents shall include the covenants set forth in Sections 6.17(a), (b) and (c) hereof, modified for the sole member of a Borrower, and each Guarantor;

(vii) if required by Administrative Agent, Administrative Agent shall have received satisfactory tax, lien and judgment searches, authority documents and evidence of good standing with respect to the Permitted Member;

(viii) Administrative Agent shall have received an Assignment of Membership Interests from the Permitted Member of each Borrower; and

(ix) Guarantor shall not have completed a previous Transfer under Section 8.1(d).

(f) All expenses incurred by Administrative Agent and Lenders in connection with a Permitted Transfer or a request for consent to a Prohibited Transfer shall be payable by Borrower whether or not the Required Lenders consent to the Prohibited Transfer. Neither Administrative Agent nor any Lender shall be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Indebtedness immediately due and payable upon a Prohibited Transfer made without the Required Lenders' consent. This provision shall apply to each and every Prohibited Transfer, whether or not the Required Lenders have consented to any previous Prohibited Transfer.

**Section 8.2. Taxes; Utility Charges.** Except to the extent sums sufficient to pay all Taxes (defined herein) have been previously deposited with Administrative Agent as part of the Tax Impound and subject to Borrower's right to contest in accordance with Section 12.14 hereof, Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges (the "**Taxes**") that may become a Lien upon any Project or become payable during the term of the Loan. Borrower's compliance with Section 3.4 of this Agreement relating to impounds for Taxes shall, with respect to payment of such Taxes, be deemed compliance with this Section 8.2. Borrower shall not suffer or permit the joint assessment of any Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrower shall promptly pay for all utility services provided to each Project.

**Section 8.3. Management.**

(a) Borrower acknowledges that the Lenders are making the Loan, in part, based upon the operational expertise of the Property Manager. Borrower shall not, and shall not permit Master Tenant to, surrender, terminate, cancel, modify in any material respect, renew, amend, or extend the Management Agreement, or enter into any other agreement relating to the management or operation of the Projects with Property Manager or any other Person, or consent to the assignment by the Property Manager of its interest under the Management Agreement, in each case without the express written consent of Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed and shall be based upon Administrative Agent's evaluation of the proposed substitute manager's and operator's financial condition, credit history and credit worthiness, experience in operating and managing properties similar to the Projects, performance and compliance history in connection with healthcare facilities, reputation for honesty and integrity and prior experience with Administrative Agent and the Lenders. If at any time Administrative Agent consents to the appointment of a new manager, such new manager and Borrower shall, as a condition of Administrative Agent's consent, execute an Acknowledgment and Agreement of Property Manager in form and substance similar to the Acknowledgment and Agreement of Property Manager executed by the Property Manager as of the Closing Date. Any change in ownership or control of the Property Manager shall be cause for Administrative Agent to re-approve such Property Manager and Management Agreement. Each Property Manager shall hold and maintain all necessary licenses, certifications and permits required by law to operate and manage the Project for which it is providing management services.

(b) Borrower and Master Tenant shall cause each Property Manager to manage the Projects in accordance with the applicable Management Agreement. Borrower and/or Master Tenant, as the case may be shall (a) diligently perform and observe all of the terms, covenants and conditions of the applicable Management Agreement on the part of Borrower or Master Tenant, respectively, to be performed and observed, (b) promptly notify Administrative Agent of any notice received by Borrower or Master Tenant of any default by Borrower in the performance or observance of any of the material terms, covenants or conditions of the applicable Management Agreement on the part of Borrower or Master Tenant, respectively, to be performed and observed, and (c) promptly deliver to Administrative Agent a copy of each financial statement, business plan or capital expenditures plan received by it under the Management Agreement. The management fee payable under each Management Agreement shall not exceed Five Percent (5.0%) of rental collections.

(c) Administrative Agent shall have the right to require Borrower and/or Master Tenant to replace the Property Manager with a Person which is not an Affiliate of, but is chosen by, Borrower and approved by Administrative Agent, such approval not to be unreasonably withheld or delayed, upon the occurrence of any one or more of the following events: (a) at any time following the occurrence and continuance of an Event of Default, and/or (b) if Property Manager shall be in default under the Management Agreement beyond any applicable notice and cure period or if at any time the Manager has engaged in gross negligence, fraud or willful misconduct or if at any time the Manager is insolvent or a debtor in a bankruptcy proceeding.

**Section 8.4. Operation; Maintenance; Inspection.** Borrower shall observe and comply with all legal requirements applicable to the ownership, use and operation of the Projects. Borrower shall maintain the Projects in good condition and promptly repair any damage or casualty, normal wear and tear excepted. Borrower shall permit Administrative Agent and its agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Projects and conduct such environmental and engineering studies as Administrative Agent may require, provided such inspections and studies do not materially interfere with the use and operation of the Projects.

**Section 8.5. Taxes on Security.** Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (a) deducting the Loan from the value of any Project for the purpose of taxation, (b) affecting any Lien on the Projects, or (c) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Administrative Agent may declare all amounts owing under the Loan Documents to be immediately due and payable.

**Section 8.6. Legal Existence; Name, Etc.** Borrower shall preserve and keep in full force and effect its existence as, and at all times operate as, a Single Purpose Entity, and shall preserve and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Projects. Neither Borrower nor any general partner or managing member of Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into any Person, or permit any subsidiary or Affiliate of Borrower to do so. Without limiting the foregoing, Borrower shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the Closing Date. Borrower and each general partner or managing member in Borrower shall conduct business only in its own name and shall not change its name, identity, state of formation, or organizational structure, or the location of its chief executive office or principal place of business unless Borrower (a) shall have obtained the prior written consent of Administrative Agent to such change, and (b) shall have taken all actions necessary or requested by Administrative Agent to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents. If Borrower does not have an organizational identification number and later obtains one, such Borrower shall promptly notify Administrative Agent of its organizational identification number. Borrower (and each general partner or managing member in Borrower, if any) shall maintain its separateness as an entity, including maintaining separate books, records, and accounts and observing corporate and partnership formalities independent of any other entity, shall pay its obligations with its own funds and shall not commingle funds or assets with those of any other entity.

**Section 8.7. Further Assurances.** Borrower shall promptly (a) cure any defects in the execution and delivery of the Loan Documents and the Environmental Indemnity Agreement, (b) provide, and cause each Borrower Party to provide, Administrative Agent such additional information and documentation on Borrower's and each Borrower Party's legal or beneficial ownership, policies, procedures, and sources of funds as Administrative Agent deems necessary or prudent to enable Administrative Agent and each Lender to comply with Anti-Money Laundering Laws as now in existence or hereafter amended, and (c) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative Agent may reasonably request to further evidence and more fully describe the Collateral for the Loan, to correct any omissions in the Loan Documents or the Environmental Indemnity Agreement to perfect, protect or preserve any liens created under any of the Loan Documents and the Environmental Indemnity Agreement, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith. Borrower grants Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent and the Lenders under the Loan Documents and the Environmental Indemnity Agreement, at law and in equity, including without limitation such rights and remedies available to Administrative Agent pursuant to this Section 8.7. From time to time upon the written request of Administrative Agent, Borrower shall deliver to Administrative Agent a schedule of the name, legal domicile address and jurisdiction of organization, if applicable, for each Borrower Party and each holder of a legal interest in Borrower.

**Section 8.8. Estoppel Certificates Regarding Loan.** Each Borrower, within ten (10) days after request, shall furnish to Administrative Agent a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Administrative Agent reasonably may request.

**Section 8.9. Notice of Certain Events.** Borrower shall promptly notify Administrative Agent of (a) any Potential Default or Event of Default, together with a detailed statement of the steps being taken to cure such Potential Default or Event of Default; (b) any notice of default received by Borrower under other obligations relating to the Projects or otherwise material to Borrower's business, including any notices of violations of any laws, regulations, codes or ordinances; (c) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any Governmental Authority, materially adversely affecting Borrower, any Borrower Party or the Projects; (d) a copy of each notice of default or termination given or made to any Operator by Borrower or received by Borrower from any Operator; and (e) a copy of each notice of default or termination under any license or permit necessary for the operation of the Projects in the manner required by this Agreement; and (f) any threatened or actual ban on admissions as to the Projects; and in the case of clauses (b), (d) or (e), promptly provide Administrative Agent with copies of such notices referred to therein.

**Section 8.10. Indemnification.** Borrower shall protect, defend, indemnify and save harmless Administrative Agent and each Lender, their respective shareholders, directors, officers, employees and agents (each, an "**Indemnified Person**") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses and other costs of investigation, or defense, including those uncured upon any appeal or in connection with responding to subpoenas, third parties or otherwise), imposed upon or incurred by or asserted against any Indemnified Person by reason of (a) credit having been extended, suspended or terminated under this Agreement and the other Loan Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith; (b) ownership of the Mortgage, the Projects or any interest therein or receipt of any rents and the exercise of rights and remedies thereunder; (c) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Projects or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any use, nonuse or condition in, on or about the Projects or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Projects or any part thereof; and (e) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Agreement, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Agreement is made. Any amounts payable to Administrative Agent or any Lender by reason of the application of this Section shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Administrative Agent or such Lender until paid.

**Section 8.11. [Intentionally Omitted].**

**Section 8.12. Payment For Labor and Materials.** Subject to Borrower's right to contest in accordance with Section 12.14 hereof, Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Projects and never permit to exist beyond the due date thereof in respect of any Project or any part thereof any Lien, even though inferior to the Liens hereof, and in any event never permit to be created or exist in respect of any Project or any part thereof any other or additional Lien other than the Liens hereof, except for the Permitted Encumbrances (defined in the Mortgage).

**Section 8.13. Use and Proceeds, Revenues.** Each Borrower shall use the proceeds of the Loan for proper business purposes. No portion of the proceeds of the Loan shall be used by Borrower in any manner that might cause the borrowing or the application of such proceeds to violate Regulation D, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Act of 1933 or the Securities Exchange Act of 1934. Except as otherwise specifically provided in the Loan Documents, revenues and other proceeds from the Projects received by Borrower shall be applied to the Indebtedness then due and payable, actual operating expenses relating to the Projects of the type included in the definition of "Adjusted Expenses", or other budgeted capital improvements, repairs or replacements for the Projects before distribution by Borrower to any Borrower Party.

**Section 8.14. Compliance with Laws and Contractual Obligations.**

(a) Borrower will (and will cause Operator to) comply in all material respects with (or, to the extent that failure to comply could reasonably be expected to materially and adversely affect the operation of a Project, will comply in all respects with) (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including, without limitation, laws, rules, regulations and orders relating to all building, zoning, density, land use, covenants, conditions and restrictions, subdivision requirements, taxes, employer and employee contributions, securities, employee retirement and welfare benefits, environmental protection matters, employee health and safety, quality and safety standards, accreditation standards and requirements of the applicable state department of health or other applicable state regulatory agency (each a "State Regulator")), as are now in effect and which may be imposed upon Borrower or Operator or the maintenance, use or operation of the Projects or the provision of services to the occupants of the Projects and (ii) the obligations, covenants and conditions contained in all other material contractual obligations of Borrower, and as they relate to the Projects and Operator.

(b) Borrower will obtain and maintain and will cause Operator to obtain and maintain, all licenses, qualifications and permits now held or hereafter required to be held by Borrower or Operator for which the loss, suspension, revocation or failure to obtain or renew, could reasonably be expected to have a material adverse effect upon the financial condition of Borrower or the ability to operate the Projects in compliance with the requirements of the Loan Documents and as it has been operated prior to the date hereof.

**Section 8.15. Operating and Financial Covenants.** The Projects shall satisfy each of the following covenants as of the end of each calendar quarter (the "**Determination Date**"):

(a) **Occupancy.** The Projects shall maintain (on a combined basis) average occupancy during the calendar quarter ending on each Determination Date of not less than 85.5%.

(b) **Debt Service Coverage.** As of each Determination Date, the Debt Service Coverage Ratio shall be equal to or greater than 2.00 to 1.00 based upon the trailing twelve (12) full calendar months prior to the Determination Date; provided, however, that, if a Determination Date is less than twelve (12) months from the date on which a Borrower acquired a Project, Adjusted Net Operating Income for such Project may be annualized based upon the period of such Borrower's ownership of the Project.

(c) **Project Yield.** As of each Determination Date, the Project Yield shall be equal to or greater than the following, in each case based upon the trailing twelve (12) full calendar months prior such to the Determination Date (i) as of each of the first four Determination Dates, 13.0%; and (ii) as of each Determination Date thereafter, 13.5%, If a Determination Date is less than twelve (12) months from the date on which a Borrower acquired a Project, Adjusted Net Operating Income for such Project may be annualized based upon the period of such Borrower's ownership of the Project.

**Section 8.16. Healthcare Laws and Covenants.**

(a) Without limiting the generality of any other provision of this Agreement, Borrower and Operator and their employees and contractors (other than contracted agencies) in the exercise of their duties on behalf of Borrower or Operator (with respect to its operation of the Projects) shall be in compliance in all material respects with all applicable Healthcare Laws. Borrower and Operator will have maintained and shall have continued to maintain in all material respects all records required to be maintained by any Governmental Authority or otherwise under the Healthcare Laws and to Borrower's Knowledge there are no presently existing circumstances which would result or likely would result in material violations of the Healthcare Laws. Borrower and Operator have and will maintain all Primary Licenses, Permits and other Governmental Approvals necessary under applicable Laws to own and/or operate the Projects, as applicable (including such Governmental Approvals as are required under such Healthcare Laws); or, if applicable Licenses have been applied for, but not yet issued to, Operator, Operator have entered into applicable agreements with the prior operator of the Projects to operate the Projects under the current Primary Licenses.

(b) Borrower represents that it is neither (i) a “covered entity” within the meaning of HIPAA or submits claims or reimbursement requests to Third Party Payor Programs “electronically” (within the meaning of HIPAA) nor (ii) subject to the “Administrative Simplification” provisions of HIPAA. If Borrower at any time becomes, and during any period during which Operator is, a “covered entity” or subject to the “Administrative Simplification” provisions of HIPAA, then such Person (during any period during which such Person is a covered entity or subject to the co-called “Administrative Simplification” provisions of HIPAA) (x) will promptly undertake all necessary surveys, audits, inventories, reviews, analyses and/or assessments (including any necessary risk assessments) of all areas of its business and operations required by HIPAA and/or that could be adversely affected by the failure of such Person(s) to be HIPAA Compliant (as defined below); (y) will promptly develop a detailed plan and time line for becoming HIPAA Compliant (a “**HIPAA Compliance Plan**”); and (z) will implement those provisions of such HIPAA Compliance Plan in all material respects necessary to ensure that such Person(s) are or become HIPAA Compliant. For purposes hereof, “**HIPAA Compliant**” shall mean that Person (A) is or will be in material compliance with each of the applicable requirements of the so-called “Administrative Simplification” provisions of HIPAA on and as of each date that any party thereof, or any final rule or regulation thereunder, becomes effective in accordance with its or their terms, as the case may be (each such date, a “**HIPAA Compliance Date**”) if and to the extent such Person is subject to such provisions, rules or regulations, and (B) is not and could not reasonably be expected to become, as of any date following any such HIPAA Compliance Date, the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any government health plan or other accreditation entity) that could result in any of the foregoing or that could reasonably be expected to adversely affect such Person’s business, operations, assets, properties or condition (financial or otherwise), in connection with any actual or potential violation by such Person of the then effective provisions of HIPAA.

(c) If and to the extent required under applicable Laws, Borrower and/or each Operator shall maintain in full force and effect throughout the term of the Loan (i) a valid Primary License for the requisite number of Residential Units in the Projects, free from restrictions or known conflicts, and such Primary License shall not be provisional, probationary or restricted in any manner that would materially impair the use or operation of the Projects for the use described in Section 6.22(a) above, (ii) a provider agreement or other required documentation of approved provider status for each Third-Party Payor Programs, if applicable; and (iii) all other Permits and Governmental Approvals necessary to operate each Project as an independent living, assisted living, memory care or skilled nursing facility, as applicable. The Projects shall be operated in a manner such that the Primary Licenses shall remain in full force and effect.

(d) Neither Borrower nor any Operator shall do (or suffer to be done) any of the following with respect to any Project without the prior written consent of Administrative Agent:

- (i) Transfer the Primary Licenses to any location other than the Projects.

(ii) Rescind, withdraw or revoke the Primary Licenses, or otherwise amend the Primary Licenses in such a manner that results in a material adverse effect on the rates charged or otherwise diminish or impair the nature, tenor or scope of the Primary Licenses;

(iii) Amend or otherwise change any Project's authorized units/beds capacity and/or the number of Residential Units permitted under the Primary Licenses or otherwise approved by the State Regulator, if applicable;

(iv) Replace or transfer all or any part of any Project's units or beds to another site or location other than to another Project; or

(v) Voluntarily transfer or encourage the transfer of any resident of any Project to any other facility (other than to another Project), unless such transfer is (A) at the request of the resident, (B) for reasons relating to the health, required level of medical care or safety of the resident to be transferred or the residents remaining at the facility or (C) as a result of the disruptive behavior of the transferred resident that is detrimental to the facility.

(e) If and when Borrower or Operator participates in any Medicare or Medicaid or other Third-Party Payor Programs with respect to the Projects, the Projects will remain in compliance with all requirements necessary for participation in Medicare and Medicaid, including the Medicare and Medicaid Patient Protection Act of 1987, as it may be amended, and such other Third-Party Payor Programs. Each Project is and will remain in conformance in all material respects with all insurance, reimbursement and cost reporting requirements, and, if applicable, have a current provider agreement that is in full force and effect under Medicare and Medicaid.

(f) To Borrower's Knowledge, there exists no Healthcare Investigations affecting the Projects. If Borrower becomes aware of any Healthcare Investigation after the Closing Date, Borrower will promptly provide to Administrative Agent the following information with respect thereto: (i) number of records requested, (ii) dates of service, (iii) dollars at risk, (iv) date records submitted, (v) determinations, findings, results and denials (including number, percentage and dollar amount of claims denied, (vi) additional remedies proposed or imposed, (vii) status update, including appeals, and (viii) any other pertinent information related thereto.

**Section 8.17. Cooperation Regarding Licenses.** From time to time, upon the request of Administrative Agent, if a Potential Default or Event of Default exists hereunder, Borrower shall, and shall cause Operator to, complete, execute and deliver to Administrative Agent any applications, notices, documentation, and other information necessary or desirable, in Administrative Agent's judgment, to permit Administrative Agent or its designee (including a receiver) to obtain, maintain or renew any one or more of the Primary Licenses for the Projects (or to become the owner of the existing Primary Licenses for the Projects) and to the extent permitted by applicable Requirements of Law to obtain any other provider agreements or Governmental Approvals then necessary or desirable for the operation of the Projects by Administrative Agent or its designee for their current use (including, without limitation, any applications for change of ownership of the existing Primary Licenses or change of control of the owner of the existing Primary Licenses). To the extent permitted by applicable Requirements of Law, (i) Administrative Agent is hereby authorized (without the consent of Borrower or Operator) to submit any such applications, notices, documentation or other information which Borrower caused to be delivered to Administrative Agent in accordance with the above provisions to the applicable Governmental Authorities, or to take such other steps as Administrative Agent may deem advisable to obtain, maintain or renew any Primary License or Permits or other Governmental Approvals in connection with the operation of the Projects for their current use, and Borrower agrees to cooperate and to cause Operator to cooperate with Administrative Agent in connection with the same and (ii) Borrower, upon demand by Administrative Agent, shall take any action and cause Operator to take any action necessary or desirable, in Administrative Agent's sole judgment, to permit Administrative Agent or its designee (including a receiver) to use, operate and maintain each Project for its current use. If Borrower fails to comply with the provisions of this Section 8.17 for any reason whatsoever, Borrower hereby irrevocably appoints Administrative Agent and its designee as Borrower's attorney-in-fact, with full power of substitution, to take any action and execute any documents and instruments necessary or desirable in Administrative Agent's sole judgment to permit Administrative Agent or its designee to undertake Borrower's obligations under this Section 8.17, including obtaining any Primary Licenses or Governmental Approvals then required for the operation of the Projects by Administrative Agent or its designee for their current uses. The foregoing power of attorney is coupled with an interest and is irrevocable and Administrative Agent may exercise its rights thereunder in addition to any other remedies which Administrative Agent may have against Borrower or any Borrower Party as a result of Borrower's breach of the obligations contained in this Section 8.17.

**Section 8.18. Transactions With Affiliates.** Without the prior written consent of Administrative Agent, Borrower shall not engage in any transaction affecting the Projects with an Affiliate of Borrower, except as expressly contemplated by this Agreement.

**Section 8.19. Representations and Warranties.** Borrower shall cause all representations and warranties in the Loan Documents and Environmental Indemnity Agreement to remain true and correct at all times while any portion of the Loan remains outstanding.

**Section 8.20. Alterations.** Administrative Agent's prior approval shall be required in connection with any alterations to the Projects (except tenant improvements under any Lease approved by Administrative Agent or under any Lease for which approval was not required by Administrative Agent under this Agreement) (a) that adversely affect the structural components of the Projects, utilities, HVAC or the exterior of the Projects, (b) that are reasonably likely to cause a Material Adverse Change or (c) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Restoration Threshold, which approval may be granted or withheld in Administrative Agent's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Projects shall at any time exceed the Restoration Threshold, Borrower shall promptly deliver to Administrative Agent as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (i) cash, (ii) letters of credit, (iii) U.S. Obligations, (iv) other securities acceptable to Administrative Agent, or (v) a completion bond in form acceptable to Administrative Agent. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Projects (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Restoration Threshold.

**Section 8.21. Business and Operations.** Borrower will continue to engage only in the businesses currently conducted by it on the date hereof, as and to the extent the same are necessary for the ownership and leasing of the Projects. Borrower shall at all times cause the Projects to be maintained in accordance with the Projects' use as a senior housing and healthcare facility.

**Section 8.22. Severability of Covenants.** Any representations, warranties or covenants made by Borrower regarding such entities or their Affiliates (as contrasted with the Projects) shall be deemed to have been made solely on behalf of such entity, and neither Borrower shall be deemed to be making such representations or covenants or warranties regarding any other entity.

**Section 8.23. Post-Closing Obligations.** Borrower shall provide evidence reasonably satisfactory to Administrative Agent that the Post-Closing Obligations within the time periods set forth on *Schedule 12.37*.

**Section 8.24. Ground Lease.** Redding Sundial Borrower shall comply with each of its obligations under the Ground Lease.

**Section 8.25. Joint Venture.** Each Borrower acknowledges that Administrative Agent is the agent for certain lenders who, prior to the date hereof, made certain loans and other financial accommodations available to CHP Friendswood SNF, LLC ("**Friendswood**") and HP Aledo, LLC ("**Aledo**"), each of which is an Affiliate of Borrower. Each Borrower covenants and agrees that, if Guarantor fails cause the sole member of each of Portland Gateway Borrower and Summit Applewood Borrower to convey 100% of such interests to a Permitted Member in a Transfer permitted under Section 8.1(d) or Section 8.1(e) on or before April 31, 2015, such Borrower, within thirty (30) days following the request of Administrative Agent therefor, shall enter into such agreements as Administrative Agent may reasonably require with Friendswood and Aledo to (a) cross-default the Loan made to Borrower hereunder and the loan made to each of Friendswood and Aledo and (b) cause the Loan and each other loan to be secured by the Collateral and the collateral securing the obligations of Friendswood and Aledo with respect to such loans. Each Borrower acknowledges that Lenders would not have made the Loan available on the Closing Date but for the covenants contained in this Section 8.25.

## ARTICLE IX

### EVENTS OF DEFAULT

Each of the following shall constitute an "**Event of Default**" hereunder and under this Agreement and each of the other Loan Documents.

**Section 9.1. Payments.** Failure of Borrower to pay any regularly scheduled installment of principal, interest or other amount due under the Loan Documents within five (5) days of (and including) the date when due, or failure of Borrower to pay the Loan at the Maturity Date, whether by acceleration or otherwise.

**Section 9.2. Insurance.** Borrower's failure to maintain insurance as required under Section 3.1 of this Agreement.

**Section 9.3. Transfers.** Any Prohibited Transfer occurs in violation of Section 8.1 of this Agreement.

**Section 9.4. Covenants.** Borrower's failure to perform, observe or comply with any of the agreements, covenants or provisions contained in this Agreement or in any of the other Loan Documents or Environmental Indemnity Agreement (other than those agreements, covenants and provisions referred to elsewhere in this Article 9), and the continuance of such failure for ten (10) days after notice by Administrative Agent to Borrower; however, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents or Environmental Indemnity Agreement, Borrower shall have an additional sixty (60) days to cure such failure if (a) such failure does not involve the failure to make payments on a monetary obligation; (b) such failure cannot reasonably be cured within ten (10) days; (c) Borrower is diligently undertaking to cure such default; and (d) Borrower has provided Administrative Agent with security reasonably satisfactory to Administrative Agent against any interruption of payment or impairment of collateral under the Loan Documents as a result of such continuing failure. The notice and cure provisions of this Section 9.4 do not apply to the other Events of Default described in this Article 9 or to Borrower's failure to perform, observe or comply with any of the agreements, covenants or provisions referenced elsewhere in this Article 9 (for which no notice and cure period shall apply).

**Section 9.5. Representations and Warranties.** Any representation or warranty made in any Loan Document or the Environmental Indemnity Agreement or the Compliance Certificate proves to be untrue in any material respect when made or deemed made.

**Section 9.6. Other Encumbrances.** Any default under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on any Project or any part thereof, is not cured within any applicable grace or cure period therein.

**Section 9.7. Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against Borrower, any Borrower Party or any other Person having an ownership or security interest in the Projects (each, a "**Bankruptcy Party**") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Federal Bankruptcy Code.

**Section 9.8. Voluntary Petitions, etc.** Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

**Section 9.9. Default Under Operators' Agreement.** The occurrence of a default by Borrower under any of the Operators' Agreements, which remains uncured beyond any applicable grace or cure periods available to Borrower.

**Section 9.10. Certain Covenants.** Borrower's failure to (i) maintain its status as a Single Purpose Entity; (ii) timely deliver the Compliance Certificate; (iii) comply with the provisions of Section 8.15; (iv) comply with the provisions of Section 8.16(c); (v) enter into such agreements and modifications as Administrative Agent may require pursuant to Section 8.25 promptly following Administrative Agent's delivery thereof, and, in any event, within thirty (30) days following such delivery; and (vi) provide Administrative Agent with ten (10) days subsequent written notice of changes of the state of Borrower's formation or Borrower's name.

**Section 9.11. Financial Information.** Borrower's failure to deliver financial statements and reports as required by Article 7 and the continuance of such failure (i) in connection with the first such failure, for a period of ten (10) days after delivery of written notice to Borrower by Administrative Agent of such failure and (ii) thereafter, for ten (10) days after the required delivery date of such financial statement or report.

**Section 9.12. Default Under Guaranty.** The occurrence of a default under the Recourse Guaranty Agreement and such default is not cured within any grace or cure periods provided therein.

**Section 9.13. Criminal Act.** Borrower's or any Borrower Party's being charged with a felony crime or a crime involving moral turpitude and the individual charged in connection therewith is not terminated within five (5) days of Borrower's knowledge of such indictment as an officer, employee or director of Borrower or Borrower Party.

**Section 9.14. Master Lease.** The occurrence of a material default under the Master Lease which continues uncured beyond any applicable notice and grace period provided under the Master Lease.

**Section 9.15. Ground Lease.** If (A) there shall occur any default by Redding Sundial Borrower, as tenant under the Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Redding Sundial Borrower, to be observed or performed, that is not cured by Borrower within five (5) days prior to the expiration of any applicable cure period (subject to extension as provided under the Ground Lease), (B) if any one or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the Ground Lessor or which would entitle the Ground Lessor to terminate the Ground Lease and the term thereof by giving notice to Redding Sundial Borrower, as tenant thereunder, (C) if the leasehold estate created by the Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever, or (D) if any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, amended or waived without the prior written consent of Administrative Agent.

**Section 9.16. Environmental Indemnity Agreement.** There shall have occurred any default under the Environmental Indemnity Agreement which remains uncured beyond any applicable grace or cure periods available under the Environmental Indemnity Agreement.

**Section 9.17. Post-Closing Obligations.** The failure to satisfy the Post Closing Obligations within the time periods set forth on *Schedule 12.37*, provided, however, that, if Borrower has made good faith efforts to satisfy, and diligently pursued the completion of, such Post-Closing Obligations within the time periods specified on such Schedule, Borrower shall have an additional thirty (30) days to cure such failure, provided Borrower is diligently pursuing such cure.

**Section 9.18. Death of Guarantor.** If any Guarantor is an individual, the death of such Guarantor.

**Section 9.19. Cash Management Agreement.** The occurrence of a default under a Cash Management Agreement which remains uncured beyond any applicable grace or cure periods provided therein.

**Section 9.20. Admissions Restrictions; Special Cure Rights.** Any Governmental Authority ceases to permit new residents or tenants to be admitted to any of the Projects or causes the Operator to discharge any residents or tenants from any of the Projects.

**Section 9.21. Healthcare Investigations; Special Cure Right with Respect to Operational Defaults.**

(a) The occurrence of a Healthcare Investigation affecting any of the Projects that results in a deficiency finding by the relevant authority.

(b) Notwithstanding the foregoing, if an event that would otherwise constitute an Event of Default under Section 9.21(a) occurs solely as a result of an act or omission of a Master Tenant or any Operator (and such act, omission or failure is outside Borrower's control and not otherwise caused by Borrower) (each such failure, an "**Operational Default**"), such Operational Default shall not constitute an "Event of Default" under Article 9 if (and only if) all of the following conditions are satisfied, as determined by Administrative Agent in its reasonable discretion:

(i) There exists no other Event of Default hereunder.

(ii) Borrower sends written notice to Administrative Agent describing in reasonable detail such breach within three (3) Business Days following the date upon which Borrower becomes aware of such Operational Default.

(iii) All debt service payments and all other amounts due under the Loan Documents are paid current at all times (regardless of whether or not there is available revenue from the Projects or rent from the Master Lease to make such payments).

(iv) Neither the value of the Collateral nor the ability to operate the Projects is materially impaired as a result of the act or omission that caused the Operational Default.

(v) Borrower diligently pursues all rights and remedies available to Borrower under the Master Lease and under applicable Laws to cure (or cause the Operator to cure) such Operational Default, and if Borrower elects to cure (or cause the Operator to cure) such Operational Default, such Operational Default is actually cured within ninety (90) days of the occurrence of such Operational Default (such ninety (90) day period from the occurrence of the Operational Default is referred to as the “**Operational Default Forbearance Period**”).

(vi) Borrower take commercially reasonable steps to cause the Primary Licenses required to operate the Projects as assisted living or skilled nursing facilities and the reimbursement agreements with respect to the Projects to remain in full force and effect under the Requirements of Law.

(vii) Borrower pays all of Administrative Agent’s and each Lender’s reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees) in connection with the matters set forth in this Section 9.21(b).

(viii) On a bi-weekly basis during the pendency of the Operational Default Forbearance Period, Borrower furnishes to Administrative Agent a detailed written statement summarizing the then current status of Borrower’s attempts to cure such Operational Default.

(ix) Borrower at all times during the Operational Default Forbearance Period takes such additional action and/or executes such additional documents (and/or causes Operator to take such additional action and/or execute such additional documents) as Administrative Agent may reasonably require in connection with the matters set forth in this Section 9.21(b).

Anything herein to the contrary notwithstanding, Administrative Agent and Lenders shall have no obligation to forbear from exercising remedies by reason of an Operational Default of any type as to which Borrower elects to cure more than twice in the aggregate during the term of the Loan or more than once in any twelve (12) month period during the term of the Loan. For the avoidance of doubt, Administrative Agent and Lenders shall have no obligation to forbear from submitting any pleadings in any bankruptcy or other proceeding to the extent that a failure to do so could result in any prejudice to Lenders, a rejection or termination of the Master Lease or otherwise adversely affect the Collateral securing the Loan.

## ARTICLE X

### REMEDIES

**Section 10.1. Remedies - Insolvency Events.** Upon the occurrence of any Event of Default described in Sections 9.7 or 9.8, all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; however, if the Bankruptcy Party under Section 9.7 or 9.8 is other than Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Administrative Agent’s election, in Administrative Agent’s sole discretion.

**Section 10.2. Remedies - Other Events.** Except as set forth in Section 10.1 above, while any Event of Default exists, Administrative Agent may and at the direction of the Required Lenders shall (a) by written notice to Borrower, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, and (b) exercise all rights and remedies therefor under the Loan Documents and at law or in equity. Notwithstanding anything to the contrary contained in the Loan Documents or the Environmental Indemnity Agreement, the enforcement of the obligations of Borrower and the Borrower Parties under the Loan Documents and the Environmental Indemnity Agreement and the exercise of rights and remedies thereunder shall be undertaken solely by Administrative Agent in its capacity as agent for the Lenders.

**Section 10.3. Administrative Agent's Right to Perform the Obligations.** If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents or the Environmental Indemnity Agreement, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Administrative Agent may have because of such Event of Default, Administrative Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Projects for such purpose and to take all such action thereon and with respect to the Projects as it may deem necessary or appropriate. If Administrative Agent shall elect to pay any sum due with reference to the Projects, Administrative Agent may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Administrative Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify, defend and hold Administrative Agent harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs, or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Administrative Agent pursuant to the provisions of this Section 10.3, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent, except as a result of Administrative Agent's gross negligence or willful misconduct. All sums paid by Administrative Agent pursuant to this Section 10.3, and all other sums expended by Administrative Agent to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents and shall be paid by Borrower to Administrative Agent upon demand.

## ARTICLE XI

### ADMINISTRATIVE AGENT

#### Section 11.1. Appointment and Duties.

(a) Each Lender hereby appoints GE Capital (together with any successor Administrative Agent pursuant to Section 11.9) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and the Environmental Indemnity Agreement and accept delivery thereof on its behalf from Borrower or any Borrower Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents the Environmental Indemnity Agreement, and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents and the Environmental Indemnity Agreement (including in any proceeding described in Section 9.7 or Section 9.8 or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document and the Environmental Indemnity Agreement to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 9.7 or Section 9.8 or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document or the Environmental Indemnity Agreement, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents or the Environmental Indemnity Agreement, applicable law or otherwise, (vii) execute any amendment, consent or waiver under the Loan Documents and the Environmental Indemnity Agreement on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by Borrower or a Borrower Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed and (viii) provide each Lender within ten (10) Business Days following receipt, copies of the reports and financial information received from Borrower under Article 7 and notices of default delivered by or received by Administrative Agent under this Agreement.

(c) Under the Loan Documents and the Environmental Indemnity Agreement, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 2.13(b) with respect to the Register and in Section 11.10), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document and the Environmental Indemnity Agreement to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document or the Environmental Indemnity Agreement other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document or the Environmental Indemnity Agreement, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

**Section 11.2. Binding Effect.** Each Lender agrees that (i) any action taken by the Administrative Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents or the Environmental Indemnity Agreement, (ii) any action taken by the Administrative Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

**Section 11.3. Use of Discretion.**

(a) The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or the Environmental Indemnity Agreement or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Notwithstanding clause (a) of this Section 11.3, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Person thereof or (ii) that is, in the opinion of the Administrative Agent or its counsel, contrary to any Loan Document or the Environmental Indemnity Agreement or applicable Requirement of Law.

**Section 11.4. Delegation of Rights and Duties.** The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document or the Environmental Indemnity Agreement by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article 11 to the extent provided by the Administrative Agent.

**Section 11.5. Reliance and Liability.**

(a) The Administrative Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 12.3, (ii) rely on the Register to the extent set forth in Section 2.13, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Borrower or any Borrower Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of the Administrative Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document or the Environmental Indemnity Agreement, and each Lender and Borrower and the Borrower Parties hereby waive and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document or the Environmental Indemnity Agreement;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person or Borrower or any Borrower Party in connection with any Loan Document, the Environmental Indemnity Agreement or any transaction contemplated therein or any other document or information with respect to any Borrower or any Borrower Party, whether or not transmitted or (except for documents expressly required under any Loan Document or the Environmental Indemnity Agreement to be transmitted to the Lenders) omitted to be transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document or the Environmental Indemnity Agreement, whether any condition set forth in any Loan Document or the Environmental Indemnity Agreement is satisfied or waived, as to the financial condition of any Borrower or any Borrower Party or as to the existence or continuation or possible occurrence or continuation of any Potential Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from a Borrower, any Lender describing such Potential Default or Event of Default clearly labeled “**NOTICE OF DEFAULT**” (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender and Borrower (on its behalf and on behalf of each of the other Borrower Parties) hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon.

**Section 11.6. Administrative Agent Individually.** The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, Borrower or any Borrower Party or Affiliate thereof as though it were not acting as Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender,” and “Required Lender,” and any similar terms shall, except where otherwise expressly provided in any Loan Document or the Environmental Indemnity Agreement, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

**Section 11.7. Lender Credit Decision.** Each Lender acknowledges that it shall, independently and without reliance upon the Administrative Agent, any other Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of Borrower and each Borrower Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or the Environmental Indemnity Agreement or with respect to any transaction contemplated in any Loan Document or the Environmental Indemnity Agreement, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document or the Environmental Indemnity Agreement to be transmitted by the Administrative Agent to the Lenders, 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 Borrower or any Borrower Party or any Affiliate of Borrower or any Borrower Party that may come into the possession of the Administrative Agent or any of its Related Persons.

**Section 11.8. Expenses; Indemnities.**

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Persons (to the extent not reimbursed by Borrower or any Borrower Party) promptly upon demand for such Lender’s Pro Rata Share with respect to the Loan of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and other taxes paid in the name of, or on behalf of, Borrower or any Borrower Party) that may be incurred by the Administrative Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document and the Environmental Indemnity Agreement.

(b) Each Lender further agrees to indemnify the Administrative Agent and each of its Related Persons (to the extent not reimbursed by Borrower or any Borrower Party), from and against such Lender's aggregate Pro Rata Share with respect to the Loan of the Liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or the Environmental Indemnity Agreement, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to the Administrative Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

**Section 11.9. Resignation of Administrative Agent.**

(a) The Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective. If the Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent. If, within 30 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of Borrower, which may not be unreasonably withheld, but shall not be required during the continuance of a Potential Default or Event of Default.

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents and the Environmental Indemnity Agreement, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document or the Environmental Indemnity Agreement other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Loan Documents and (iv) subject to its rights under Section 10.3, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents and the Environmental Indemnity Agreement. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents and the Environmental Indemnity Agreement.

(c) Administrative Agent may be removed as Administrative Agent upon the request of all Lenders (other than Affiliates of Administrative Agent) upon the determination by a court of competent jurisdiction that Administrative Agent has committed actions constituting gross negligence or willful misconduct under this Agreement. The provisions of subsection (b) above shall apply upon such removal.

**Section 11.10. Additional Secured Parties.** The benefit of the provisions of the Loan Documents and the Environmental Indemnity Agreement directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this Article 11, Section 12.7 (Sharing of Payments, Etc.) and Section 12.36 (Non-Public Information; Confidentiality) and the decisions and actions of the Administrative Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 11.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Pro Rata Share or similar concept, (b) except as set forth specifically herein, each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as set forth specifically herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document or the Environmental Indemnity Agreement.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1. Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

If to Borrower: c/o Summit Healthcare REIT, Inc.  
2 South Pointe Drive, Suite 1400  
Lake Forest, California 92630  
Attention: General Counsel  
Facsimile: (949) 812-8173

If to Administrative Agent: General Electric Capital Corporation  
Loan No. 07-0004596  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Dague Retzlaff, Vice President  
Facsimile: (866) 579-3042

with a copy to: General Electric Capital Corporation  
Loan No. 07-0004596  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Jeffrey M. Muchmore, Managing Director  
Facsimile: (866) 254-1971

with a copy to: General Electric Capital Corporation  
Loan No. 07-0004596  
5804 Trailridge Drive  
Austin, Texas 78731  
Attention: Diana Pennington, Chief Counsel-  
HFS Real Estate  
Facsimile: (866) 221-0433

If to a Lender: To the address set forth on **Exhibit B** attached hereto.

Any notice or request so addressed and sent by United States mail or overnight courier shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee (except as otherwise provided in the Mortgage). Any notice or request so delivered in person shall be deemed to be given when receipted for by, or actually received by Administrative Agent, a Lender, or Borrower, as the case may be. If given by facsimile, a notice or request shall be deemed given and received when the facsimile is transmitted to the party's facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1. If given by electronic mail, a notice shall be deemed given and received when the electronic mail is transmitted to the recipient's electronic mail address specified above and electronic confirmation of receipt (either by reply from the recipient or by automated response to a request for delivery receipt) is received by the sending party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier or personal delivery as otherwise provided in this Section 12.1. Except for facsimile and electronic mail notices sent as expressly described above, no notice hereunder shall be effective if sent or delivered by electronic means. Either party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

**Section 12.2. Amendments and Waivers.**

(a) No amendment or waiver of any provision of the Environmental Indemnity Agreement or any Loan Document and no consent to any departure by Borrower or any Borrower Party therefrom shall be effective unless the same shall be in writing and signed (1) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Secured Parties or extending an existing Lien over additional property, by the Administrative Agent and Borrower, (2) in the case of any other waiver or consent, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and (3) in the case of any other amendment, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and Borrower; provided, however, that no amendment, consent or waiver described in clause (2) or (3) above shall be effective, unless in writing and signed by each Lender (or by the Administrative Agent with the consent of the Lenders), in addition to any other Person the signature of which is otherwise required pursuant to any Loan Document, and such amendment, consent or waiver does any of the following:

(i) waives any condition precedent to the effectiveness of this Agreement, except any condition referring to any other provision of any Loan Document;

(ii) increases the Loan Commitment of any Lender or subjects any Lender to any additional obligation or otherwise increases the principal amount of the Loan;

(iii) reduces (including through release, forgiveness, assignment or otherwise) (A) the principal amount of, the interest rate on, or any obligation of Borrower to repay (whether or not on a fixed date), any outstanding amount under the Loan owing to Lenders or (B) any fee or accrued interest payable to any Lender; provided, however, that this clause (iii) does not apply to (x) any change to any provision increasing any interest rate or fee during the continuance of an Event of Default or to any payment of any such increase or (y) any modification to any financial covenant set forth in Article 8 or in any definition set forth therein or principally used therein;

(iv) waives or postpones any scheduled maturity date or other scheduled date fixed for the payment, in whole or in part, of principal of or interest on the Loan (including any agreement to forbear that would have the same effect) or fee owing to such Lender or for the reduction of such Lender's Loan Commitment; provided, however, that this clause (iv) does not apply to any change to mandatory prepayments, including those required under Section 2.5(c), or to the application of any payment, including as set forth in Section 2.7;

(v) releases all or substantially all of the Collateral or any Guarantor from its guaranty of any Obligation of Borrower;

(vi) reduces or increases the proportion of Lenders required for the Lenders (or any subset thereof) to take any action hereunder or change the definition of the terms “Required Lenders,” “Pro Rata Share,” or “Pro Rata Outstandings”; or

(vii) amends Section 12.7 (Sharing of Payments, Etc.) or this Section 12.2;

(b) Anything herein to the contrary notwithstanding, (A) any waiver of any payment applied pursuant to Section 2.6 (Application of Payments) to, and any modification of the application of any such payment to the Loan shall require the consent of the Required Lenders, (B) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, the Administrative Agent (or otherwise modify any provision of Article 11 or the application thereof), and (C) (1) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Loan Commitment or of such Lender may not be increased or extended without the consent of such Lender, (y) the outstanding balance of such Lender’s Pro Rata Share of the Loan may not be forgiven without the consent of such Lender, and (z) the interest rate on the Loan cannot be reduced unless the Defaulting Lender is treated the same as all other Lenders; (2) each Lender is entitled to vote as such Lender sees fit on any bankruptcy or insolvency reorganization plan that affects the Loan; (3) each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein; and (4) the Required Lenders may consent to allow a Borrower to use cash collateral in the context of a bankruptcy or insolvency proceeding.

(c) Each waiver or consent under any Loan Document, the Guaranty or the Environmental Indemnity Agreement shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower or any Borrower Party shall entitle such Person to any notice or demand in the same, similar or other circumstances. No failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(d) This Agreement and the other Loan Documents and the Environmental Indemnity Agreement shall not be executed, entered into, altered, amended, or modified by electronic means. Without limiting the generality of the foregoing, Borrower, Administrative Agent, and each Lender hereby agree that the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in Section 12.1 regarding notices. Any reference to a Loan Document or the Environmental Indemnity Agreement, whether in this Agreement or in any other Loan Document or the Environmental Indemnity Agreement, shall be deemed to be a reference to such Loan Document or the Environmental Indemnity Agreement as it may hereafter from time to time be amended, modified, supplemented and restated in accordance with the terms hereof.

(e) Unless also consented to in writing by such Secured Hedge Provider or, in the case of a Secured Hedge Agreement provided or arranged by GE Capital or an Affiliate of GE Capital, GE Capital, no such amendment, waiver or consent with respect to this Credit Agreement or any other Loan Document shall (A) alter the ratable treatment of Obligations arising under Secured Hedge Agreements such that such Obligations become junior in right of payment to principal on the Loan or (B) result in Obligations owing to any Secured Hedge Provider becoming unsecured (other than releases of Liens applicable to all Lenders and otherwise permitted in accordance with the terms hereof), in each case in a manner adverse to such Secured Hedge Provider.

**Section 12.3. Assignments and Participations; Binding Effect.**

(a) This Agreement shall become effective when it shall have been executed by the Administrative Agent, the Lenders party hereto, and Borrower. Thereafter, it shall be binding upon and inure to the benefit of Borrower (except for Article 11), the Administrative Agent, each Lender and, to the extent provided in Section 12.4, each other Indemnitee and Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document or the Environmental Indemnity Agreement none of Borrower, the Master Tenant, or the Administrative Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Each Lender (other than a Defaulting Lender) may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Loan Commitment and its rights and obligations with respect to the Loan) to (i) any existing Lender (other than a Defaulting Lender), (ii) any Affiliate or Approved Fund of any existing Lender (so long as such Person would not, upon acceptance of such rights and obligations hereunder, constitute a Defaulting Lender) or (iii) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent; provided, however, that the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loan subject to any such sale shall be in a minimum amount of \$1,000,000, unless such sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in the Loan or is made with the prior consent of the Administrative Agent. For purposes of clarification, any sale, transfer, conveyance or other assignment, however described, by GE Capital to GE Capital Bank, formerly known as GE Capital Financial Inc. ("**GECB**"), and/or to any Affiliate of GECB, and by GECB to any of its Affiliates (including GE Capital) or to GE Capital, is expressly approved, and each signatory hereto, including Borrower, acknowledges that no further consent or approval will be required in connection with any such sale, transfer, conveyance or other assignment. A Defaulting Lender may not sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder except with Administrative Agent's consent or at Administrative Agent's direction in accordance with Section 2.14(c) hereof. A Defaulting Lender (or Person that would constitute a Defaulting Lender upon acceptance of rights and obligations hereunder) may not be the recipient of the sale, transfer, negotiation or assignment of any rights or obligations hereunder except with the consent of the Administrative Agent and, provided no Potential Default or Event of Default is then in existence, Borrower.

(c) The parties to each transfer or sale made in reliance on clause (b) above (other than those described in clause (d) or (e) below) shall execute and deliver to the Administrative Agent an Assignment via an electronic settlement system designated by the Administrative Agent (or if previously agreed with the Administrative Agent, via a manual execution and delivery of the assignment) evidencing such transfer or sale, together with any existing Note subject to such transfer or sale (or any affidavit of loss therefor acceptable to the Administrative Agent), any tax forms or other forms required to be delivered by the Administrative Agent, and payment of an assignment fee in the amount of \$3,500, provided that (1) if a transfer or sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such transfer or sale, and (2) if a transfer or sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such transfer or sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in accordance with Section 12.3(b)(iii), upon the Administrative Agent (and Borrower, if applicable) consenting to such Assignment, from and after the effective date specified in such Assignment, the Administrative Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Subject to the recording of an Assignment by the Administrative Agent in the Register pursuant to Section 2.13(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents and the Environmental Indemnity Agreement have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Loan Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents and the Environmental Indemnity Agreement, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents and the Environmental Indemnity Agreement, such Lender shall cease to be a party hereto except that each Lender agrees to remain bound by Article 11, Section 12.7 (Sharing of Payments) and Section 12.36 (Non-Public Information; Confidentiality)).

(e) In addition to the other rights provided in this Section 12.3, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loan), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to the Administrative Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's securities by notice to the Administrative Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

EACH LENDER AT ANY TIME AND FROM TIME TO TIME MAY (I) DIVIDE AND RESTATE ITS PRO RATA SHARE OF THE LOAN OR ITS NOTE, AND/OR (II) SELL, ASSIGN OR GRANT PARTICIPATING INTERESTS IN OR TRANSFER ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER ANY LOAN DOCUMENT, THE ENVIRONMENTAL INDEMNITY AGREEMENT, THE LOAN, ITS NOTE, THE OBLIGATIONS AND/OR THE COLLATERAL TO OTHER PERSONS (EACH SUCH TRANSFEREE, ASSIGNEE OR PURCHASER, A "**LENDER TRANSFEREE**"). Borrower agrees to cooperate with Lenders in connection with any such restatement, division, sale, assignment or transfer. Each Lender Transferee shall have all of the rights and benefits with respect to the Loan, Obligations, any Notes, the Collateral and/or the Loan Documents and the Environmental Indemnity Agreement held by it as fully as if the original holder thereof, and either Lender or any Lender Transferee may be designated as the sole agent to manage the transactions and obligations contemplated therein. Notwithstanding any other provision of any Loan Document or the Environmental Indemnity Agreement, a Lender may disclose to any Lender Transferee all information, reports, financial statements, certificates and documents obtained under any provision of any Loan Document.

(f) In addition to the other rights provided in this Section 12.3, each Lender may, without notice to or consent from the Administrative Agent or Borrower, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents and the Environmental Indemnity Agreement; provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such participant shall have a commitment, or be deemed to have made an offer to commit, to make advances of the Loan hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Loan Parties and the Secured Parties towards such Lender, under any Loan Document and the Environmental Indemnity Agreement shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant shall be entitled to the benefit of Sections 2.8 (Capital Adequacy; Increased Costs; Illegality), 2.9 (Interest Rate Protection), and 2.10 (Libor Breakage Amount); provided, however, that in no case shall a participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document and the Environmental Indemnity Agreement or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents and the Environmental Indemnity Agreement (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (iii), (iv), and (v) of Section 12.2(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant would otherwise be entitled.

**Section 12.4. Indemnities.**

(a) Borrower agrees to indemnify, hold harmless and defend the Administrative Agent, each Lender, and each of their respective Related Persons (each such Person being an “**Indemnitee**”) from and against all Liabilities (including brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnitee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), any related transaction, or any securities filing of, or with respect to, Borrower, any Borrower Party or the Projects, (ii) any commitment letter, proposal letter or term sheet with any Person and any contractual obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors (and including attorneys’ fees in any case), whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise, or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the “**Indemnified Matters**”); provided, however, that Borrower shall have no liability under this Section 12.4 to any Indemnitee with respect to any Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, Borrower and each Borrower Party waives and agrees not to assert against any Indemnitee any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, “**Indemnified Matters**” includes all environmental Liabilities as set forth in Article 4 whether or not, with respect to any such environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Related Person or the owner, lessee or operator of any property of any Related Person through any foreclosure action, in each case except to the extent such environmental Liabilities (i) are incurred solely following foreclosure by any Secured Party or following any Secured Party having become the successor-in-interest to Borrower or any Borrower Party and (ii) are attributable solely to acts of such Indemnitee.

(c) Any indemnification or other protection provided to any Indemnitee pursuant to any Loan Document and all representations and warranties made in any Loan Document shall (i) survive the termination of the Loan Commitment and the payment in full of other Obligations and (ii) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

(d) In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each of Borrower and Borrower Parties hereby waives, releases and agrees not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

**Section 12.5. Lender-Creditor Relationship.** The relationship between the Lenders and the Administrative Agent, on the one hand, and Borrower, on the other hand, is solely that of lender and creditor. No Secured Party has any fiduciary relationship or duty to Borrower or Borrower Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and Borrower and Borrower Parties by virtue of, any Loan Document or any transaction contemplated therein.

**Section 12.6. [Reserved].**

**Section 12.7. Sharing of Payments, Etc.** If any Lender, directly or through an affiliate or branch office thereof, obtains any payment of any Obligation of Borrower or any Borrower Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or “proceeds” (as defined under the applicable UCC) of Collateral) other than pursuant to Sections 2.8 (Capital Adequacy; Increased Costs; Illegality), 2.9 (Interest Rate Protection), and 2.10 (Libor Breakage Amount) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, the Administrative Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Secured Parties such participations in their Obligations as necessary for such Lender to share such excess payment with such Secured Parties to ensure such payment is applied as though it had been received by the Administrative Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of Borrower, applied to repay the Obligations in accordance herewith); provided, however, that (a) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (b) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

**Section 12.8. Marshaling; Payments Set Aside.** No Secured Party shall be under any obligation to marshal any property in favor of Borrower or any Borrower Party or any other party or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from Borrower, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

**Section 12.9. Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Administrative Agent and Lenders with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent and any Lender or charged by Administrative Agent or any Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State of Illinois and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents and the Environmental Indemnity Agreement shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Note has been paid in full, refunded to Borrower); and (b) if maturity is accelerated by reason of an election by Administrative Agent, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents and the Environmental Indemnity Agreement or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Note has been paid in full, refunded to Borrower). The terms and provisions of this Section 12.9 shall control and supersede every other provision of the Loan Documents. The Loan Documents and the Environmental Indemnity Agreement are contracts made under and shall be construed in accordance with and governed by the laws of the State of Illinois, except that if at any time the laws of the United States of America permit Administrative Agent or the Lenders to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of Illinois (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Administrative Agent or the Lenders may contract for, take, reserve, charge or receive under the Loan Documents and the Environmental Indemnity Agreement.

**Section 12.10. Invalid Provisions.** If any provision of any Loan Document or the Environmental Indemnity Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Environmental Indemnity Agreement and the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Environmental Indemnity Agreement and/or such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

**Section 12.11. Reimbursement of Expenses.**

(a) Any action taken by Borrower or any Borrower Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Secured Party, shall be at the expense of Borrower or such Borrower Party, and no Secured Party shall be required under any Loan Document to reimburse any Borrower or Borrower Party therefor except as expressly provided therein. In addition, Borrower agrees to pay or reimburse upon demand (a) the Administrative Agent for all reasonable out-of-pocket costs and expenses incurred by it or any of its Related Persons in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including periodic audits in connection therewith and environmental audits and assessments), in each case including the reasonable fees, charges and disbursements of legal counsel to the Administrative Agent or such Related Persons, fees, costs and expenses incurred in connection with Intralinks® or any other E-System and allocated to the Loan by the Administrative Agent in its reasonable discretion and fees, charges and disbursements of the auditors, appraisers, printers and other of their Related Persons retained by or on behalf of any of them or any of their Related Persons, (b) the Administrative Agent and each Lender for all reasonable costs and expenses incurred by them or any of their Related Persons in connection with internal audit reviews, field examinations, financial investigation, and Collateral examinations, including, without limitation, any tax service company (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by the Administrative Agent for its examiners), (c) each of the Administrative Agent, its Related Persons, and each Lender for all costs and expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to Borrower or any Borrower Party or Master Tenant, Loan Document, Obligation or related transaction (or the response to and preparation for any subpoena or request for document production relating thereto), including reasonable fees and disbursements of counsel (including allocated costs of internal counsel), (d) costs incurred in connection with settlement of condemnation and casualty awards, premiums for title insurance and endorsements thereto, and (e) fees and costs for Uniform Commercial Code and litigation searches and background checks, if required.

(b) Borrower shall also pay to Administrative Agent on the first (1st) day of each month during the term of the Loan, in addition to all other amounts due under the Loan Documents, the sum of One Hundred Fifty and No/100 Dollars (\$150.00) per Project, which Administrative Agent shall apply against the cost and expenses incurred in connection with the annual on-site audit and inspection of the Projects.

**Section 12.12. Approvals; Third Parties; Conditions.** All approval rights retained or exercised by Administrative Agent or the Lenders with respect to the Leases, contracts, plans, studies and other matters are solely to facilitate Administrative Agent’s and the Lenders’ credit underwriting, and shall not be deemed or construed as a determination that Administrative Agent or the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent (and its successors and permitted assigns), the Lenders (and their successors and permitted assigns and participants), and Borrower and may not be enforced, nor relied upon, by any Person other than Administrative Agent (and its successors and permitted assigns), the Lenders (and their successors and permitted assigns and participants), and Borrower. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that any Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by any Lender at any time in such Lender’s sole discretion.

**Section 12.13. Administrative Agent and Lenders Not in Control; No Partnership.** None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or the Lenders the right or power to exercise control over the affairs or management of Borrower, the power of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Environmental Indemnity Agreement or the Loan Documents. No covenant or provision of the Environmental Indemnity Agreement or the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income among Administrative Agent and the Lenders or any of them, on the one hand, and Borrower, on the other hand, or to create an equity interest in the Projects in Administrative Agent or any Lender. None of Administrative Agent nor any Lender undertakes or assumes any responsibility or duty to Borrower or to any other Person with respect to the Projects or the Loan, except as expressly provided in the Environmental Indemnity Agreement and the Loan Documents; and notwithstanding any other provision of the Environmental Indemnity Agreement or the Loan Documents: (a) none of Administrative Agent or any Lender are, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or its stockholders, members, or partners and Administrative Agent and the Lenders do not intend to ever assume such status; (b) Administrative Agent and the Lenders shall in no event be liable for any Debts, expenses or losses incurred or sustained by Borrower; and (c) Administrative Agent and the Lenders shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or its stockholders, members, or partners. Administrative Agent and the Lenders and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income among the Administrative Agent and the Lenders or any of them, on the one hand, and Borrower, on the other hand, or to create an equity interest in the Projects in Administrative Agent or the Lenders, or any sharing of liabilities, losses, costs or expenses.

**Section 12.14. Contest of Certain Claims.** Borrower may contest the validity of Taxes or any mechanic's or materialman's lien asserted against any Project so long as (a) Borrower notifies Administrative Agent that it intends to contest such Taxes or liens, as applicable, (b) Borrower provides Administrative Agent with an indemnity, bond or other security reasonably satisfactory to Administrative Agent assuring the discharge of Borrower's obligations for such Taxes or liens, as applicable, including interest and penalties, (c) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which any Project is scheduled to be sold for non-payment, (d) Borrower promptly upon final determination thereof pays the amount of any such Taxes or liens, as applicable, together with all costs, interest and penalties which may be payable in connection therewith, and (e) notwithstanding the foregoing, Borrower shall immediately upon request of Administrative Agent pay any such Taxes or liens, as applicable, notwithstanding such contest if, in the opinion of Administrative Agent, any Project or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Administrative Agent may pay over any cash deposit or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Administrative Agent, the entitlement of such claimant is established.

**Section 12.15. Time of the Essence.** Time is of the essence with respect to this Agreement.

**Section 12.16. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders and Borrower and their respective successors and assigns, provided that neither Borrower nor any other Borrower Party shall, without the prior written consent of the Lenders, assign any of its rights, duties or obligations hereunder.

**Section 12.17. Renewal, Extension or Rearrangement.** All provisions of the Environmental Indemnity Agreement and the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan.

**Section 12.18. Waivers.**

(a) No course of dealing on the part of Administrative Agent or the Lenders or their respective officers, employees, consultants or agents, nor any failure or delay by Administrative Agent or any Lender with respect to exercising any right, power or privilege of Administrative Agent or the Lenders under the Environmental Indemnity Agreement and any of the Loan Documents, shall operate as a waiver thereof.

(b) Borrower hereby waives any right under the UCC or any other applicable law to receive notice and/or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements and releases and excuses Administrative Agent and each Lender from any obligation under the UCC or any other applicable law to provide notice or a copy of any such filed or recorded documents.

**Section 12.19. Cumulative Rights; Joint and Several Liability.** Rights and remedies of Administrative Agent (on behalf of the Lenders) under the Environmental Indemnity Agreement and the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy. If more than one person or entity has executed this Agreement as "**Borrower**," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 12.20. Singular and Plural.** Words used in this Agreement, the other Loan Documents and the Environmental Indemnity Agreement, in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement, the other Loan Documents, and the Environmental Indemnity Agreement shall apply to such words when used in the plural where the context so permits and vice versa.

**Section 12.21. Exhibits and Schedules.** The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

**Section 12.22. Titles of Articles, Sections and Subsections.** All titles or headings to articles, sections, subsections or other divisions of this Agreement, the other Loan Documents, and the Environmental Indemnity Agreement or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

**Section 12.23. Promotional Material.** Borrower authorizes Administrative Agent and any Lender to issue press releases, advertisements and other promotional materials in connection with Administrative Agent's or such Lender's own promotional and marketing activities, subject to Borrower's reasonable approval of the form of such materials, and such materials may describe the Loan in general terms and Administrative Agent's and such Lender's participation therein in the Loan. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Administrative Agent in advance of issuance.

**Section 12.24. Survival.** All of the representations, warranties, covenants, and indemnities hereunder (including environmental matters under Article 4), under the indemnification provisions of the other Loan Documents and under the Environmental Indemnity Agreement, shall survive the repayment in full of the Loan and the release of the liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Projects to any party, whether or not an Affiliate of Borrower.

**Section 12.25. WAIVER OF JURY TRIAL.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE ENVIRONMENTAL INDEMNITY AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY AGREEMENT OR IN ANY WAY RELATING TO THE LOAN OR THE PROJECTS (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER INTO THIS AGREEMENT.

**Section 12.26. Waiver of Punitive or Consequential Damages.** None of Administrative Agent, any Lender nor Borrower shall be responsible or liable to the other or to any other Person for any punitive, exemplary or consequential damages which may be alleged as a result of the Loan or the transaction contemplated hereby, including any breach or other default by any party hereto. Borrower represents and warrants to Administrative Agent and each Lender that as of the Closing Date neither Borrower nor any Borrower Party has any claims against Administrative Agent or any Lender in connection with the Loan.

**Section 12.27. Governing Law.** UNLESS OTHERWISE NOTED THEREIN TO THE CONTRARY, THE LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS' PRINCIPLES OF CONFLICTS OF LAW) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT FOR THOSE PROVISIONS IN THE LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY PERTAINING TO THE CREATION, PERFECTION OR VALIDITY OF OR EXECUTION ON LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATES WHERE THE PROJECTS ARE LOCATED, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATES WHERE THE PROJECTS ARE LOCATED AND APPLICABLE UNITED STATES FEDERAL LAW.

**Section 12.28. Entire Agreement.** This Agreement, the other Loan Documents and the Environmental Indemnity Agreement embody the entire agreement and understanding between Administrative Agent and each Lender and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents and the Environmental Indemnity Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between the Term Sheet and this Agreement, any of the other Loan Documents, or the Environmental Indemnity Agreement, the terms of this Agreement, the other Loan Documents, and the Environmental Indemnity Agreement, as applicable, shall control.

**Section 12.29. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

**Section 12.30. Consents and Approvals.** To the extent that Administrative Agent, Lenders and/or Required Lenders provide any consent or approval as provided for in this Agreement, such consent shall be limited to the specific matter approved and shall NOT be construed to (a) relieve Borrower from compliance with all of the other terms and obligations of this Agreement, or (b) constitute a consent to any further similar action (as to which a prospective consent or approval shall be required and may not necessarily be granted), or (c) constitute a consent to any other obligation to which any Lender may be a party.

**Section 12.31. [Reserved].**

**Section 12.32. Effectiveness of Facsimile Documents and Signatures.** The Loan Documents and Environmental Indemnity Agreement 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 parties to the Loan Documents and Environmental Indemnity Agreement, as applicable. 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.

**Section 12.33. Venue.** EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO ADMINISTRATIVE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

**Section 12.34. Important Information Regarding Procedures for Requesting Credit.** Each of the Administrative Agent and Lenders hereby notifies the Borrower Parties that in order to help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each individual or business that requests credit. Accordingly, in connection with the Loan or any other request for credit, Administrative Agent and the Lenders will ask for the business name, business address, Employer Identification Number, and other information which allows them to identify each Borrower Party, and may ask for other identifying documents showing existence of each Borrower Party.

**Section 12.35. Method of Payment.** All amounts payable under this Agreement and the other Loan Documents must be paid by Borrower in accordance with Section 2.6(c). Payments in the form of cash, money order, third party payment, cashier's check, a check drawn on a foreign bank or non-bank financial institution, or any form of payment other than those provided in the preceding sentence will not be accepted.

**Section 12.36. Non-Public Information; Confidentiality; Disclosure.** Borrower authorizes Administrative Agent and each Lender to disclose information about Borrower and any Borrower Party that Administrative Agent or such Lender may at any time possess to any Affiliate of a Lender or Administrative Agent, whether such information was supplied by Borrower or otherwise obtained by Administrative Agent or the Lender; provided to the extent Administrative Agent or any Lender receives material non-public information hereunder concerning Borrower, the Borrower Parties, and the Master Tenant and their Affiliates and agrees to use such information in compliance with all relevant policies, procedures and contractual obligations and applicable Requirements of Laws (including United States federal and state securities laws and regulations).

**Section 12.37. Post-Closing Obligations of Borrower.** Notwithstanding the fact that Borrower have not satisfied certain of the conditions to the advance of the Loan proceeds as of the Closing Date, Lenders have agreed to advance the proceeds of the Loan to Borrower, subject to the satisfaction of the other conditions to funding contained herein and each of the requirements set forth in *Schedule 12.37* attached hereto. Borrower shall complete the same (or cause the same to be completed) within the time periods specified in *Schedule 12.37*, which time period may be extended by Administrative Agent in its sole discretion, all of which shall be performed in a manner satisfactory to Administrative Agent. In addition, any Post-Closing Obligation that involves a repair, replacement or improvement of the Project shall be subject to inspection by Administrative Agent.

**Section 12.38. Release and Waiver Regarding Special Audits.** Borrower and Lenders acknowledge that from time to time during the term of the Loan, one or more Lenders and/or Borrower may request that GE Capital provide Borrower and/or the Lenders (collectively, the “**Recipient**”) with certain internally generated reports (whether oral and/or written, the “**Reports**”), which Reports may include oral and/or written information, assessments, notes, memoranda and analyses prepared by employees of GE Capital for the limited purpose of preparing an audit of the progress of one or more of the Projects has made with respect to a plan of correction (or similar remedial obligation of Borrower or any Operator under any Healthcare Laws) that may be issued from time to time with respect to one or more of the Projects. With respect to any Reports that may be provided to the Recipient from time to time during the term of the Loan, Lenders and Borrower hereby acknowledge and agree as follows: (a) the Reports may be prepared based on procedures that may not include all procedures deemed necessary for the Recipient’s own purposes; (b) GE Capital will not be able or willing to make any recommendations based on the Reports and GE Capital shall not in any way be deemed a consultant, agent or other representative to the Recipient in any manner; (c) the Recipient does not acquire any rights as a result of the disclosure of the Reports and its access thereto, and GE Capital assumes no duties or obligations in connection with, or as a result of, such access; (d) the Recipient is not entitled to rely on the Report; (e) the Recipient will not distribute or disclose the Reports or the information contained therein to any third party, except if compelled by legal process, and it will, to the extent permitted by applicable Law, indemnify and hold harmless GE Capital, together with its employees, officers, advisors and Affiliates from and against any and all claims, losses or expenses (including attorneys’ fees) arising as a result of GE Capital having disclosed the Reports to the Recipient; (f) the Recipient waives its right to recover from, and releases and discharges any legal action against, GE Capital with respect to any and all suits, actions, proceedings, investigations, demands, claims, liabilities, fines, penalties, liens, judgments, losses, injuries, damages, settlement expenses or costs of whatever kind or nature, whether direct or indirect, known or unknown, contingent or otherwise, including, without limitation, attorneys’ and experts’ fees and expenses, and investigation and remediation costs that may arise on account of or in any way be connected with the Report; and (g) and with respect to the Reports, GE Capital is not acting as an agent, fiduciary or representative for the Recipient, and the Recipient will (i) make its own independent investigation of the subject matter of the Reports and (ii) be solely responsible for its own review, assessments, conclusions and decisions with respect to the Loan, the Projects and the relevant Borrower and/or Operator.

## ARTICLE XIII

### LIMITATIONS ON LIABILITY

#### Section 13.1. Limitation on Liability.

(a) Subject to the qualifications below, neither the Administrative Agent nor any Lender shall enforce the liability and obligation of Borrower to perform and observe the Obligations by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Administrative Agent and the Lenders may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Administrative Agent and the Lenders to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Projects, or any other Collateral given to Administrative Agent and the Lenders pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Projects and in any other collateral given to Administrative Agent and the Lenders to secure the Obligations, and Administrative Agent and each Lender, as applicable, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents.

(b) The provisions of this Section 13.1 shall not, however, (i) constitute a waiver, release or impairment of any Obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Administrative Agent or any Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (iii) affect the validity or enforceability of any guaranty made in connection with the Loan or any of the rights and remedies of Administrative Agent or any Lender thereunder; (iv) impair the right of Administrative Agent or any Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases and Rents; (vi) constitute a prohibition against Administrative Agent or any Lender to commence any appropriate action or proceeding in order for Administrative Agent or any Lender to exercise its remedies against the Projects; or (vii) constitute a waiver of the right of Administrative Agent or any Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation (including attorneys' fees and costs reasonably incurred), causes of action, suits, claims, demands and judgments of any nature or description whatsoever, which may be imposed upon, incurred by or awarded against Administrative Agent or any Lender or any affiliate thereof as a result of, arising out of or in connection with (and Borrower shall be personally liable and shall indemnify Administrative Agent and such Lender for) the following:

(i) any failure by Borrower or any Guarantor or any of their Affiliates or their respective employees, managers, contractors, agents or other representatives after the occurrence and during the continuance of any Event of Default to apply any portion of the gross income from the Projects at any time received by or payable to Borrower or any Guarantor or any of their Affiliates or their respective employers, managers, contractors, agents or other representatives to the Loan or to customary operating expenses of the Projects;

- (ii) Borrower's commission of a criminal act;
- (iii) Borrower's failure to permit on-site inspections of any Project or to provide the financial reports and other financial information, each as required by, and in accordance with the terms and provisions of, this Agreement and the other Loan Documents;
- (iv) the failure by Borrower or any Borrower Party to apply any funds derived from the Projects, including Security Deposits, Adjusted Revenue, insurance proceeds and condemnation awards as required by the Loan Documents;
- (v) any intentional misrepresentation by Borrower or any Borrower Party made in or in connection with the Loan Documents or the Loan;
- (vi) Borrower's collection of rents more than one month in advance or entering into or modifying or canceling Leases, or receipt of monies by Borrower or any Borrower Party in connection with the modification or cancellation of any Leases, in violation of this Agreement or any of the other Loan Documents;
- (vii) Borrower, any Guarantor or any Affiliate of any of them contesting or in any way interfering with, directly or indirectly (collectively, a "**Contest**"), any foreclosure action or sale commenced by Administrative Agent or any Lender or with any other enforcement of Administrative Agent's or any Lender's rights, powers or remedies under any of the Loan Documents or under any document evidencing, securing or otherwise relating to any of the Security (whether by making any motion, bringing any counterclaim, claiming any defense, seeking any injunction or other restraint, commencing any action seeking to consolidate any such foreclosure or other enforcement with any other action, or otherwise);
- (viii) Borrower's failure to turn over to Administrative Agent all Security Deposits upon Administrative Agent's demand following an Event of Default;
- (ix) any amendment or modification of the Master Lease, or any guaranty thereof, or any termination or surrender of the Master Lease or any guaranty thereof (except only to the extent expressly permitted under this Agreement), without the prior written consent of Administrative Agent in each instance;
- (x) Borrower's failure to maintain insurance as required by this Agreement or to pay any Taxes or assessments affecting the Projects;
- (xi) damage or destruction to any Project caused by the negligent or intentional acts or omissions of Borrower, its agents, employees, or contractors;
- (xii) Borrower's failure to perform its obligations under the Environmental Indemnity Agreement or with respect to environmental matters under Article 4;

(xiii) Borrower's failure to pay for any loss, liability or expense (including attorneys' fees) incurred by Administrative Agent or any Lender arising out of any claim or allegation made by Borrower, its successors or assigns, or any creditor of Borrower, that this Agreement or the transactions contemplated by the Loan Documents and the Environmental Indemnity Agreement establish a joint venture, partnership or other similar arrangement among Borrower, the Administrative Agent, or any Lender;

(xiv) any brokerage commission or finder's fees claimed in connection with the transactions contemplated by the Loan Documents;

(xv) uninsured damage to any Project resulting from acts of terrorism;

(xvi) the physical waste of any Project;

(xvii) the removal or disposal of any personal property from any Project in which Administrative Agent or the Lenders have a security interest in violation of the terms and conditions of the Loan Documents;

(xviii) with respect to the Redding Sundial Project only, the difference between the proceeds of any Award paid to Redding Sundial Borrower and the Allocated Loan Amount;

(xix) the payment of any distributions to Borrower or any Guarantor or any of their Affiliates, employees, managers or contractors, other than as permitted in this Agreement; or

(xx) any fees paid by Borrower to any Guarantor or any of their Affiliates, employees, managers or contractors after the occurrence and during the continuation of an Event of Default under the Loan Documents.

(c) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, all of the Obligations shall be fully recourse to Borrower and Borrower shall be personally liable therefor in the event of: (i) any Transfer of any Project or any part thereof or a Transfer of an interest in any Restricted Party in breach of any of the covenants in this Agreement or the Mortgage, (ii) Borrower's failure to comply with the covenants in Section 6.17 hereof; (iii) the commission of fraud by Borrower or any Borrower Party in connection with the Loan, (iv) the filing by Borrower or any Borrower Party or the filing against Borrower or any Borrower Party by Borrower, any Borrower Party or any Affiliate of Borrower of any proceeding for relief under any federal or state bankruptcy, insolvency or receivership laws or any assignment for the benefit of creditors made by Borrower or any Borrower Party or the consenting to, acquiescing in or joining in any such proceeding by Borrower or Borrower Party; or (v) the amendment, modification, termination, cancellation or surrender of the Ground Lease, or the waiver of any of the terms or provisions thereof, without Administrative Agent's prior written consent.

(d) Borrower also shall be personally liable to Administrative Agent and the Lenders for any and all attorneys' fees and expenses and court costs incurred by Administrative Agent and the Lenders in enforcing this Section 13.1 or otherwise incurred by Administrative Agent or any Lender in connection with any of the foregoing matters, regardless whether such matters are legal or equitable in nature or arise under tort or contract law. The limitation on the personal liability of Borrower in this Section 13.1 shall not modify, diminish or discharge the personal liability of any Guarantor. Nothing herein shall be deemed to be a waiver of any right which Administrative Agent or any Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to Administrative Agent and the Lenders under the Loan Documents or to require that all collateral shall continue to secure the amounts due under the Loan Documents.

**Section 13.2. Limitation on Liability of Lender's Officers, Employees, etc.** Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement, any other Loan Document, or the Environmental Indemnity Agreement shall be satisfied, if at all, out of the Administrative Agent's or such Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent's or such Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

#### **ARTICLE XIV CROSS-GUARANTY**

**Section 14.1. Cross-Guaranty.** Each Borrower hereby agrees that such Borrower is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the Administrative Agent and Lenders and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Administrative Agent and Lenders by each other Borrower. Each Borrower agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Article XIV shall not be discharged until payment and performance, in full, of the Obligations has occurred, and that its obligations under this Article XIV shall be absolute and unconditional, irrespective of, and unaffected by:

(a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or any other agreement, document or instrument to which any Borrower is or may become a party;

(b) the absence of any action to enforce this Agreement (including this Article XIV) or any other Loan Document or the waiver or consent by Administrative Agent and Lenders with respect to any of the provisions thereof;

(c) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by Agent and Lenders in respect thereof (including the release of any such security);

(d) the insolvency of any Borrower or Guarantor; or

(e) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

Each Borrower shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guaranteed hereunder.

**Section 14.2. Waivers By Borrower.** Each Borrower expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel Administrative Agent or Lenders to marshal assets or to proceed in respect of the Obligations guaranteed hereunder against any other Borrower, any other party or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Borrower. It is agreed among each Borrower, Administrative Agent and Lenders that the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Article XIV and such waivers, Administrative Agent and Lenders would decline to enter into this Agreement.

**Section 14.3. Benefit of Guaranty.** Each Borrower agrees that the provisions of this Article XIV are for the benefit of Administrative Agent and Lenders and their respective successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Borrower and Administrative Agent or Lenders, the obligations of such other Borrower under the Loan Documents.

**Section 14.4. Waiver of Subrogation, Etc.** Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, and except as set forth in Section 14.7, each Borrower hereby expressly and irrevocably waives any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor. Each Borrower acknowledges and agrees that this waiver is intended to benefit Administrative Agent and Lenders and shall not limit or otherwise affect such Borrower's liability hereunder or the enforceability of this Article XIV, and that Agent, Lenders and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 14.4.

**Section 14.5. Election of Remedies.** If Administrative Agent or any Lender may, under applicable law, proceed to realize its benefits under any of the Loan Documents giving Administrative Agent or such Lender a Lien upon any Collateral, whether owned by any Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, Administrative Agent or any Lender may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of its rights and remedies under this Article XIV. If, in the exercise of any of its rights and remedies, Administrative Agent or any Lender shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Borrower or any other Person, whether because of any applicable laws pertaining to “election of remedies” or the like, each Borrower hereby consents to such action by Administrative Agent or such Lender and waives any claim based upon such action, even if such action by Administrative Agent or such Lender shall result in a full or partial loss of any rights of subrogation that each Borrower might otherwise have had but for such action by Administrative Agent or such Lender. Any election of remedies that results in the denial or impairment of the right of Administrative Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. In the event Administrative Agent or any Lender shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, Administrative Agent or such Lender may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by Administrative Agent or such Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Administrative Agent, Lender or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Article XIV, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Administrative Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

**Section 14.6. Limitation.** Notwithstanding any provision herein contained to the contrary, each Borrower's liability under this Article XIV (which liability is in any event in addition to amounts for which such Borrower is primarily liable under Article II) shall be limited to an amount not to exceed as of any date of determination the greater of:

(a) the net amount of all Loan proceeds advanced to any other Borrower under this Agreement and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower; and

(b) the amount that could be claimed by Agent and Lenders from such Borrower under this Article XIV without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, such Borrower's right of contribution and indemnification from each other Borrower under Section 14.7.

**Section 14.7. Contribution with respect to Guarantee Obligations.**

(a) To the extent that any Borrower shall make a payment under this Article XIV of all or any of the Obligations (other than Loan made to that Borrower for which it is primarily liable) (a “Guarantor Payment”) that, taking into account all other Guarantor Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Borrower's “Allocable Amount” (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Borrowers as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Obligations and termination of the Commitments, such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “Allocable Amount” of any Borrower shall be equal to the maximum amount of the claim that could then be recovered from such Borrower under this Article XIV without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 14.7 is intended only to define the relative rights of Borrowers and nothing set forth in this Section 14.7 is intended to or shall impair the obligations of Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement, including Section 14.1. Nothing contained in this Section 14.7 shall limit the liability of any Borrower to pay the Loan made directly or indirectly to that Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Borrower to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Borrower against each other Borrower under this Section 14.7 shall be exercisable upon the full and indefeasible payment of the Obligations.

**Section 14.8.** **Liability Cumulative.** The liability of Borrower under this Article XIV is in addition to and shall be cumulative with all liabilities of each Borrower to Administrative Agent and Lenders under this Agreement and the other Loan Documents to which such Borrower is a party or in respect of any Obligations or obligation of the other Borrower, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

**[Signatures Begin on Following Page]**

EXECUTED as of the date first written above.

**ADMINISTRATIVE AGENT:**

**GENERAL ELECTRIC CAPITAL CORPORATION,**  
a Delaware corporation

By: /s/ Dague Retzlaff  
Dague Retzlaff, its Duly Authorized Signatory

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Signature Page – Loan Agreement  
[Summit Healthcare]

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**LENDER:**

**GENERAL ELECTRIC CAPITAL CORPORATION,**  
a Delaware corporation

By: /s/ Dague Retzlaff  
Dague Retzlaff, its Duly Authorized Signatory

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Signature Page – Loan Agreement  
[Summit Healthcare]

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**BORROWER:**

**HP REDDING, LLC,  
SUMMIT SALEM, LLC,  
SUMMIT PORTLAND, LLC,**  
each, a Delaware limited liability company

By: Summit Healthcare REIT, Inc.,  
a Maryland corporation, its Manager

By: /s/ Kent Eikanas  
Kent Eikanas, its Chief Operating Officer

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Signature Page – Loan Agreement  
[Summit Healthcare]

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**SCHEDULES AND EXHIBITS OMITTED**

[Summit Healthcare]



## NEWS RELEASE

FOR IMMEDIATE RELEASE

### CONTACT

Kiersten Mehl

(800) 978-8136

kmehl@summithealthcarereit.com

### **Summit Healthcare REIT, Inc. Acquires Two Senior Living Facilities**

**Lake Forest, Calif., (Jan. 7, 2015)** – Summit Healthcare REIT, Inc. (“Summit”) announced today that it acquired two senior living facilities on December 31, 2014, for a total purchase price of approximately \$14.2 million.

The two facilities acquired include Gateway Care and Retirement Center, a 38,034 square foot facility located in Portland, Oregon that has 59 beds dedicated to skilled nursing services and 32 independent living private apartments, and Applewood Retirement Community, a 45,563 square foot facility located in Salem, Oregon that has 69 independent living apartments.

The facilities will be operated and leased by Sapphire Health Services (“Sapphire”) pursuant to a 15-year triple net lease. Sapphire is an experienced operator of independent living, assisted living and skilled nursing facilities.

“We are excited to begin a relationship with Sapphire and look forward to working long-term with this exceptional operating team,” said Kent Eikanas, President and Chief Operating Officer of Summit Healthcare REIT, Inc.

“Sapphire is excited about forging a new partnership with Summit. Summit has an experienced team, proven in handling complex acquisitions and lease-back transactions. In our experience, Summit was exceptional in making the transaction as smooth and calm as possible,” said Kevin Ricker, Co-Owner of Sapphire Health Services. “We look forward to our next acquisition together.”

#### **About Summit Healthcare REIT, Inc.**

Summit is a publicly registered non-traded REIT that is currently focused on investing in healthcare related senior housing real estate located throughout the United States. The current portfolio includes interests in 16 healthcare facilities.

For more information, please contact Kiersten Mehl at (800) 978-8136.

*This material does not constitute an offer to sell or a solicitation of an offer to buy Summit Healthcare REIT, Inc.*

*This release may contain forward-looking statements relating to the business and financial outlook of Summit Healthcare REIT, Inc. that are based on our current expectations, estimates, forecasts and projections and are not guarantees of future performance. Actual results may differ materially from those expressed in these forward-looking statements, and you should not place undue reliance on any such statements. A number of important factors could cause actual results to differ materially from any forward-looking statements contained in this release. Such factors include those described in the Risk Factors sections of the Company’s annual report on Form 10-K for the year ended December 31, 2013, and quarterly reports for the periods ended March 31, 2014, June 30, 2014, and September 30, 2014. Forward-looking statements in this document speak only as of the date on which such statements were made, and we undertake no obligation to update any such statements that may become untrue because of subsequent events. We claim the safe harbor protection for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.*

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