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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Form 10-Q**

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

For the quarterly period ended September 30, 2013

or

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

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

Commission File Number: 001-32641

**BROOKDALE SENIOR LIVING INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

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

**20-3068069**

*(I.R.S. Employer Identification No.)*

**111 Westwood Place, Suite 400, Brentwood, Tennessee**

*(Address of principal executive offices)*

**37027**

*(Zip Code)*

**(615) 221-2250**

*(Registrant's telephone number, including area code)*

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  T No  £

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  T No  £

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  T

Accelerated filer  £

Non-accelerated filer  £ (Do not check if a smaller reporting company)

Smaller reporting company  £

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

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As of November 4, 2013, 124,285,473 shares of the registrant's common stock, \$0.01 par value, were outstanding (excluding unvested restricted shares).

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FORM 10-Q

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**BROOKDALE SENIOR LIVING INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands, except stock amounts)**

	September 30, 2013 (Unaudited)	December 31, 2012
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 42,690	\$ 69,240
Cash and escrow deposits — restricted	43,231	43,096
Accounts receivable, net	108,720	100,401
Deferred tax asset	13,377	13,377
Prepaid expenses and other current assets, net	85,860	82,924
Total current assets	<u>293,878</u>	<u>309,038</u>
Property, plant and equipment and leasehold intangibles, net	3,845,741	3,879,977
Cash and escrow deposits — restricted	60,146	62,767
Investment in unconsolidated ventures	46,050	31,386
Goodwill	109,553	109,553
Other intangible assets, net	159,954	159,942
Other assets, net	128,909	113,315
Total assets	<u>\$ 4,644,231</u>	<u>\$ 4,665,978</u>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities</b>		
Current portion of long-term debt	\$ 72,172	\$ 509,543
Trade accounts payable	46,873	43,184
Accrued expenses	216,919	200,895
Refundable entrance fees and deferred revenue	376,161	370,755
Tenant security deposits	5,245	6,521
Total current liabilities	<u>717,370</u>	<u>1,130,898</u>
Long-term debt, less current portion	2,490,109	2,089,826
Line of credit	45,000	80,000
Deferred entrance fee revenue	85,507	79,010
Deferred liabilities	155,346	150,788
Deferred tax liability	96,187	96,187
Other liabilities	38,175	42,283
Total liabilities	<u>3,627,694</u>	<u>3,668,992</u>
<b>Stockholders' Equity</b>		
Preferred stock, \$0.01 par value, 50,000,000 shares authorized at September 30, 2013 and December 31, 2012; no shares issued and outstanding	—	—
Common stock, \$0.01 par value, 200,000,000 shares authorized at September 30, 2013 and December 31, 2012; 130,135,841 and 129,117,946 shares issued and 127,707,440 and 126,689,545 shares outstanding (including 3,422,273 and 3,951,950 unvested restricted shares), respectively	1,277	1,267
Additional paid-in-capital	2,020,096	1,997,946
Treasury stock, at cost; 2,428,401 shares at September 30, 2013 and December 31, 2012	(46,800)	(46,800)
Accumulated deficit	(958,036)	(955,427)
Total stockholders' equity	<u>1,016,537</u>	<u>996,986</u>
Total liabilities and stockholders' equity	<u>\$ 4,644,231</u>	<u>\$ 4,665,978</u>

See accompanying notes to condensed consolidated financial statements.

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**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited, in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
<b>Revenue</b>				
Resident fees	\$ 631,144	\$ 605,530	\$ 1,876,452	\$ 1,804,129
Management fees	7,622	7,407	22,975	22,350
Reimbursed costs incurred on behalf of managed communities	90,233	83,208	258,306	242,847
Total revenue	<u>728,999</u>	<u>696,145</u>	<u>2,157,733</u>	<u>2,069,326</u>
<b>Expense</b>				
Facility operating expense (excluding depreciation and amortization of \$60,896, \$56,956, \$177,595 and \$172,982, respectively)	420,579	411,467	1,249,609	1,213,751
General and administrative expense (including non-cash stock-based compensation expense of \$6,894, \$6,021, \$20,776 and \$19,185, respectively)	45,824	43,158	138,470	134,202
Facility lease expense	69,232	71,167	207,028	213,240
Depreciation and amortization	68,644	62,876	200,557	189,781
Asset impairment	504	—	2,658	8,329
Loss on acquisition	—	—	—	636
Gain on facility lease termination	—	—	—	(2,780)
Costs incurred on behalf of managed communities	90,233	83,208	258,306	242,847
Total operating expense	<u>695,016</u>	<u>671,876</u>	<u>2,056,628</u>	<u>2,000,006</u>
Income from operations	33,983	24,269	101,105	69,320
Interest income	472	676	1,027	2,220
Interest expense:				
Debt	(29,642)	(32,262)	(90,456)	(96,743)
Amortization of deferred financing costs and debt discount	(4,100)	(4,543)	(13,017)	(13,602)
Change in fair value of derivatives and amortization	(1,377)	140	594	(371)
Loss on extinguishment of debt	(53)	—	(946)	(221)
Equity in earnings (loss) of unconsolidated ventures	431	(249)	991	(211)
Other non-operating income	279	500	1,365	392
(Loss) income before income taxes	(7)	(11,469)	663	(39,216)
Provision for income taxes	(960)	(747)	(3,272)	(2,559)
Net loss	<u>\$ (967)</u>	<u>\$ (12,216)</u>	<u>\$ (2,609)</u>	<u>\$ (41,775)</u>
Basic and diluted net loss per share	<u>\$ (0.01)</u>	<u>\$ (0.10)</u>	<u>\$ (0.02)</u>	<u>\$ (0.34)</u>
Weighted average shares used in computing basic and diluted net loss per share	<u>124,128</u>	<u>122,493</u>	<u>123,457</u>	<u>121,784</u>

See accompanying notes to condensed consolidated financial statements.

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**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(Unaudited, in thousands)**

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Net loss	\$ (967)	\$ (12,216)	\$ (2,609)	\$ (41,775)
Other comprehensive income:				
Unrealized gain on marketable securities - restricted	—	980	—	1,818
Other	—	—	—	61
Total other comprehensive income, net of tax	—	980	—	1,879
Comprehensive loss	<u>\$ (967)</u>	<u>\$ (11,236)</u>	<u>\$ (2,609)</u>	<u>\$ (39,896)</u>

See accompanying notes to condensed consolidated financial statements.

**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
**(Unaudited, in thousands)**

	<u>Common Stock</u>		<u>Additional Paid-In- Capital</u>	<u>Treasury Stock</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>				
<b>Balances at January 1, 2013 as previously reported</b>	126,689	\$ 1,267	\$ 1,997,946	\$ (46,800)	\$ (949,696)	\$ 1,002,717
Retrospective adjustment for adoption of accounting policy	—	—	—	—	(5,731)	(5,731)
<b>Balances at January 1, 2013 as adjusted</b>	126,689	1,267	1,997,946	(46,800)	(955,427)	996,986
Compensation expense related to restricted stock grants	—	—	20,776	—	—	20,776
Net loss	—	—	—	—	(2,609)	(2,609)
Issuance of common stock under Associate Stock Purchase Plan	47	—	1,135	—	—	1,135
Restricted stock, net	971	10	—	—	—	10
Other	—	—	239	—	—	239
<b>Balances at September 30, 2013</b>	<u>127,707</u>	<u>\$ 1,277</u>	<u>\$ 2,020,096</u>	<u>\$ (46,800)</u>	<u>\$ (958,036)</u>	<u>\$ 1,016,537</u>

See accompanying notes to condensed consolidated financial statements.

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**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited, in thousands)

	Nine Months Ended September 30,	
	2013	2012
<b>Cash Flows from Operating Activities</b>		
Net loss	\$ (2,609)	\$ (41,775)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Loss on extinguishment of debt	946	221
Depreciation and amortization	213,574	203,383
Asset impairment	2,658	8,329
Equity in (earnings) loss of unconsolidated ventures	(991)	211
Distributions from unconsolidated ventures from cumulative share of net earnings	2,089	1,435
Amortization of deferred gain	(3,279)	(3,279)
Amortization of entrance fees	(21,178)	(18,835)
Proceeds from deferred entrance fee revenue	30,584	30,303
Deferred income tax benefit	—	(435)
Change in deferred lease liability	2,250	5,324
Change in fair value of derivatives and amortization	(594)	371
(Gain) loss on sale of assets	(876)	245
Loss on acquisition	—	636
Gain on facility lease termination	—	(2,780)
Non-cash stock-based compensation	20,776	19,185
Other	—	(487)
Changes in operating assets and liabilities:		
Accounts receivable, net	(9,482)	(8,092)
Prepaid expenses and other assets, net	(2,805)	1,653
Accounts payable and accrued expenses	20,595	9,552
Tenant refundable fees and security deposits	(828)	(1,556)
Deferred revenue	(1,755)	4,369
Net cash provided by operating activities	<u>249,075</u>	<u>207,978</u>
<b>Cash Flows from Investing Activities</b>		
Increase in lease security deposits and lease acquisition deposits, net	(2,046)	(6,767)
Decrease (increase) in cash and escrow deposits — restricted	2,484	(2,402)
Purchase of marketable securities — restricted	—	(1,453)
Additions to property, plant and equipment and leasehold intangibles, net	(161,522)	(151,381)
Acquisition of assets, net of related payables and cash received	(7,394)	(111,308)
Payments on (issuance of) notes receivable, net	95	(591)
Investment in unconsolidated ventures	(17,172)	(571)
Distributions received from unconsolidated ventures	100	256
Proceeds from sale of assets, net	7,554	325
Other	—	487
Net cash used in investing activities	<u>(177,901)</u>	<u>(273,405)</u>
<b>Cash Flows from Financing Activities</b>		
Proceeds from debt	597,852	193,607
Repayment of debt and capital lease obligations	(651,741)	(136,957)
Proceeds from line of credit	320,000	280,000
Repayment of line of credit	(355,000)	(265,000)
Payment of financing costs, net of related payables	(11,194)	(2,810)
Refundable entrance fees:		
Proceeds from refundable entrance fees	29,265	29,512
Refunds of entrance fees	(24,504)	(19,555)
Cash portion of loss on extinguishment of debt	(502)	(118)
Purchase of derivatives and payment of swap termination	(2,863)	(1,289)
Other	963	(295)
Net cash (used in) provided by financing activities	<u>(97,724)</u>	<u>77,095</u>
Net (decrease) increase in cash and cash equivalents	<u>(26,550)</u>	<u>11,668</u>
Cash and cash equivalents at beginning of period	69,240	30,836
Cash and cash equivalents at end of period	<u>\$ 42,690</u>	<u>\$ 42,504</u>

See accompanying notes to condensed consolidated financial statements.





**BROOKDALE SENIOR LIVING INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**1. Description of Business**

Brookdale Senior Living Inc. ("Brookdale" or the "Company") is a leading owner and operator of senior living communities throughout the United States. The Company provides an exceptional living experience through properties that are designed, purpose-built and operated to provide the highest quality service, care and living accommodations for residents. The Company owns, leases and operates retirement centers, assisted living and dementia-care communities and continuing care retirement centers ("CCRCs"). Through its Innovative Senior Care ("ISC") program, the Company also offers a range of outpatient therapy, home health and hospice services, primarily to residents of its communities.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission for quarterly reports on Form 10-Q. In the opinion of management, these financial statements include all adjustments necessary to present fairly the financial position, results of operations and cash flows of the Company as of September 30, 2013, and for all periods presented. The condensed consolidated financial statements are prepared on the accrual basis of accounting. All adjustments made have been of a normal and recurring nature. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. The Company believes that the disclosures included are adequate and provide a fair presentation of interim period results. Interim financial statements are not necessarily indicative of the financial position or operating results for an entire year. It is suggested that these interim financial statements be read in conjunction with the audited financial statements and the notes thereto, together with management's discussion and analysis of financial condition and results of operations, included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission.

***Revenue Recognition***

***Resident Fees***

Resident fee revenue is recorded when services are rendered and consists of fees for basic housing, support services and fees associated with additional services such as personalized health and assisted living care. Residency agreements are generally for a term of 30 days to one year, with resident fees billed monthly in advance. Revenue for certain skilled nursing services and ancillary charges is recognized as services are provided and is billed monthly in arrears.

***Entrance Fees***

Certain of the Company's communities have residency agreements which require the resident to pay an upfront entrance fee prior to occupying the community. In addition, in connection with the Company's MyChoice program, new and existing residents are allowed to pay additional entrance fee amounts in return for a reduced monthly service fee. The non-refundable portion of the entrance fee is recorded as deferred entrance fee revenue and amortized over the estimated stay of the resident based on an actuarial valuation. The refundable portion of a resident's entrance fee is generally refundable within a certain number of months or days following contract termination or upon the sale of the unit, or in certain agreements, upon the resale of a comparable unit or 12 months after the resident vacates the unit. In such instances the refundable portion of the fee is not amortized and included in refundable entrance fees and deferred revenue. All refundable amounts due to residents at any time in the future are classified as current liabilities.

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### *Management Fees*

Management fee revenue is recorded as services are provided to the owners of the communities. Revenues are determined by an agreed upon percentage of gross revenues (as defined).

### *Reimbursed Costs Incurred on Behalf of Managed Communities*

The Company manages certain communities under contracts which provide for payment to the Company of a monthly management fee plus reimbursement of certain operating expenses. Where the Company is the primary obligor with respect to any such operating expenses, the Company recognizes revenue when the goods have been delivered or the service has been rendered and the Company is due reimbursement. Such revenue is included in "reimbursed costs incurred on behalf of managed communities" on the condensed consolidated statements of operations. The related costs are included in "costs incurred on behalf of managed communities" on the condensed consolidated statements of operations.

### *Fair Value of Financial Instruments*

The Financial Accounting Standards Board ("FASB") issued Accounting Standards Codification ("ASC") 820 – *Fair Value Measurements* ("ASC 820"), which establishes a three-level valuation hierarchy for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels are defined as follows:

Level 1 – Inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2 – Inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

Level 3 – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

Cash and cash equivalents and cash and escrow deposits-restricted are reflected in the accompanying condensed consolidated balance sheets at amounts considered by management to reasonably approximate fair value due to the short maturity. Management estimates the fair value of its long-term debt using a discounted cash flow analysis based upon the Company's current borrowing rate for debt with similar maturities and collateral securing the indebtedness.

The Company had outstanding debt with a carrying value and estimated fair value of approximately \$2.6 billion and \$2.7 billion as of September 30, 2013 and December 31, 2012, respectively. The Company's fair value of debt disclosure is classified within Level 2 of the valuation hierarchy.

### *Self-Insurance Liability Accruals*

The Company is subject to various legal proceedings and claims that arise in the ordinary course of its business. Although the Company maintains general liability and professional liability insurance policies for its owned, leased and managed communities under a master insurance program, the Company's current policies provide for deductibles for each and every claim. As a result, the Company is, in effect, self-insured for claims that are less than the deductible amounts. In addition, the Company maintains a large-deductible workers compensation program and a self-insured employee medical program. The Company reviews the adequacy of its accruals related to these liabilities on an ongoing basis, using historical claims, actuarial valuations, third party administrator estimates, consultants, advice from legal counsel and industry data, and adjusts accruals periodically. Estimated costs related to these self-insurance programs are accrued based on known claims and projected claims incurred but not yet reported. Subsequent changes in actual experience are monitored and estimates are updated as information is available.

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### ***Cumulative Effect Adjustment***

In July 2012, the FASB issued ASU 2012-01, *Continuing Care Retirement Communities — Refundable Advance Fees* ("ASU 2012-01"). ASU 2012-01 amends the situations in which recognition of deferred revenue for refundable advance fees is appropriate. Under this amendment, refundable advance fees that are contingent upon reoccupancy by a subsequent resident but are not limited to the proceeds of reoccupancy should be accounted for and reported as a liability. The guidance in ASU 2012-01 is effective for public companies for fiscal years, and interim periods within those years, beginning after December 15, 2012. The Company adopted the provisions of this update as of January 1, 2013 and incorporated the provisions of this update to its consolidated financial statements through retrospective application to all periods presented and a cumulative effect adjustment to the Company's accumulated deficit as of January 1, 2013.

The effect of this change in accounting was not material to the consolidated results of operations or financial position for any period, including the three and nine months ended September 30, 2013 and 2012, and did not impact cash flows from operations in any period. The Company increased its accumulated deficit by \$5.7 million to reflect the net cumulative effect of the adoption of ASU 2012-01.

The related adjustments will be made to the applicable prior periods as such financial information is included in future filings with the SEC, but no later than the filing of the Company's Annual Report on Form 10-K for the year ending December 31, 2013. The impact of all adjustments made to the prior annual consolidated financial statements is summarized as follows (dollars in thousands):

	<b>As of and for the Year Ended December 31, 2012</b>		
	<b>As Reported</b>	<b>Adjustment</b>	<b>As Adjusted</b>
<b>Consolidated Balance Sheets</b>			
Refundable entrance fees and deferred revenue	\$ 361,360	\$ 9,395	\$ 370,755
Deferred tax liability	99,851	(3,664)	96,187
Accumulated deficit	(949,696)	(5,731)	(955,427)
<b>Consolidated Statements of Operations</b>			
Resident fees	\$ 2,414,283	\$ (1,347)	\$ 2,412,936
Total revenue	2,770,085	(1,347)	2,768,738
Loss before income taxes	(63,601)	(1,347)	(64,948)
Provision for income taxes	(2,044)	525	(1,519)
Net loss	(65,645)	(822)	(66,467)
Basic and diluted net loss per share	(0.54)	—	(0.54)
<b>Consolidated Statements of Cash Flows</b>			
Net loss	\$ (65,645)	\$ (822)	\$ (66,467)
Amortization of entrance fees	(26,709)	1,347	(25,362)
Deferred income tax benefit	—	(525)	(525)

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	<b>Year Ended December 31, 2011</b>		
	<b>As Reported</b>	<b>Adjustment</b>	<b>As Adjusted</b>
<b>Consolidated Statements of Operations</b>			
Resident fees	\$ 2,291,757	\$ (1,435)	\$ 2,290,322
Total revenue	2,457,918	(1,435)	2,456,483
Loss before income taxes	(65,835)	(1,435)	(67,270)
Provision for income taxes	(2,340)	560	(1,780)
Net loss	(68,175)	(875)	(69,050)
Basic and diluted net loss per share	(0.56)	(0.01)	(0.57)
<b>Consolidated Statements of Cash Flows</b>			
Net loss	\$ (68,175)	\$ (875)	\$ (69,050)
Amortization of entrance fees	(25,401)	1,435	(23,966)
Deferred income tax provision	943	(560)	383

The prior period financial statements included in this filing have been revised to reflect this change in accounting, the effects of which have been summarized below (dollars in thousands):

	<b>Three Months Ended September 30, 2012</b>		
	<b>As Reported</b>	<b>Adjustment</b>	<b>As Adjusted</b>
<b>Condensed Consolidated Statements of Operations</b>			
Resident fees	\$ 605,867	\$ (337)	\$ 605,530
Total revenue	696,482	(337)	696,145
Loss before income taxes	(11,132)	(337)	(11,469)
Provision for income taxes	(878)	131	(747)
Net loss	(12,010)	(206)	(12,216)
Basic and diluted net loss per share	(0.10)	—	(0.10)

	<b>Nine Months Ended September 30, 2012</b>		
	<b>As Reported</b>	<b>Adjustment</b>	<b>As Adjusted</b>
<b>Condensed Consolidated Statements of Operations</b>			
Resident fees	\$ 1,805,140	\$ (1,011)	\$ 1,804,129
Total revenue	2,070,337	(1,011)	2,069,326
Loss before income taxes	(38,205)	(1,011)	(39,216)
Provision for income taxes	(2,953)	394	(2,559)
Net loss	(41,158)	(617)	(41,775)
Basic and diluted net loss per share	(0.34)	—	(0.34)
<b>Condensed Consolidated Statements of Cash Flows</b>			
Net loss	\$ (41,158)	\$ (617)	\$ (41,775)
Amortization of entrance fees	(19,846)	1,011	(18,835)
Deferred income tax benefit	(41)	(394)	(435)

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### ***New Accounting Pronouncements***

In July 2013, the FASB issued ASU 2013-11, *Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists* ("ASU 2013-11"). ASU 2013-11 changes the presentation of an unrecognized tax benefit when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. These changes require an entity to present an unrecognized tax benefit as a liability in the financial statements if (i) a net operating loss carryforward, a similar tax loss, or a tax credit carryforward is not available at the reporting date under the tax law of the applicable jurisdiction to settle any additional income taxes that would result from the disallowance of a tax position, or (ii) the tax law of the applicable jurisdiction does not require the entity to use, and the entity does not intend to use, the deferred tax asset to settle any additional income taxes that would result from the disallowance of a tax position. Otherwise, an unrecognized tax benefit is required to be presented in the financial statements as a reduction to a deferred tax asset for a net operating loss carryforward, a similar tax loss, or a tax credit carryforward. The guidance in ASU 2013-11 is effective for public companies for fiscal years, and interim periods within those years, beginning after December 15, 2013. The Company does not believe that the adoption of ASU 2013-11 will have a material impact on the consolidated financial statements or disclosures.

### ***Reclassifications***

Certain prior period amounts have been reclassified to conform to the current financial statement presentation, with no effect on the Company's consolidated financial position or results of operations.

### **3. Earnings Per Share**

Basic earnings per share ("EPS") is calculated by dividing net income by the weighted average number of shares of common stock outstanding. Diluted EPS includes the components of basic EPS and also gives effect to dilutive common stock equivalents. For purposes of calculating basic and diluted earnings per share, vested restricted stock awards are considered outstanding. Under the treasury stock method, diluted EPS reflects the potential dilution that could occur if securities or other instruments that are convertible into common stock were exercised or could result in the issuance of common stock. Potentially dilutive common stock equivalents include unvested restricted stock, restricted stock units and convertible debt instruments and warrants.

During the three and nine months ended September 30, 2013 and 2012, the Company reported a consolidated net loss. As a result of the net loss, unvested restricted stock and restricted stock unit awards and convertible debt instruments and warrants were anti-dilutive for each period and were not included in the computation of diluted weighted average shares. The weighted average restricted stock and restricted stock unit awards excluded from the calculations of diluted net loss per share were 3.6 million and 4.2 million for the three months ended September 30, 2013 and 2012, respectively, and 4.1 million and 4.7 million for the nine months ended September 30, 2013 and 2012, respectively.

### **4. Acquisitions and Dispositions**

Effective May 24, 2013, the Company acquired the underlying real estate interest in an entrance fee CCRC that the Company previously managed for an aggregate purchase price of \$15.4 million, which included the assumption of the existing mortgage debt and certain liabilities in addition to cash paid. The Company will continue to manage the CCRC and report the results of operations of such community in the Management Services segment until necessary license approvals are obtained.

Effective May 31, 2013, the Company purchased the underlying real estate in an assisted living community for an aggregate purchase price of \$2.4 million. The results of operations of the community are reported in the Assisted Living segment.

During the nine months ended September 30, 2013, the Company purchased three home health agencies for an aggregate purchase price of approximately \$2.6 million. The purchase price of the acquisitions has been ascribed to an indefinite useful life intangible asset and recorded on the condensed consolidated balance sheet under other intangible assets, net.

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During the nine months ended September 30, 2013, the Company sold two communities for an aggregate selling price of \$7.2 million. The results of operations of the communities were previously reported in the Assisted Living segment.

### 5. Stock-Based Compensation

The Company follows ASC 718 in accounting for its share-based payments. This guidance requires measurement of the cost of employee services received in exchange for stock compensation based on the grant-date fair value of the employee stock awards. This cost is recognized as compensation expense ratably over the employee's requisite service period. Incremental compensation costs arising from subsequent modifications of awards after the grant date must be recognized when incurred.

For all service awards, the Company records compensation expense for the entire award on a straight-line basis (or, if applicable, on the accelerated method) over the requisite service period. For awards with performance-based vesting conditions, total compensation expense is recognized over the requisite service period for each separately vesting tranche of the award as if the award is, in substance, multiple awards once the performance target is deemed probable of achievement. Performance goals are evaluated quarterly. If such goals are not ultimately met or it is not probable the goals will be achieved, no compensation expense is recognized and any previously recognized compensation expense is reversed.

The Company's compensation expense recorded in connection with grants of restricted stock for the three and nine months ended September 30, 2013 and 2012 reflects an initial estimated cumulative forfeiture rate from 0% to 10% over the requisite service period of the awards. That estimate is revised if subsequent information indicates that the actual number of awards expected to vest is likely to differ from previous estimates.

Current year grants of restricted shares under the Company's Omnibus Stock Incentive Plan were as follows (amounts in thousands except for value per share):

	<u>Shares Granted</u>	<u>Value Per Share</u>	<u>Total Value</u>
Three months ended March 31, 2013	1,036	\$25.32 – \$27.36	\$ 27,858
Three months ended June 30, 2013	156	\$26.85 – \$27.50	\$ 4,216
Three months ended September 30, 2013	50	\$26.84 – \$29.20	\$ 1,445

### 6. Goodwill and Other Intangible Assets, Net

The following is a summary of the carrying amount of goodwill for the nine months ended September 30, 2013 and the year ended December 31, 2012 presented on an operating segment basis (dollars in thousands):

	<u>September 30, 2013</u>			<u>December 31, 2012</u>		
	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment and Other Charges</u>	<u>Net</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment and Other Charges</u>	<u>Net</u>
Retirement Centers	\$ 7,642	\$ (521)	\$ 7,121	\$ 7,642	\$ (521)	\$ 7,121
Assisted Living	102,680	(248)	102,432	102,680	(248)	102,432
CCRCs - Rental	56,281	(56,281)	—	56,281	(56,281)	—
CCRCs - Entry Fee	158,718	(158,718)	—	158,718	(158,718)	—
<b>Total</b>	<u>\$ 325,321</u>	<u>\$ (215,768)</u>	<u>\$ 109,553</u>	<u>\$ 325,321</u>	<u>\$ (215,768)</u>	<u>\$ 109,553</u>

Goodwill is tested for impairment annually with a test date of October 1 or sooner if indicators of impairment are present. No indicators of impairment were present during the nine months ended September 30, 2013.

Community purchase options are amortized over their estimated lives and are tested for impairment whenever indicators of impairment arise. No indicators of impairment were present during the nine months ended September

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30, 2013. The following is a summary of other intangible assets at September 30, 2013 and December 31, 2012 (dollars in thousands):

	September 30, 2013			December 31, 2012		
	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Community purchase options	\$ 147,610	\$ (24,037)	\$ 123,573	\$ 147,610	\$ (21,263)	\$ 126,347
Health care licenses	33,850	—	33,850	31,082	—	31,082
Other	3,331	(800)	2,531	2,585	(72)	2,513
Total	<u>\$ 184,791</u>	<u>\$ (24,837)</u>	<u>\$ 159,954</u>	<u>\$ 181,277</u>	<u>\$ (21,335)</u>	<u>\$ 159,942</u>

Amortization expense related to definite-lived intangible assets for the three months ended September 30, 2013 and 2012 was \$1.2 million and \$1.0 million, respectively, and for the nine months ended September 30, 2013 and 2012 was \$3.5 million and \$2.8 million, respectively. Health care licenses were determined to be indefinite-lived intangible assets and are not subject to amortization.

### 7. Property, Plant and Equipment and Leasehold Intangibles, Net

Property, plant and equipment and leasehold intangibles, net, which include assets under capital leases, consist of the following (dollars in thousands):

	September 30, 2013	December 31, 2012
Land	\$ 297,992	\$ 296,314
Buildings and improvements	3,454,304	3,391,667
Leasehold improvements	73,832	60,186
Furniture and equipment	608,728	541,585
Resident and leasehold operating intangibles	441,657	441,603
Construction in progress	75,678	75,419
Assets under capital and financing leases	687,698	674,492
	5,639,889	5,481,266
Accumulated depreciation and amortization	(1,794,148)	(1,601,289)
Property, plant and equipment and leasehold intangibles, net	<u>\$ 3,845,741</u>	<u>\$ 3,879,977</u>

Long-lived assets with definite useful lives are depreciated or amortized on a straight-line basis over their estimated useful lives (or, in certain cases, the shorter of their estimated useful lives or the lease term) and are tested for impairment whenever indicators of impairment arise.

During the nine months ended September 30, 2013, there were indicators of impairment on certain long-lived assets. The Company compared the estimated fair value of the assets to their carrying values and recorded an impairment charge for the excess of carrying value over fair value. Non-cash charges of \$2.7 million related to certain communities within the CCRCs - Rental and Assisted Living segments were recorded in the Company's operating results and reflected as asset impairment in the accompanying condensed consolidated statement of operations. The impairment charges are primarily due to the amount by which the carrying values of the assets exceeded the estimated selling price.

### 8. Debt

#### *Long-Term Debt, Capital Leases and Financing Obligations*

Long-term debt, capital leases and financing obligations consist of the following (dollars in thousands):



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	<u>September 30,</u> <u>2013</u>	<u>December 31,</u> <u>2012</u>
Mortgage notes payable due 2014 through 2023; weighted average interest rate of 4.09% for the nine months ended September 30, 2013, net of debt discount of \$0.2 million (weighted average interest rate of 4.62% in 2012)	\$ 1,996,204	\$ 1,701,515
\$150,000 Series A notes payable, secured by five communities and by a \$3.0 million cash collateral deposit, bearing interest at LIBOR plus 0.88%, payable in monthly installments of principal and interest through maturity in August 2013	—	144,384
Discount mortgage note payable due June 2013, net of debt discount of \$1.0 million in 2012 (weighted average interest rate of 2.56% in 2012)	—	80,533
Variable rate tax-exempt bonds credit-enhanced by Fannie Mae; (weighted average interest rate of 1.65% in 2012), due 2032, payable in monthly installments of principal and interest through maturity, secured by the underlying assets of the portfolio	—	99,847
Capital and financing lease obligations payable through 2026; weighted average interest rate of 8.15% for the nine months ended September 30, 2013 (weighted average interest rate of 8.16% in 2012)	299,319	319,745
Convertible notes payable in aggregate principal amount of \$316.3 million, less debt discount of \$57.4 million and \$65.0 million in 2013 and 2012, respectively, interest at 2.75% per annum, due June 2018	258,840	251,312
Construction financing due 2017 through 2027; weighted average interest rate of 4.37% for the nine months ended September 30, 2013 (weighted average interest rate of 8.0% in 2012)	438	1,280
Notes payable issued to finance insurance premiums, weighted average interest rate of 2.65% for the nine months ended September 30, 2013 (weighted average interest rate of 2.81% in 2012), due 2014	7,480	753
<b>Total debt</b>	<b>2,562,281</b>	<b>2,599,369</b>
Less current portion	72,172	509,543
<b>Total long-term debt</b>	<b>\$ 2,490,109</b>	<b>\$ 2,089,826</b>

*Credit Facilities*

On March 28, 2013, the Company entered into a second amended and restated credit agreement with General Electric Capital Corporation, as administrative agent and lender, and the other lenders from time to time parties thereto. The amended credit agreement extended the maturity date of the facility to March 31, 2018 and decreased the interest rate payable on advances and the fee payable on the unused portion of the facility. The amended credit agreement provided an option to increase the committed amount initially from \$230.0 million to \$250.0 million, which the Company exercised on June 28, 2013, and provides an additional option to increase the committed amount from \$250.0 million to up to \$350.0 million, subject to obtaining commitments for the amount of such increase from acceptable lenders. The amended credit agreement also permits reduction of the committed amount or termination of the facility during the last two years of the five year term without payment of a premium or penalty. The amended credit agreement was further amended and restated effective September 20, 2013 to, among other things, incorporate a \$25.0 million swingline feature to permit same-day borrowing.

Amounts drawn under the facility bear interest at 90-day LIBOR plus an applicable margin. The applicable margin varies with the percentage of the total commitment drawn, with a 3.25% margin at 25% or lower utilization, a 3.75% margin at utilization greater than 25% but less than or equal to 50%, and a 4.25% margin at greater than 50% utilization. For purposes of determining the interest rate, in no event will LIBOR be less than 0.5% per annum. The

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Company is also required to pay a quarterly commitment fee of 0.5% per annum on the unused portion of the facility.

The revolving line of credit can be used to finance acquisitions and fund working capital and capital expenditures and for other general corporate purposes.

The facility is secured by a first priority mortgage on certain of the Company's communities. The availability under the line will vary from time to time as it is based on borrowing base calculations related to the appraised value and performance of the communities securing the facility.

The amended credit agreement contains typical affirmative and negative covenants, including financial covenants with respect to minimum consolidated fixed charge coverage and minimum consolidated tangible net worth. A violation of any of these covenants could result in a default under the amended credit agreement, which would result in termination of all commitments under the amended credit agreement and all amounts owing under the amended credit agreement and certain other loan agreements becoming immediately due and payable.

As of September 30, 2013, the Company had an available secured line of credit with a \$250.0 million commitment and \$238.6 million of availability (of which \$45.0 million had been drawn as of such date). The Company also had secured and unsecured letter of credit facilities of up to \$92.5 million in the aggregate as of September 30, 2013. Letters of credit totaling \$71.8 million had been issued under these facilities as of that date.

### *Financings*

On April 3, 2013, the Company obtained a \$25.0 million first mortgage loan, secured by the underlying community. The loan bears interest at a variable rate equal to 30-day LIBOR plus a margin of 275 basis points and matures in April 2018. In connection with the transaction, the Company repaid \$29.0 million of existing variable rate debt.

On April 12, 2013, the Company obtained \$259.0 million in loans secured by first mortgages on 23 communities. The loans bear interest at a variable rate equal to 30-day LIBOR plus a margin of 246 basis points. Concurrent with the closing of the loans, the Company entered into a five-year interest rate cap agreement that caps the interest rate on the loans at 5.03%. The loans mature in May 2023 and require amortization of principal over a 30 year period. Proceeds of the loans, together with cash on hand, were used to refinance or repay a total of \$275.2 million of mortgage debt which was scheduled to mature in May 2013 and July 2013 and variable rate tax-exempt bonds scheduled to mature in 2032.

On April 22, 2013, the Company obtained a \$28.0 million first mortgage loan, secured by two communities. The loan bears interest at a variable rate equal to 30-day LIBOR plus a margin of 275 basis points and matures in April 2018. In connection with the transaction, the Company repaid \$35.1 million of existing variable rate debt.

On May 30, 2013, the Company obtained an \$84.1 million first mortgage loan secured by eight of the Company's communities. The loan has a ten-year term and bears interest at a variable rate equal to 30-day LIBOR plus a margin of 289 basis points. Concurrent with the closing of the loan, the Company entered into a five-year interest rate cap agreement that caps the interest rate on the loan at 4.68%. Proceeds of the loan, together with cash on hand, were used to refinance or repay \$100.9 million of mortgage debt that was scheduled to mature between 2013 and 2017.

On August 1, 2013, the Company obtained \$172.1 million in loans secured by first mortgages on four communities. The loans bear interest at a variable rate equal to 30-day LIBOR plus a margin ranging from 226 to 288 basis points. The loans mature in August 2020 (\$75.0 million) and August 2023 (\$97.1 million) and require amortization of principal over a 30 year period. Proceeds of the loans were used to refinance a total of \$142.0 million of Series A notes payable which were scheduled to mature on August 1, 2013.

As of September 30, 2013, the Company is in compliance with the financial covenants of its outstanding debt and lease agreements.

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**9. Litigation**

The Company has been and is currently involved in litigation and claims incidental to the conduct of its business which are comparable to other companies in the senior living industry. Certain claims and lawsuits allege large damage amounts and may require significant costs to defend and resolve. Similarly, the senior living industry is continuously subject to scrutiny by governmental regulators, which could result in litigation related to regulatory compliance matters. As a result, the Company maintains general liability and professional liability insurance policies in amounts and with coverage and deductibles the Company believes are adequate, based on the nature and risks of its business, historical experience and industry standards. The Company's current policies provide for deductibles for each claim. Accordingly, the Company is, in effect, self-insured for claims that are less than the deductible amounts.

**10. Supplemental Disclosure of Cash Flow Information**

(dollars in thousands):

	<b>Nine Months Ended September 30,</b>	
	<b>2013</b>	<b>2012</b>
<b>Supplemental Disclosure of Cash Flow Information:</b>		
Interest paid	\$ 90,167	\$ 95,795
Income taxes paid	\$ 2,089	\$ 1,954
Write-off of deferred costs	\$ 444	\$ 744

**Supplemental Schedule of Non-cash Operating, Investing and Financing Activities:**

Acquisition of assets, net of related payables and cash received:

Cash and escrow deposits-restricted	\$ —	\$ 3,313
Prepaid expenses and other current assets	(1,326)	(2,817)
Property, plant and equipment and leasehold intangibles, net	17,157	123,450
Other intangible assets, net	3,514	6,641
Other assets, net	1,760	(7,327)
Accrued expenses	(3,866)	(580)
Other liabilities	—	3,628
Long-term debt	(9,845)	(15,000)
Net	<u>\$ 7,394</u>	<u>\$ 111,308</u>

Capital leases:

Property, plant and equipment and leasehold intangibles, net	\$ —	\$ 13,852
Long-term debt	—	(13,852)
Net	<u>\$ —</u>	<u>\$ —</u>

**11. Facility Operating Leases**

The following table provides a summary of facility lease expense and the impact of straight-line adjustment and amortization of deferred gains (dollars in thousands):

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Cash basis payment	\$ 69,507	\$ 70,142	\$ 208,057	\$ 211,195
Straight-line expense	818	2,118	2,250	5,324
Amortization of deferred gain	(1,093)	(1,093)	(3,279)	(3,279)
Facility lease expense	<u>\$ 69,232</u>	<u>\$ 71,167</u>	<u>\$ 207,028</u>	<u>\$ 213,240</u>

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### **12. Income Taxes**

The difference in the Company's effective tax rates for both the three months and nine months ended September 30, 2013 and 2012 was due to the impact of the Company's improved financial results under generally accepted accounting principles. The Company's tax expense mainly reflects its cash tax position for states that do not allow for or have suspended the use of net operating losses for the period.

The Company recorded additional interest charges related to its tax contingency reserve as well as an additional reserve for an uncertain tax position for the nine months ended September 30, 2013. Tax returns for years 2009 through 2012 are subject to future examination by tax authorities. In addition, certain tax returns are open from 2002 through 2008 to the extent of the net operating losses generated during those periods.

### **13. Segment Information**

The Company currently has six reportable segments: retirement centers; assisted living; CCRCs – rental; CCRCs – entry fee; ISC; and management services. Operating segments are defined as components of an enterprise that engage in business activities from which it may earn revenues and incur expenses; for which separate financial information is available; and whose operating results are regularly reviewed by the chief operating decision maker to assess the performance of the individual segment and make decisions about resources to be allocated to the segment.

*Retirement Centers.* The Company's Retirement Centers segment includes owned or leased communities that are primarily designed for middle to upper income senior citizens age 75 and older who desire an upscale residential environment providing the highest quality of service. The majority of the Company's retirement center communities consist of both independent living and assisted living units in a single community, which allows residents to "age-in-place" by providing them with a continuum of senior independent and assisted living services.

*Assisted Living.* The Company's Assisted Living segment includes owned or leased communities that offer housing and 24-hour assistance with activities of daily life to mid-acuity frail and elderly residents. Assisted living communities include both freestanding, multi-story communities and freestanding single story communities. The Company also operates memory care communities, which are freestanding assisted living communities specially designed for residents with Alzheimer's disease and other dementias.

*CCRCs - Rental.* The Company's CCRCs - Rental segment includes large owned or leased communities that offer a variety of living arrangements and services to accommodate all levels of physical ability and health. Most of the Company's CCRCs have independent living, assisted living and skilled nursing available on one campus or within the immediate market, and some also include memory care/Alzheimer's units.

*CCRCs - Entry Fee.* The communities in the Company's CCRCs - Entry Fee segment are similar to those in the Company's CCRCs - Rental segment but allow for residents in the independent living apartment units to pay a one-time upfront entrance fee, which is partially refundable in certain circumstances. The amount of the entrance fee varies depending upon the type and size of the dwelling unit, the type of contract plan selected, whether the contract contains a lifecare benefit for the resident, the amount and timing of refund, and other variables. In addition to the initial entrance fee, residents under all entrance fee agreements also pay a monthly service fee, which entitles them to the use of certain amenities and services. Since entrance fees are received upon initial occupancy, the monthly fees are generally less than fees at a comparable rental community.

*ISC.* The Company's ISC segment includes the outpatient therapy, home health and hospice services provided to residents of many of the Company's communities, to other senior living communities that the Company does not own or operate and to seniors living outside of the Company's communities. The ISC segment does not include the therapy services provided in the Company's skilled nursing units, which are included in the Company's CCRCs - Rental and CCRCs - Entry Fee segments.

*Management Services.* The Company's management services segment includes communities operated by the Company pursuant to management agreements. In some of the cases, the controlling financial interest in the community is held by third parties and, in other cases, the community is owned in a joint venture structure in which

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the Company has an ownership interest. Under the management agreements for these communities, the Company receives management fees as well as reimbursed expenses, which represent the reimbursement of expenses it incurs on behalf of the owners.

The accounting policies of the Company's reportable segments are the same as those described in the summary of significant accounting policies.

The following table sets forth certain segment financial and operating data (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Revenue <sup>(1)</sup>				
Retirement Centers	\$ 133,272	\$ 126,401	\$ 392,364	\$ 376,726
Assisted Living	262,524	254,179	783,636	757,930
CCRCs - Rental	100,076	96,681	297,965	287,051
CCRCs - Entry Fee	74,110	71,413	222,434	213,990
ISC	61,162	56,856	180,053	168,432
Management Services <sup>(2)</sup>	97,855	90,615	281,281	265,197
	<u>\$ 728,999</u>	<u>\$ 696,145</u>	<u>\$ 2,157,733</u>	<u>\$ 2,069,326</u>
Segment operating income <sup>(3)</sup>				
Retirement Centers	\$ 56,820	\$ 50,722	\$ 164,331	\$ 154,388
Assisted Living	96,750	91,162	289,216	271,891
CCRCs - Rental	27,013	25,100	81,657	79,883
CCRCs - Entry Fee	18,218	15,164	55,561	47,486
ISC	11,764	11,915	36,078	36,730
Management Services	7,622	7,407	22,975	22,350
	<u>218,187</u>	<u>201,470</u>	<u>649,818</u>	<u>612,728</u>
General and administrative (including non-cash stock-based compensation expense)	45,824	43,158	138,470	134,202
Facility lease expense	69,232	71,167	207,028	213,240
Depreciation and amortization	68,644	62,876	200,557	189,781
Asset impairment	504	—	2,658	8,329
Loss on acquisition	—	—	—	636
Gain on facility lease termination	—	—	—	(2,780)
Income from operations	<u>\$ 33,983</u>	<u>\$ 24,269</u>	<u>\$ 101,105</u>	<u>\$ 69,320</u>

	As of	
	September 30, 2013	December 31, 2012
Total assets		
Retirement Centers	\$ 1,245,316	\$ 1,256,497
Assisted Living	1,426,868	1,438,934
CCRCs - Rental	524,875	534,220
CCRCs - Entry Fee	951,475	951,584
ISC	95,906	90,357
Corporate and Management Services	399,791	394,386
Total assets	<u>\$ 4,644,231</u>	<u>\$ 4,665,978</u>

(1) All revenue is earned from external third parties in the United States.

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- (2) Management services segment revenue includes reimbursements for which the Company is the primary obligor of costs incurred on behalf of managed communities.
- (3) Segment operating income is defined as segment revenues less segment operating expenses (excluding depreciation and amortization).

### **14. Subsequent Events**

Effective October 1, 2013, the Company acquired seven communities for an aggregate purchase price of \$80.9 million. The Company financed the transaction with \$60.8 million of first mortgage financing (substantially through the assumption of existing debt), with the balance of the purchase price paid from cash on hand. The Company had been managing six of the communities since the acquisition of Horizon Bay in September 2011. The results of operations of the seven communities will be reported in the Assisted Living segment.

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

#### **SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

Certain statements in this Quarterly Report on Form 10-Q and other information we provide from time to time may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Those forward-looking statements include all statements that are not historical statements of fact and those regarding our intent, belief or expectations, including, but not limited to, statements relating to the consummation of the restructuring of the management agreements with Chartwell Retirement Residences ("Chartwell"); statements relating to our operational initiatives and our expectations regarding their effect on our results; our expectations regarding the economy, the senior living industry, occupancy, revenue, cash flow, operating income, expenses, capital expenditures, Program Max opportunities, cost savings, the demand for senior housing, the home resale market, expansion, development and construction activity, acquisition opportunities, asset dispositions, our share repurchase program, capital deployment, returns on invested capital and taxes; our expectations regarding returns to shareholders and our growth prospects; our expectations concerning the future performance of recently acquired communities and the effects of acquisitions (including the Chartwell portfolio acquisition) on our financial results; our ability to secure financing or repay, replace or extend existing debt at or prior to maturity; our ability to remain in compliance with all of our debt and lease agreements (including the financial covenants contained therein); our expectations regarding liquidity and leverage; our expectations regarding financings and refinancings of assets (including the timing thereof) and their effect on our results; our expectations regarding changes in government reimbursement programs and their effect on our results; our plans to generate growth organically through occupancy improvements, increases in annual rental rates and the achievement of operating efficiencies and cost savings; our plans to expand our offering of ancillary services (therapy, home health and hospice); our plans to expand, renovate, redevelop and reposition existing communities; our plans to acquire additional communities, asset portfolios, operating companies and home health agencies; the expected project costs for our expansion, redevelopment and repositioning program; our expected levels of expenditures and reimbursements (and the timing thereof); our expectations regarding our sales, marketing and branding initiatives and their impact on our results; our expectations for the performance of our entrance fee communities; our ability to anticipate, manage and address industry trends and their effect on our business; our expectations regarding the payment of dividends; and our ability to increase revenues, earnings, Adjusted EBITDA, Cash From Facility Operations, and/or Facility Operating Income (as such terms are defined herein). Words such as "anticipate(s)", "expect(s)", "intend(s)", "plan(s)", "target(s)", "project(s)", "predict(s)", "believe(s)", "may", "will", "would", "could", "should", "seek(s)", "estimate(s)" and similar expressions are intended to identify such forward-looking statements. These statements are based on management's current expectations and beliefs and are subject to a number of risks and uncertainties that could lead to actual results differing materially from those projected, forecasted or expected. Although we believe that the assumptions underlying the forward-looking statements are reasonable, we can give no assurance that our expectations will be attained. Factors which could have a material adverse effect on our operations and future prospects or which could cause actual results to differ materially from our expectations include, but are not limited to, the risk that we may not be able to satisfy the conditions and successfully complete the Chartwell management agreement restructuring; the risk associated with the current global economic situation and its impact upon capital markets and liquidity; changes in governmental reimbursement programs; our inability to extend (or refinance) debt (including our credit and letter of credit facilities) as it matures; the risk that we may not be able to satisfy the conditions precedent to exercising the extension options associated with certain of our debt agreements; events which adversely affect the ability of seniors to afford our monthly resident fees or entrance fees; the conditions of housing markets in certain geographic areas; our ability to generate sufficient cash flow to cover required interest and long-term operating lease payments; the effect of our indebtedness and long-term operating leases on our liquidity; the risk of loss of property pursuant to our mortgage debt and long-term lease obligations; the possibilities that changes in the capital markets, including changes in interest rates and/or credit spreads, or other factors could make financing more expensive or unavailable to us; our determination from time to time to purchase any shares under the repurchase program; our ability to fund any repurchases; our ability to effectively manage our growth; our ability to maintain consistent quality control; delays in obtaining regulatory approvals; the risk that we may not be able to expand, redevelop and reposition our communities in accordance with our plans; our ability to complete acquisitions and integrate them into our operations; competition for the acquisition of assets; our ability to obtain additional capital on terms acceptable to us; a decrease in the overall demand for senior housing; our vulnerability to economic downturns; acts of nature in certain geographic areas; terminations of our resident agreements and vacancies in the living spaces we lease; early

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terminations or non-renewal of management agreements; increased competition for skilled personnel; increased union activity; departure of our key officers; increases in market interest rates; environmental contamination at any of our facilities; failure to comply with existing environmental laws; an adverse determination or resolution of complaints filed against us; the cost and difficulty of complying with increasing and evolving regulation; and other risks detailed from time to time in our filings with the Securities and Exchange Commission, press releases and other communications, including those set forth under "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2012 and in this Quarterly Report. Such forward-looking statements speak only as of the date of this Quarterly Report. We expressly disclaim any obligation to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or change in events, conditions or circumstances on which any statement is based.

### Executive Overview

Our primary long-term growth objectives are to grow our revenues, Adjusted EBITDA, Cash From Facility Operations and Facility Operating Income primarily through a combination of: (i) organic growth in our core business, including expense control and the realization of economies of scale; (ii) expansion, redevelopment and repositioning of existing communities; (iii) acquisition and consolidation of asset portfolios and other senior living companies; and (iv) continued expansion of our ancillary services programs (including therapy, home health and hospice services).

The tables below present a summary of our operating results and certain other financial metrics for the three and nine months ended September 30, 2013 and 2012 and the amount and percentage of increase or decrease of each applicable item (dollars in millions).

	<b>Three Months Ended September 30,</b>		<b>Increase (Decrease)</b>	
	<b>2013</b>	<b>2012</b>	<b>Amount</b>	<b>Percent</b>
Total revenues	\$ 729.0	\$ 696.1	\$ 32.9	4.7%
Net loss	\$ (1.0)	\$ (12.2)	\$ (11.2)	(92.1%)
Adjusted EBITDA	\$ 114.1	\$ 106.8	\$ 7.3	6.8%
Cash From Facility Operations	\$ 70.6	\$ 61.5	\$ 9.1	14.8%
Facility Operating Income	\$ 203.6	\$ 187.6	\$ 16.0	8.5%

	<b>Nine Months Ended September 30,</b>		<b>Increase (Decrease)</b>	
	<b>2013</b>	<b>2012</b>	<b>Amount</b>	<b>Percent</b>
Total revenues	\$ 2,157.7	\$ 2,069.3	\$ 88.4	4.3%
Net loss	\$ (2.6)	\$ (41.8)	\$ (39.2)	(93.8%)
Adjusted EBITDA	\$ 338.2	\$ 307.9	\$ 30.3	9.8%
Cash From Facility Operations	\$ 209.6	\$ 177.5	\$ 32.1	18.0%
Facility Operating Income	\$ 605.7	\$ 571.5	\$ 34.2	6.0%

Adjusted EBITDA and Facility Operating Income are non-GAAP financial measures we use in evaluating our operating performance. Cash From Facility Operations is a non-GAAP financial measure we use in evaluating our liquidity. See "Non-GAAP Financial Measures" below for an explanation of how we define each of these measures, a detailed description of why we believe such measures are useful and the limitations of each measure, a reconciliation of net income (loss) to each of Adjusted EBITDA and Facility Operating Income and a reconciliation of net cash provided by operating activities to Cash From Facility Operations.

During the nine months ended September 30, 2013, we experienced an increase in our total revenues, primarily due to increases in occupancy and average monthly revenue per unit, including an increase in our ancillary services revenue. Total revenues for the nine months ended September 30, 2013 increased to \$2.2 billion, an increase of \$88.4 million, or 4.3%, over our total revenues for the nine months ended September 30, 2012. Resident fees for the nine months ended September 30, 2013 increased \$72.3 million, or 4.0%, from the prior year period. Management



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fees increased \$0.6 million, or 2.8%, from the prior year period, and reimbursed costs incurred on behalf of managed communities increased \$15.5 million, or 6.4%.

The increase in resident fees during the nine months ended September 30, 2013 was primarily a result of a 2.7% increase in senior housing average monthly revenue per unit compared to the prior year period, an 80 basis points increase in average occupancy and an increase in revenues from our ancillary services programs. Our weighted average occupancy rate for the nine months ended September 30, 2013 and 2012 was 88.6% and 87.8%, respectively. The increase in our average occupancy rate was a result of improving fundamentals, execution by our field organization and sales and marketing team and the benefit of the capital we have invested and continue to spend on our communities.

During the nine months ended September 30, 2013, we also made progress in controlling our cost growth. Facility operating expenses for the nine months ended September 30, 2013 were \$1.2 billion, an increase of \$35.9 million, or 3.0%, as compared to the nine months ended September 30, 2012.

Net loss for the nine months ended September 30, 2013 was \$2.6 million, or \$(0.02) per basic and diluted common share, compared to a net loss of \$41.8 million, or \$(0.34) per basic and diluted common share, for the nine months ended September 30, 2012.

During the nine months ended September 30, 2013, our Adjusted EBITDA, Cash From Facility Operations and Facility Operating Income increased by 9.8%, 18.0% and 6.0%, respectively, when compared to the nine months ended September 30, 2012.

During the first nine months of 2013, we continued to expand our ancillary services offerings. As of September 30, 2013, we offered therapy services to approximately 53,000 of our units and home health services to approximately 48,000 of our units (approximately 38,000 and 34,000 of these units, respectively, are in our consolidated portfolio). As of that date we also had ten hospice agencies in operation. We expect to continue to expand our ancillary services programs to additional units and to open or acquire additional home health agencies. We also expect to expand our ancillary services programs by opening additional hospice agencies.

Effective October 1, 2013, we acquired seven communities from Chartwell for an aggregate purchase price of \$80.9 million. We financed the transaction with \$60.8 million of first mortgage financing (substantially through the assumption of existing debt), with the balance of the purchase price paid from cash on hand. We had been managing six of the communities since the acquisition of Horizon Bay in September 2011.

### **Consolidated Results of Operations**

#### **Three Months Ended September 30, 2013 and 2012**

The following table sets forth, for the periods indicated, statement of operations items and the amount and percentage of increase or decrease of these items. The results of operations for any particular period are not necessarily indicative of results for any future period. The following data should be read in conjunction with our condensed consolidated financial statements and the related notes, which are included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Certain prior period amounts have been reclassified to conform to the current year presentation.

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(dollars in thousands, except average monthly revenue per unit)

	<b>Three Months Ended September 30,</b>		<b>Increase (Decrease)</b>	<b>% Increase (Decrease)</b>
	<b>2013</b>	<b>2012</b>		
<i>Statement of Operations Data:</i>				
Revenue				
Resident fees				
Retirement Centers	\$ 133,272	\$ 126,401	\$ 6,871	5.4%
Assisted Living	262,524	254,179	8,345	3.3%
CCRCs – Rental	100,076	96,681	3,395	3.5%
CCRCs – Entry Fee	74,110	71,413	2,697	3.8%
ISC	<u>61,162</u>	<u>56,856</u>	<u>4,306</u>	<u>7.6%</u>
Total resident fees	631,144	605,530	25,614	4.2%
Management services <sup>(1)</sup>	<u>97,855</u>	<u>90,615</u>	<u>7,240</u>	<u>8.0%</u>
Total revenue	<u>728,999</u>	<u>696,145</u>	<u>32,854</u>	<u>4.7%</u>
Expense				
Facility operating expense				
Retirement Centers	76,452	75,679	773	1.0%
Assisted Living	165,774	163,017	2,757	1.7%
CCRCs – Rental	73,063	71,581	1,482	2.1%
CCRCs – Entry Fee	55,892	56,249	(357)	(0.6%)
ISC	<u>49,398</u>	<u>44,941</u>	<u>4,457</u>	<u>9.9%</u>
Total facility operating expense	420,579	411,467	9,112	2.2%
General and administrative expenses	45,824	43,158	2,666	6.2%
Facility lease expense	69,232	71,167	(1,935)	(2.7%)
Depreciation and amortization	68,644	62,876	5,768	9.2%
Asset impairment	504	—	504	100.0%
Costs incurred on behalf of managed communities	<u>90,233</u>	<u>83,208</u>	<u>7,025</u>	<u>8.4%</u>
Total operating expense	<u>695,016</u>	<u>671,876</u>	<u>23,140</u>	<u>3.4%</u>
Income from operations	33,983	24,269	9,714	40.0%
Interest income	472	676	(204)	(30.2%)
Interest expense				
Debt	(29,642)	(32,262)	(2,620)	(8.1%)
Amortization of deferred financing costs and debt discounts	(4,100)	(4,543)	(443)	(9.8%)
Change in fair value of derivatives and amortization	(1,377)	140	1,517	NM
Loss on extinguishment of debt	(53)	—	53	100.0%
Equity in earnings (loss) of unconsolidated ventures	431	(249)	680	273.1%
Other non-operating income	<u>279</u>	<u>500</u>	<u>(221)</u>	<u>(44.2%)</u>
Loss before income taxes	(7)	(11,469)	(11,462)	(99.9%)
Provision for income taxes	<u>(960)</u>	<u>(747)</u>	<u>213</u>	<u>28.5%</u>
Net loss	<u>\$ (967)</u>	<u>\$ (12,216)</u>	<u>\$ (11,249)</u>	<u>(92.1%)</u>

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	<b>Three Months Ended September 30,</b>		<b>Increase (Decrease)</b>	<b>% Increase (Decrease)</b>
	<b>2013</b>	<b>2012</b>		
<i>Selected Operating and Other Data:</i>				
Total number of communities (period end)	651	648	3	0.5%
Total units operated <sup>(2)</sup>				
Period end	66,311	66,110	201	0.3%
Weighted average	66,243	66,090	153	0.2%
<i>Owned/leased communities units<sup>(2)</sup></i>				
Period end	47,983	48,013	(30)	(0.1%)
Weighted average	47,952	48,009	(57)	(0.1%)
Owned/leased communities occupancy rate (weighted average)	89.0%	88.0%	1.0%	1.1%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 4,397	\$ 4,279	\$ 118	2.8%
<i>Selected Segment Operating and Other Data:</i>				
<b>Retirement Centers</b>				
Number of communities (period end)	76	76	—	—
Total units <sup>(2)</sup>				
Period end	14,453	14,438	15	0.1%
Weighted average	14,444	14,445	(1)	—
Occupancy rate (weighted average)	90.2%	89.1%	1.1%	1.2%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 3,408	\$ 3,275	\$ 133	4.1%
<b>Assisted Living</b>				
Number of communities (period end)	432	434	(2)	(0.5%)
Total units <sup>(2)</sup>				
Period end	21,519	21,655	(136)	(0.6%)
Weighted average	21,513	21,652	(139)	(0.6%)
Occupancy rate (weighted average)	90.0%	89.1%	0.9%	1.0%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 4,518	\$ 4,393	\$ 125	2.8%
<b>CCRCs - Rental</b>				
Number of communities (period end)	27	27	—	—
Total units <sup>(2)</sup>				
Period end	6,687	6,691	(4)	(0.1%)
Weighted average	6,687	6,691	(4)	(0.1%)
Occupancy rate (weighted average)	86.7%	85.8%	0.9%	1.0%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 5,759	\$ 5,619	\$ 140	2.5%
<b>CCRCs - Entry Fee</b>				
Number of communities (period end)	14	14	—	—
Total units <sup>(2)</sup>				
Period end	5,324	5,229	95	1.8%
Weighted average	5,308	5,221	87	1.7%
Occupancy rate (weighted average)	84.1%	83.4%	0.7%	0.8%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 4,994	\$ 4,975	\$ 19	0.4%
<b>Other Entry Fee Data</b>				
Non-refundable entrance fees sales	\$ 9,223	\$ 12,926	\$ (3,703)	(28.6%)
Refundable entrance fees sales <sup>(4)</sup>	9,875	12,206	(2,331)	(19.1%)
Total entrance fee receipts	19,098	25,132	(6,034)	(24.0%)

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	<b>Three Months Ended September 30,</b>		<b>Increase (Decrease)</b>	<b>% Increase (Decrease)</b>
	<b>2013</b>	<b>2012</b>		
Refunds	(7,728)	(6,024)	1,704	28.3%
Net entrance fees	<u>\$ 11,370</u>	<u>\$ 19,108</u>	<u>\$ (7,738)</u>	<u>(40.5%)</u>
<b>Management Services</b>				
Number of communities (period end)	102	97	5	5.2%
<b>Total units<sup>(2)</sup></b>				
Period end	18,328	18,097	231	1.3%
Weighted average	18,291	18,081	210	1.2%
Occupancy rate (weighted average)	85.7%	84.3%	1.4%	1.7%
<b>ISC</b>				
Outpatient Therapy treatment codes	818,758	939,241	(120,483)	(12.8%)
Home Health average census	4,574	3,651	923	25.3%

- (1) Management services segment revenue includes reimbursements for which we are the primary obligor of costs incurred on behalf of managed communities.
- (2) Period end units operated excludes equity homes. Weighted average units operated represents the average units operated during the period, excluding equity homes.
- (3) Senior Housing average monthly revenue per unit represents the average of the total monthly resident fee revenues, excluding amortization of entrance fees and ISC segment revenue, divided by average occupied units.
- (4) Refundable entrance fee sales for the three months ended September 30, 2013 and 2012 include amounts received from residents participating in the MyChoice program, which allows new and existing residents the option to pay additional refundable entrance fee amounts in return for a reduced monthly service fee. MyChoice amounts received from residents totaled \$3.2 million and \$2.4 million for the three months ended September 30, 2013 and 2012, respectively.

As of September 30, 2013, our total operations included 651 communities with a capacity to serve 67,069 residents.

**Resident Fees**

Resident fees increased over the prior year period primarily as a result of an increase in the average monthly revenue per unit compared to the prior year period, including an increase in revenue from our ancillary services programs, and an increase in occupancy. During the current period, revenues grew 3.8% at the 541 communities we operated during both periods with a 2.5% increase in the average monthly revenue per unit (excluding amortization of entrance fees in both instances). Occupancy increased 1.1% in these communities period over period.

Retirement Centers revenue increased \$6.9 million, or 5.4%, primarily due to increases in average monthly revenue per unit and occupancy at the communities we operated during both periods.

Assisted Living revenue increased \$8.3 million, or 3.3%, primarily due to increases in average monthly revenue per unit and occupancy at the communities we operated during both periods. The increase was partially offset by the impact of the disposition of three communities subsequent to the prior year period.

CCRCs - Rental revenue increased \$3.4 million, or 3.5%, primarily due to increases in average monthly revenue per unit and occupancy at the communities we operated during both periods.

CCRCs - Entry Fee revenue increased \$2.7 million, or 3.8%, primarily due to an increase in the number of units operated and an increase in occupancy at the communities we operated during both periods.

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ISC revenue increased \$4.3 million, or 7.6%, primarily due to the roll-out of our ancillary services programs to additional units subsequent to the prior year period. The increase was partially offset by a decrease in therapy service volume and by the impact of reimbursement changes.

### ***Management Services***

Management services revenue, including reimbursed costs incurred on behalf of managed communities, increased \$7.2 million, or 8.0%, primarily due to additional costs incurred on behalf of managed communities resulting from an increase in the number of managed communities from the prior year period.

### ***Facility Operating Expense***

Facility operating expense increased over the prior-year period primarily due to increases in salaries and wages and additional expenses incurred in connection with the expansion of our ancillary services programs. These increases were partially offset by a decrease in insurance expense.

Retirement Centers operating expenses increased \$0.8 million, or 1.0%, primarily due to an increase in salaries and wages due to wage rate increases and an increase in food and supplies expense due to an increase in occupancy. These increases were partially offset by a decrease in insurance expense.

Assisted Living operating expenses increased \$2.8 million, or 1.7%, primarily due to an increase in salaries and wages due to wage rate increases and expenses incurred for grounds maintenance services. These increases were partially offset by a decrease in insurance expense and by the impact of the disposition of three communities subsequent to the prior year period.

CCRCs - Rental operating expenses increased \$1.5 million, or 2.1%, primarily driven by an increase in salaries and wages due to wage rate increases and increased hours worked period over period, an increase in food and supplies expense due to an increase in occupancy and an increase in bad debt expense period over period. These increases were partially offset by a decrease in insurance expense.

CCRCs - Entry Fee operating expenses decreased \$0.4 million, or 0.6%, primarily driven by a decrease in insurance expense.

ISC operating expenses increased \$4.5 million, or 9.9%, primarily due to an increase in expenses incurred in connection with the continued expansion of our ancillary services programs, an increase in therapy labor expense and an increase in bad debt expense.

### ***General and Administrative Expense***

General and administrative expense increased \$2.7 million, or 6.2%, primarily as a result of increased employee benefits, travel, professional fees and repairs and maintenance expenses. General and administrative expense as a percentage of total revenue, including revenue generated by the communities we manage and excluding non-cash stock-based compensation expense and integration, transaction-related and electronic medical records ("EMR") roll-out costs, was 4.3% for both the three months ended September 30, 2013 and 2012, calculated as follows (dollars in thousands):

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	<b>Three Months Ended September 30,</b>			
	<b>2013</b>		<b>2012</b>	
Resident fee revenues	\$ 631,144	78.8%	\$ 605,530	79.2%
Resident fee revenues under management	169,373	21.2%	158,600	20.8%
Total	<u>\$ 800,517</u>	<u>100.0%</u>	<u>\$ 764,130</u>	<u>100.0%</u>
General and administrative expenses (excluding non-cash stock-based compensation expense and integration, transaction-related and EMR roll-out costs)	\$ 34,269	4.3%	\$ 32,513	4.3%
Non-cash stock-based compensation expense	6,894	0.9%	6,021	0.8%
Integration, transaction-related and EMR roll-out costs	4,661	0.6%	4,624	0.6%
General and administrative expenses (including non-cash stock-based compensation expense and integration, transaction-related and EMR roll-out costs)	<u>\$ 45,824</u>	<u>5.7%</u>	<u>\$ 43,158</u>	<u>5.6%</u>

### ***Facility Lease Expense***

Facility lease expense decreased \$1.9 million, or 2.7%, primarily as a result of the purchase of 12 previously leased communities in the prior year.

### ***Depreciation and Amortization***

Depreciation and amortization expense increased \$5.8 million, or 9.2%, primarily as a result of the purchase of 12 previously leased communities in the prior year.

### ***Asset Impairment***

During the three months ended September 30, 2013, we recognized \$0.5 million of impairment charges related to asset impairments for property, plant, and equipment for a community within the Assisted Living segment. We compared the estimated fair value of the assets to the carrying value and recorded an impairment charge for the excess of carrying value over estimated fair value.

### ***Costs Incurred on Behalf of Managed Communities***

Costs incurred on behalf of managed communities increased \$7.0 million, or 8.4%, primarily due to additional costs resulting from an increase in the number of managed communities from the prior year period.

### ***Interest Expense***

Interest expense decreased \$1.5 million, or 4.2%, primarily due to decreased interest expense related to our mortgage debt, which had lower interest rates period over period, and a decrease in amortization of deferred financing costs and debt discount. These decreases were partially offset by a change in the fair value of interest rate swaps and caps due to a decrease in interest rates during the current period.

### ***Income Taxes***

The difference in our effective tax rates for the three months ended September 30, 2013 and 2012 was due to the impact of our improved financial results under generally accepted accounting principles. Tax expense mainly reflects our cash tax position for states that do not allow for or have suspended the use of net operating losses for the period.

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Additional interest charges related to our tax contingency reserve as well as an additional reserve for an uncertain tax position were recorded during the three months ended September 30, 2013. Tax returns for years 2009 through 2012 are subject to future examination by tax authorities. In addition, certain tax returns are open from 2002 through 2008 to the extent of the net operating losses generated during those periods.

### Nine Months Ended September 30, 2013 and 2012

The following table sets forth, for the periods indicated, statement of operations items and the amount and percentage of increase or decrease of these items. The results of operations for any particular period are not necessarily indicative of results for any future period. The following data should be read in conjunction with our condensed consolidated financial statements and the related notes, which are included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Certain prior period amounts have been reclassified to conform to the current year presentation.

(dollars in thousands, except average monthly revenue per unit)

	Nine Months Ended September 30,		Increase (Decrease)	% Increase (Decrease)
	2013	2012		
<i>Statement of Operations Data:</i>				
Revenue				
Resident fees				
Retirement Centers	\$ 392,364	\$ 376,726	\$ 15,638	4.2%
Assisted Living	783,636	757,930	25,706	3.4%
CCRCs - Rental	297,965	287,051	10,914	3.8%
CCRCs - Entry Fee	222,434	213,990	8,444	3.9%
ISC	180,053	168,432	11,621	6.9%
Total resident fees	1,876,452	1,804,129	72,323	4.0%
Management services <sup>(1)</sup>	281,281	265,197	16,084	6.1%
Total revenue	2,157,733	2,069,326	88,407	4.3%
Expense				
Facility operating expense				
Retirement Centers	228,033	222,338	5,695	2.6%
Assisted Living	494,420	486,039	8,381	1.7%
CCRCs - Rental	216,308	207,168	9,140	4.4%
CCRCs - Entry Fee	166,873	166,504	369	0.2%
ISC	143,975	131,702	12,273	9.3%
Total facility operating expense	1,249,609	1,213,751	35,858	3.0%
General and administrative expense	138,470	134,202	4,268	3.2%
Facility lease expense	207,028	213,240	(6,212)	(2.9%)
Depreciation and amortization	200,557	189,781	10,776	5.7%
Asset impairment	2,658	8,329	(5,671)	(68.1%)
Loss on acquisition	—	636	(636)	(100.0%)
Gain on facility lease termination	—	(2,780)	(2,780)	(100.0%)
Costs incurred on behalf of managed communities	258,306	242,847	15,459	6.4%
Total operating expense	2,056,628	2,000,006	56,622	2.8%
Income from operations	101,105	69,320	31,785	45.9%
Interest income	1,027	2,220	(1,193)	(53.7%)
Interest expense				
Debt	(90,456)	(96,743)	(6,287)	(6.5%)
Amortization of deferred financing costs and debt discount	(13,017)	(13,602)	(585)	(4.3%)
Change in fair value of derivatives and amortization	594	(371)	(965)	(260.1%)

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(dollars in thousands, except average monthly revenue per unit)

	Nine Months Ended September 30,		Increase (Decrease)	% Increase (Decrease)
	2013	2012		
Loss on extinguishment of debt	(946)	(221)	725	328.1%
Equity in earnings (loss) of unconsolidated ventures	991	(211)	1,202	569.7%
Other non-operating income	1,365	392	973	248.2%
Income (loss) before income taxes	663	(39,216)	39,879	101.7%
Provision for income taxes	(3,272)	(2,559)	713	27.9%
Net loss	\$ (2,609)	\$ (41,775)	\$ (39,166)	(93.8%)

*Selected Operating and Other Data:*

Total number of communities (period end)	651	648	3	0.5%
Total units operated <sup>(2)</sup>				
Period end	66,311	66,110	201	0.3%
Weighted average	66,175	66,105	70	0.1%
Owned/leased communities units <sup>(2)</sup>				
Period end	47,983	48,013	(30)	(0.1%)
Weighted average	47,937	47,946	(9)	—
Owned/leased communities occupancy rate (weighted average)	88.6%	87.8%	0.8%	0.9%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 4,382	\$ 4,267	\$ 115	2.7%

*Selected Segment Operating and Other Data:*

**Retirement Centers**

Number of communities (period end)	76	76	—	—
Total units <sup>(2)</sup>				
Period end	14,453	14,438	15	0.1%
Weighted average	14,434	14,449	(15)	(0.1%)
Occupancy rate (weighted average)	89.7%	88.9%	0.8%	0.9%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 3,366	\$ 3,259	\$ 107	3.3%

**Assisted Living**

Number of communities (period end)	432	434	(2)	(0.5%)
Total units <sup>(2)</sup>				
Period end	21,519	21,655	(136)	(0.6%)
Weighted average	21,523	21,641	(118)	(0.5%)
Occupancy rate (weighted average)	89.5%	88.7%	0.8%	0.9%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 4,520	\$ 4,387	\$ 133	3.0%

**CCRCs - Rental**

Number of communities (period end)	27	27	—	—
Total units <sup>(2)</sup>				
Period end	6,687	6,691	(4)	(0.1%)
Weighted average	6,686	6,659	27	0.4%
Occupancy rate (weighted average)	86.8%	86.0%	0.8%	0.9%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 5,706	\$ 5,571	\$ 135	2.4%

**CCRCs - Entry Fee**

Number of communities (period end)	14	14	—	—
Total units <sup>(2)</sup>				
Period end	5,324	5,229	95	1.8%



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<i>(dollars in thousands, except average monthly revenue per unit)</i>	<b>Nine Months Ended September 30,</b>		<b>Increase (Decrease)</b>	<b>% Increase (Decrease)</b>
	<b>2013</b>	<b>2012</b>		
Weighted average	5,295	5,197	98	1.9%
Occupancy rate (weighted average)	84.2%	83.5%	0.7%	0.8%
Senior Housing average monthly revenue per unit <sup>(3)</sup>	\$ 5,010	\$ 4,998	\$ 12	0.2%
<b>Other Entry Fee Data</b>				
Non-refundable entrance fees sales	\$ 30,584	\$ 30,303	\$ 281	0.9%
Refundable entrance fees sales <sup>(4)</sup>	29,265	29,512	(247)	(0.8%)
Total entrance fee receipts	59,849	59,815	34	0.1%
Refunds	(24,504)	(19,555)	4,949	25.3%
Net entrance fees	\$ 35,345	\$ 40,260	\$ (4,915)	(12.2%)
<b>Management Services</b>				
Number of communities (period end)	102	97	5	5.2%
Total units <sup>(2)</sup>				
Period end	18,328	18,097	231	1.3%
Weighted average	18,238	18,159	79	0.4%
Occupancy rate (weighted average)	85.1%	84.2%	0.9%	1.1%
<b>ISC</b>				
Outpatient Therapy treatment codes	2,480,142	2,804,421	(324,279)	(11.6%)
Home Health average census	4,410	3,551	859	24.2%

- (1) Management services segment revenue includes reimbursements for which we are the primary obligor of costs incurred on behalf of managed communities.
- (2) Period end units operated excludes equity homes. Weighted average units operated represents the average units operated during the period, excluding equity homes.
- (3) Senior Housing average monthly revenue per unit represents the average of the total monthly resident fee revenues, excluding amortization of entrance fees and ISC segment revenue, divided by average occupied units.
- (4) Refundable entrance fee sales for the nine months ended September 30, 2013 and 2012 include amounts received from residents participating in the MyChoice program, which allows new and existing residents the option to pay additional refundable entrance fee amounts in return for a reduced monthly service fee. MyChoice amounts received from residents totaled \$9.0 million and \$8.4 million for the nine months ended September 30, 2013 and 2012, respectively.

**Resident Fees**

Resident fees increased over the prior year period primarily as a result of an increase in the average monthly revenue per unit compared to the prior year period, including an increase in revenue from our ancillary services programs, and an increase in occupancy. During the current year period, revenues grew 3.5% at the 540 communities we operated during both periods with a 2.5% increase in the average monthly revenue per unit (excluding amortization of entrance fees in both instances). Occupancy increased 0.9% in these communities period over period.

Retirement Centers revenue increased \$15.6 million, or 4.2%, primarily due to increases in average monthly revenue per unit and occupancy at the communities we operated during both periods.

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Assisted Living revenue increased \$25.7 million, or 3.4%, primarily due to increases in average monthly revenue per unit and occupancy at the communities we operated during both periods. The increase was partially offset by the impact of the disposition of three communities subsequent to the prior year period.

CCRCs - Rental revenue increased \$10.9 million, or 3.8%, primarily due to increases in average monthly revenue per unit and occupancy at the communities we operated during both periods.

CCRCs - Entry Fee revenue increased \$8.4 million, or 3.9%, primarily due to an increase in occupancy at the communities we operated during both periods and an increase in the number of units operated. This increase was partially offset by a decrease in skilled therapy revenue due to lower Medicare reimbursement.

ISC revenue increased \$11.6 million, or 6.9%, primarily due to the roll-out of our ancillary services programs to additional units subsequent to the prior year period. The increase was partially offset by a decrease in therapy service volume and by the impact of reimbursement changes.

### ***Management Services***

Management services revenue, including reimbursed costs incurred on behalf of managed communities, increased \$16.1 million, or 6.1%, primarily due to additional costs incurred on behalf of managed communities resulting from an increase in the number of managed communities from the prior year period.

### ***Facility Operating Expense***

Facility operating expense increased over the prior-year period primarily due to increased marketing and advertising expenses, as well as increases in salaries and wages and additional expenses incurred in connection with the expansion of our ancillary services programs. These increases were partially offset by a decrease in insurance expense.

Retirement Centers operating expenses increased \$5.7 million, or 2.6%, primarily due to an increase in marketing and advertising expense and an increase in salaries and wages due to wage rate increases. There was also an increase in real estate tax expense period over period and an increase in food expense driven by higher occupancy compared to the prior year period. These increases were partially offset by a decrease in insurance expense.

Assisted Living operating expenses increased \$8.4 million, or 1.7%, primarily due to an increase in marketing and advertising expense and an increase in salaries and wages due to wage rate increases. There was also an increase in grounds maintenance and repair expense period over period. These increases were partially offset by a decrease in insurance expense.

CCRCs - Rental operating expenses increased \$9.1 million, or 4.4%, primarily driven by an increase in salaries and wages due to wage rate increases and an increase in hours worked period over period, an increase in healthcare supplies expense due to an increase in occupancy and residents with higher acuity needs, and an increase in marketing and advertising expense. There was also an increase in bad debt expense compared to the prior year period. These increases were partially offset by a decrease in insurance expense.

CCRCs - Entry Fee operating expenses increased \$0.4 million, or 0.2%, primarily driven by an increase in marketing and advertising expense, an increase in salaries and wages due to wage rate increases, and an increase in bad debt expense. These increases were partially offset by a decrease in skilled therapy service expense due to a decrease in hours worked in the current year period and a decrease in insurance expense.

ISC operating expenses increased \$12.3 million, or 9.3%, primarily due to an increase in expenses incurred in connection with the continued expansion of our ancillary services programs, an increase in therapy labor expense and an increase in bad debt expense.

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### ***General and Administrative Expense***

General and administrative expense increased \$4.3 million, or 3.2%, primarily as a result of increases in salaries and wage expense and employee benefits expense primarily due to increased employee headcount and increases in travel, repairs and maintenance, and marketing and advertising expenses. These increases were partially offset by a decrease in integration, transaction-related and EMR roll-out costs compared to the prior year period. General and administrative expense as a percentage of total revenue, including revenue generated by the communities we manage and excluding non-cash stock-based compensation expense and integration, transaction-related and EMR roll-out costs, was 4.5% and 4.3% for the nine months ended September 30, 2013 and 2012, respectively, calculated as follows (dollars in thousands):

	<b>Nine Months Ended September 30,</b>			
	<b>2013</b>		<b>2012</b>	
Resident fee revenues	\$ 1,876,452	79.0%	\$ 1,804,129	79.1%
Resident fee revenues under management	500,238	21.0%	475,522	20.9%
Total	<u>\$ 2,376,690</u>	<u>100.0%</u>	<u>\$ 2,279,651</u>	<u>100.0%</u>
General and administrative expenses (excluding non-cash stock-based compensation expense and integration, transaction-related and EMR roll-out costs)	\$ 107,302	4.5%	\$ 98,801	4.3%
Non-cash stock-based compensation expense	20,776	0.9%	19,185	0.8%
Integration, transaction-related and EMR roll-out costs	10,392	0.4%	16,216	0.7%
General and administrative expenses (including non-cash stock-based compensation expense and integration, transaction-related and EMR roll-out costs)	<u>\$ 138,470</u>	<u>5.8%</u>	<u>\$ 134,202</u>	<u>5.9%</u>

### ***Facility Lease Expense***

Facility lease expense decreased \$6.2 million, or 2.9%, primarily as a result of the purchase of 12 previously leased communities in the prior year.

### ***Depreciation and Amortization***

Depreciation and amortization expense increased \$10.8 million, or 5.7%, primarily as a result of the purchase of 12 previously leased communities in the prior year.

### ***Asset Impairment***

During the nine months ended September 30, 2013, we recognized \$2.7 million of impairment charges related to asset impairments for property, plant, and equipment for certain communities within the CCRCs – Rental and Assisted Living segments. During the nine months ended September 30, 2012, we recognized \$8.3 million of impairment charges related to asset impairments for property, plant, and equipment for certain communities within the Assisted Living and CCRCs – Entry Fee segments. We compared the estimated fair value of the assets to the carrying value and recorded an impairment charge for the excess of carrying value over estimated fair value.

### ***Loss on Acquisition***

The loss on acquisition recognized during the nine months ended September 30, 2012 relates to the reduction of a prior-year gain for adjustments to pre-acquisition self-insurance reserves and the related tax impact.

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### ***Gain on Facility Lease Termination***

During the nine months ended September 30, 2012, we recognized a \$2.8 million net gain on facility lease termination from the reversal of deferred lease liabilities associated with nine previously-leased communities that were acquired during the prior year period, partially offset by the write-off of deferred lease costs.

### ***Costs Incurred on Behalf of Managed Communities***

Costs incurred on behalf of managed communities increased \$15.5 million, or 6.4%, primarily due to additional costs resulting from an increase in the number of managed communities from the prior year period.

### ***Interest Expense***

Interest expense decreased \$7.8 million, or 7.1%, primarily due to decreased interest expense related to our mortgage debt, which had lower interest rates period over period, and a gain recorded from the change in the fair value of interest rate swaps and caps due to an increase in interest rates since the purchase of the instruments.

### ***Income Taxes***

The difference in our effective tax rates for the nine months ended September 30, 2013 and 2012 was due to the impact of our improved financial results under generally accepted accounting principles. Tax expense mainly reflects our cash tax position for states that do not allow for or have suspended the use of net operating losses for the period.

Additional interest charges related to our tax contingency reserve as well as an additional reserve for an uncertain tax position were recorded during the nine months ended September 30, 2013. Tax returns for years 2009 through 2012 are subject to future examination by tax authorities. In addition, certain tax returns are open from 2002 through 2008 to the extent of the net operating losses generated during those periods.

### ***Liquidity and Capital Resources***

The following is a summary of cash flows from operating, investing and financing activities, as reflected in the condensed consolidated statements of cash flows (dollars in thousands):

	<b>Nine Months Ended September 30,</b>	
	<b>2013</b>	<b>2012</b>
Cash provided by operating activities	\$ 249,075	\$ 207,978
Cash used in investing activities	(177,901)	(273,405)
Cash (used in) provided by financing activities	(97,724)	77,095
Net (decrease) increase in cash and cash equivalents	(26,550)	11,668
Cash and cash equivalents at beginning of period	69,240	30,836
Cash and cash equivalents at end of period	<u>\$ 42,690</u>	<u>\$ 42,504</u>

The increase in cash provided by operating activities was attributable primarily to improved operating results.

The decrease in cash used in investing activities was primarily attributable to a decrease in cash paid for acquisitions. The decrease was partially offset by an increase in spending on property, plant, equipment, and leasehold intangibles and by additional investments in unconsolidated ventures. The current year period also includes cash received from the sale of two communities.

The change in cash related to financing activities period over period was primarily attributable to net repayment of debt, including our line of credit, and related financing costs in connection with refinancing transactions during the current period.

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Our principal sources of liquidity have historically been from:

- cash balances on hand;
- cash flows from operations;
- proceeds from our credit facilities;
- proceeds from mortgage financing or refinancing of various assets;
- funds generated through joint venture arrangements or sale-leaseback transactions; and
- with somewhat lesser frequency, funds raised in the debt or equity markets and proceeds from the selective disposition of underperforming and/or non-core assets.

Over the longer-term, we expect to continue to fund our business through these principal sources of liquidity.

Our liquidity requirements have historically arisen from:

- working capital;
- operating costs such as employee compensation and related benefits, general and administrative expense and supply costs;
- debt service and lease payments;
- acquisition consideration and transaction costs;
- cash collateral required to be posted in connection with our interest rate swaps and related financial instruments;
- capital expenditures and improvements, including the expansion of our current communities and the development of new communities;
- dividend payments;
- purchases of common stock under our share repurchase authorizations; and
- other corporate initiatives (including integration and branding).

Over the near-term, we expect that our liquidity requirements will primarily arise from:

- working capital;
- operating costs such as employee compensation and related benefits, general and administrative expense and supply costs;
- debt service and lease payments;
- capital expenditures and improvements, including the expansion, renovation, redevelopment and repositioning of our current communities and the development of new communities;
- other corporate initiatives (including information systems and branding); and
- acquisition consideration and transaction costs.

We are highly leveraged and have significant debt and lease obligations. As of September 30, 2013, we have three principal corporate-level debt obligations: our \$250.0 million revolving credit facility, our \$316.3 million convertible senior notes due 2018 and separate secured and unsecured letter of credit facilities providing for up to \$92.5 million of letters of credit in the aggregate. The remainder of our indebtedness is generally comprised of non-recourse property-level mortgage financings.

At September 30, 2013, we had \$2.3 billion of debt outstanding, excluding capital lease obligations and our line of credit, at a weighted-average interest rate of 4.5% (calculated using an imputed interest rate of 7.5% for our \$316.3 million convertible senior notes due 2018). At September 30, 2013, we had \$299.3 million of capital and financing lease obligations, \$45.0 million was drawn on our revolving loan facility, and \$71.8 million of letters of credit had been issued under our letter of credit facilities. Approximately \$72.2 million of our debt and capital lease obligations are due on or before September 30, 2014. We also have substantial operating lease obligations and capital expenditure requirements. For the year ending September 30, 2014, we will be required to make approximately \$281.0 million of payments in connection with our existing operating leases.

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We had \$42.7 million of cash and cash equivalents at September 30, 2013, excluding cash and escrow deposits-restricted and lease security deposits of \$144.0 million in the aggregate. As of that date, we also had \$238.6 million of availability on our revolving credit facility (of which \$45.0 million had been drawn as of September 30, 2013).

At September 30, 2013, we had \$423.5 million of negative working capital, which includes the classification of \$268.7 million of refundable entrance fees as current liabilities. Based upon our historical operating experience, we anticipate that only 9.0% to 12.0% of the refundable entrance fee liabilities will actually come due, and be required to be settled in cash, during the next 12 months. We expect that any entrance fee liabilities due within the next 12 months will be fully offset by the proceeds generated by subsequent entrance fee sales. Entrance fee sales, net of refunds paid, provided \$35.3 million of cash for the nine months ended September 30, 2013.

For the year ending December 31, 2013, we anticipate that we will make investments of approximately \$180.0 million to \$195.0 million for net capital expenditures (excluding expenditures related to our Program Max initiative discussed below), comprised of approximately \$40.0 million to \$45.0 million of net recurring capital expenditures and approximately \$140.0 million to \$150.0 million of expenditures relating to other major projects (including corporate initiatives). These major projects include unusual or non-recurring capital projects, projects which create new or enhanced economics, such as major renovations or repositioning projects at our communities, integration related expenditures (including the cost of developing information systems), and expenditures supporting the expansion of our ancillary services programs. For the nine months ended September 30, 2013, we spent approximately \$32.1 million for net recurring capital expenditures and approximately \$89.8 million for expenditures relating to other major projects and corporate initiatives.

In addition, we have increased our efforts with respect to the expansion, redevelopment and repositioning of our communities through our Program Max initiative. We anticipate making net investments of approximately \$40.0 million to \$50.0 million during 2013 in connection with recently initiated or currently planned projects. For the nine months ended September 30, 2013, we spent approximately \$38.1 million in connection with our Program Max initiative.

During 2013, we anticipate that our capital expenditures will be funded from cash on hand, cash flows from operations, lessor reimbursement and amounts drawn on our credit facility.

As opportunities arise, we plan to continue to take advantage of the fragmented senior housing and care sectors by selectively purchasing existing operating companies, asset portfolios, home health agencies and communities. We may also seek to acquire the fee interest in communities that we currently lease or manage. We expect to continue to assess our financing alternatives periodically and access the capital markets opportunistically. If our existing resources are insufficient to satisfy our liquidity requirements, or if we enter into an acquisition or strategic arrangement with another company, we may need to sell additional equity or debt securities. Any such sale of additional equity securities will dilute the interests of our existing stockholders, and we cannot be certain that additional public or private financing will be available in amounts or on terms acceptable to us, if at all. If we are unable to obtain this additional financing, we may be required to delay, reduce the scope of, or eliminate one or more aspects of our business development activities, any of which could reduce the growth of our business.

We currently estimate that our existing cash flows from operations, together with existing working capital, amounts available under our credit facility and, to a lesser extent, proceeds from anticipated financings, will be sufficient to fund our liquidity needs for at least the next 12 months, assuming that the overall economy does not substantially deteriorate.

Our actual liquidity and capital funding requirements depend on numerous factors, including our operating results, the actual level of capital expenditures, our expansion, development and acquisition activity, general economic conditions and the cost of capital. Shortfalls in cash flows from operating results or other principal sources of liquidity may have an adverse impact on our ability to execute our business and growth strategies. Volatility in the credit and financial markets may also have an adverse impact on our liquidity by making it more difficult for us to obtain financing or refinancing. As a result, this may impact our ability to grow our business, maintain capital spending levels, expand certain communities, or execute other aspects of our business strategy. In order to continue some of these activities at historical or planned levels, we may incur additional indebtedness or lease financing to

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provide additional funding. There can be no assurance that any such additional financing will be available or on terms that are acceptable to us.

As of September 30, 2013, we are in compliance with the financial covenants of our outstanding debt and lease agreements.

### *Credit Facilities*

On March 28, 2013, we entered into a second amended and restated credit agreement with General Electric Capital Corporation, as administrative agent and lender, and the other lenders from time to time parties thereto. The amended credit agreement extended the maturity date of the facility to March 31, 2018 and decreased the interest rate payable on advances and the fee payable on the unused portion of the facility. The amended credit agreement provided an option to increase the committed amount initially from \$230.0 million to \$250.0 million, which we exercised on June 28, 2013, and provides an additional option to increase the committed amount from \$250.0 million to up to \$350.0 million, subject to obtaining commitments for the amount of such increase from acceptable lenders. The amended credit agreement also permits reduction of the committed amount or termination of the facility during the last two years of the five year term without payment of a premium or penalty. The amended credit agreement was further amended and restated effective September 20, 2013 to, among other things, incorporate a \$25.0 million swingline feature to permit same-day borrowing.

Amounts drawn under the facility bear interest at 90-day LIBOR plus an applicable margin. The applicable margin varies with the percentage of the total commitment drawn, with a 3.25% margin at 25% or lower utilization, a 3.75% margin at utilization greater than 25% but less than or equal to 50%, and a 4.25% margin at greater than 50% utilization. For purposes of determining the interest rate, in no event will LIBOR be less than 0.5% per annum. We are also required to pay a quarterly commitment fee of 0.5% per annum on the unused portion of the facility.

The revolving line of credit can be used to finance acquisitions and fund working capital and capital expenditures and for other general corporate purposes.

The facility is secured by a first priority mortgage on certain of our communities. The availability under the line will vary from time to time as it is based on borrowing base calculations related to the appraised value and performance of the communities securing the facility.

The amended credit agreement contains typical affirmative and negative covenants, including financial covenants with respect to minimum consolidated fixed charge coverage and minimum consolidated tangible net worth. A violation of any of these covenants could result in a default under the amended credit agreement, which would result in termination of all commitments under the amended credit agreement and all amounts owing under the amended credit agreement and certain other loan agreements becoming immediately due and payable.

As of September 30, 2013, we had an available secured line of credit with a \$250.0 million commitment and \$238.6 million of availability (of which \$45.0 million had been drawn as of such date). We also had secured and unsecured letter of credit facilities of up to \$92.5 million in the aggregate as of September 30, 2013. Letters of credit totaling \$71.8 million had been issued under these facilities as of that date.

### **Contractual Commitments**

Significant ongoing commitments consist primarily of leases, debt, purchase commitments and certain other long-term liabilities. For a summary and complete presentation and description of our ongoing commitments and contractual obligations, see the "Contractual Commitments" section of Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012.

There have been no material changes outside the ordinary course of business in our contractual commitments during the nine months ended September 30, 2013. See Note 8 for financing transactions that were completed during the period.

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### **Off-Balance Sheet Arrangements**

The equity method of accounting has been applied in the accompanying financial statements with respect to our investment in unconsolidated ventures that are not considered variable interest entities as we do not possess a controlling financial interest. We do not believe these off-balance sheet arrangements have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

### **Non-GAAP Financial Measures**

A non-GAAP financial measure is generally defined as one that purports to measure historical or future financial performance, financial position or cash flows, but excludes or includes amounts that would not be so adjusted in the most comparable GAAP measure. In this report, we define and use the non-GAAP financial measures Adjusted EBITDA, Cash From Facility Operations and Facility Operating Income, as set forth below.

#### ***Adjusted EBITDA***

##### *Definition of Adjusted EBITDA*

We define Adjusted EBITDA as follows:

Net income (loss) *before*:

- provision (benefit) for income taxes;
- non-operating (income) expense items;
- (gain) loss on sale or acquisition of communities (including gain (loss) on facility lease termination);
- depreciation and amortization (including non-cash impairment charges);
- straight-line lease expense (income);
- amortization of deferred gain;
- amortization of deferred entrance fees;
- non-cash stock-based compensation expense; and
- change in future service obligation;

and *including*:

- entrance fee receipts and refunds (excluding (i) first generation entrance fee receipts from the sale of units at a recently opened entrance fee CCRC prior to stabilization and (ii) first generation entrance fee refunds not replaced by second generation entrance fee receipts at the recently opened community prior to stabilization).

##### *Management's Use of Adjusted EBITDA*

We use Adjusted EBITDA to assess our overall financial and operating performance. We believe this non-GAAP measure, as we have defined it, is helpful in identifying trends in our day-to-day performance because the items excluded have little or no significance on our day-to-day operations. This measure provides an assessment of controllable expenses and affords management the ability to make decisions which are expected to facilitate meeting



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current financial goals as well as achieve optimal financial performance. It provides an indicator for management to determine if adjustments to current spending decisions are needed.

Adjusted EBITDA provides us with a measure of financial performance, independent of items that are beyond the control of management in the short-term, such as the change in the liability for the obligation to provide future services under existing lifecare contracts, depreciation and amortization (including non-cash impairment charges), straight-line lease expense (income), taxation and interest expense associated with our capital structure. This metric measures our financial performance based on operational factors that management can impact in the short-term, namely the cost structure or expenses of the organization.

Adjusted EBITDA is one of the metrics used by senior management and the board of directors to review the financial performance of the business on a monthly basis. Adjusted EBITDA is also used by research analysts and investors to evaluate the performance of and value companies in our industry.

### *Limitations of Adjusted EBITDA*

Adjusted EBITDA has limitations as an analytical tool. It should not be viewed in isolation or as a substitute for GAAP measures of earnings. Material limitations in making the adjustments to our earnings to calculate Adjusted EBITDA, and using this non-GAAP financial measure as compared to GAAP net income (loss), include:

- the cash portion of interest expense, income tax (benefit) provision and non-recurring charges related to gain (loss) on sale of communities and extinguishment of debt activities generally represent charges (gains), which may significantly affect our financial results; and
- depreciation and amortization, though not directly affecting our current cash position, represent the wear and tear and/or reduction in value of our communities, which affects the services we provide to our residents and may be indicative of future needs for capital expenditures.

An investor or potential investor may find this item important in evaluating our performance, results of operations and financial position. We use non-GAAP financial measures to supplement our GAAP results in order to provide a more complete understanding of the factors and trends affecting our business.

Adjusted EBITDA is not an alternative to net income, income from operations or cash flows provided by or used in operations as calculated and presented in accordance with GAAP. You should not rely on Adjusted EBITDA as a substitute for any such GAAP financial measure. We strongly urge you to review the reconciliation of Adjusted EBITDA to GAAP net income (loss), along with our condensed consolidated financial statements included herein. We also strongly urge you to not rely on any single financial measure to evaluate our business. In addition, because Adjusted EBITDA is not a measure of financial performance under GAAP and is susceptible to varying calculations, the Adjusted EBITDA measure, as presented in this report, may differ from and may not be comparable to similarly titled measures used by other companies.

The table below shows the reconciliation of net loss to Adjusted EBITDA for the three and nine months ended September 30, 2013 and 2012 (dollars in thousands):

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2013<sup>(1)</sup></b>	<b>2012<sup>(1)</sup></b>	<b>2013<sup>(1)</sup></b>	<b>2012<sup>(1)</sup></b>
Net loss	\$ (967)	\$ (12,216)	\$ (2,609)	\$ (41,775)
Provision for income taxes	960	747	3,272	2,559
Equity in (earnings) loss of unconsolidated ventures	(431)	249	(991)	211
Loss on extinguishment of debt	53	—	946	221
Other non-operating income	(279)	(500)	(1,365)	(392)
Interest expense:				
Debt	23,467	24,615	71,291	73,691
Capitalized lease obligation	6,175	7,647	19,165	23,052

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Amortization of deferred financing costs and debt discount	4,100	4,543	13,017	13,602
Change in fair value of derivatives and amortization	1,377	(140)	(594)	371
Interest income	(472)	(676)	(1,027)	(2,220)
Income from operations	33,983	24,269	101,105	69,320
Gain on facility lease termination	—	—	—	(2,780)
Loss on acquisition	—	—	—	636
Depreciation and amortization	68,644	62,876	200,557	189,781
Asset impairment	504	—	2,658	8,329
Straight-line lease expense	818	2,118	2,250	5,324
Amortization of deferred gain	(1,093)	(1,093)	(3,279)	(3,279)
Amortization of entrance fees	(7,013)	(6,459)	(21,178)	(18,835)
Non-cash stock-based compensation expense	6,894	6,021	20,776	19,185
Entrance fee receipts <sup>(2)</sup>	19,098	25,132	59,849	59,815
Entrance fee disbursements	(7,728)	(6,024)	(24,504)	(19,555)
<b>Adjusted EBITDA</b>	<b>\$ 114,107</b>	<b>\$ 106,840</b>	<b>\$ 338,234</b>	<b>\$ 307,941</b>

- (1) The calculation of Adjusted EBITDA includes integration, transaction-related and EMR roll-out costs of \$4.7 million and \$10.4 million for the three and nine months ended September 30, 2013, respectively. The calculation of Adjusted EBITDA includes integration, transaction-related and EMR roll-out costs of \$4.6 million and \$16.2 million for the three and nine months ended September 30, 2012, respectively.
- (2) Includes the receipt of refundable and non-refundable entrance fees.

### ***Cash From Facility Operations***

#### *Definition of Cash From Facility Operations*

We define Cash From Facility Operations (CFFO) as follows:

Net cash provided by (used in) operating activities adjusted for:

- changes in operating assets and liabilities;
- deferred interest and fees added to principal;
- refundable entrance fees received;
- first generation entrance fee receipts at a recently opened entrance fee CCRC prior to stabilization;
- entrance fee refunds disbursed adjusted for first generation entrance fee refunds not replaced by second generation entrance fee receipts at the recently opened community prior to stabilization;
- lease financing debt amortization with fair market value or no purchase options;
- gain (loss) on facility lease termination;
- recurring capital expenditures, net;
- distributions from unconsolidated ventures from cumulative share of net earnings;
- CFFO from unconsolidated ventures; and
- other.

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Recurring capital expenditures include routine expenditures capitalized in accordance with GAAP that are funded from current operations. Amounts excluded from recurring capital expenditures consist primarily of major projects, renovations, community repositionings, expansions, systems projects or other non-recurring or unusual capital items (including integration capital expenditures) or community purchases that are funded using lease or financing proceeds, available cash and/or proceeds from the sale of communities that are held for sale.

### *Management's Use of Cash From Facility Operations*

We use CFFO to assess our overall liquidity. This measure provides an assessment of controllable expenses and affords management the ability to make decisions which are expected to facilitate meeting current financial and liquidity goals as well as to achieve optimal financial performance. It provides an indicator for management to determine if adjustments to current spending decisions are needed.

This metric measures our liquidity based on operational factors that management can impact in the short-term, namely the cost structure or expenses of the organization. CFFO is one of the metrics used by our senior management and board of directors (i) to review our ability to service our outstanding indebtedness (including our credit facilities and long-term leases), (ii) to review our ability to pay dividends to stockholders, (iii) to review our ability to make regular recurring capital expenditures to maintain and improve our communities on a period-to-period basis, (iv) for planning purposes, including preparation of our annual budget, (v) in making compensation determinations for certain of our associates (including our named executive officers) and (vi) in setting various covenants in our credit agreements. These agreements generally require us to escrow or spend a minimum of between \$250 and \$450 per unit per year. Historically, we have spent in excess of these per unit amounts; however, there is no assurance that we will have funds available to escrow or spend these per unit amounts in the future. If we do not escrow or spend the required minimum annual amounts, we would be in default of the applicable debt or lease agreement which could trigger cross default provisions in our outstanding indebtedness and lease arrangements.

### *Limitations of Cash From Facility Operations*

CFFO has limitations as an analytical tool. It should not be viewed in isolation or as a substitute for GAAP measures of cash flow from operations. CFFO does not represent cash available for dividends or discretionary expenditures, since we may have mandatory debt service requirements or other non-discretionary expenditures not reflected in the measure. Material limitations in making the adjustment to our cash flow from operations to calculate CFFO, and using this non-GAAP financial measure as compared to GAAP operating cash flows, include:

- the cash portion of interest expense, income tax (benefit) provision and non-recurring charges related to gain (loss) on sale of communities and extinguishment of debt activities generally represent charges (gains), which may significantly affect our financial results; and
- depreciation and amortization, though not directly affecting our current cash position, represent the wear and tear and/or reduction in value of our communities, which affects the services we provide to our residents and may be indicative of future needs for capital expenditures.

We believe CFFO is useful to investors because it assists their ability to meaningfully evaluate (1) our ability to service our outstanding indebtedness, including our credit facilities and capital and financing leases, (2) our ability to pay dividends to stockholders and (3) our ability to make regular recurring capital expenditures to maintain and improve our communities.

CFFO is not an alternative to cash flows provided by or used in operations as calculated and presented in accordance with GAAP. You should not rely on CFFO as a substitute for any such GAAP financial measure. We strongly urge you to review the reconciliation of CFFO to GAAP net cash provided by (used in) operating activities, along with our condensed consolidated financial statements included herein. We also strongly urge you to not rely on any single financial measure to evaluate our business. In addition, because CFFO is not a measure of financial performance under GAAP and is susceptible to varying calculations, the CFFO measure, as presented in this report, may differ from and may not be comparable to similarly titled measures used by other companies.

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The table below shows the reconciliation of net cash provided by operating activities to CFFO for the three and nine months ended September 30, 2013 and 2012 (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013 <sup>(1)</sup>	2012 <sup>(1)</sup>	2013 <sup>(1)</sup>	2012 <sup>(1)</sup>
Net cash provided by operating activities	\$ 104,247	\$ 79,431	\$ 249,075	\$ 207,978
Changes in operating assets and liabilities	(21,464)	(10,731)	(5,725)	(5,926)
Refundable entrance fees received <sup>(2)(3)</sup>	9,875	12,206	29,265	29,512
Entrance fee refunds disbursed	(7,728)	(6,024)	(24,504)	(19,555)
Recurring capital expenditures, net	(12,127)	(11,475)	(32,115)	(28,138)
Lease financing debt amortization with fair market value or no purchase options	(3,518)	(3,066)	(10,333)	(8,988)
Distributions from unconsolidated ventures from cumulative share of net earnings	(648)	(420)	(2,089)	(1,435)
CFFO from unconsolidated ventures	1,922	1,559	5,979	4,097
<b>Cash From Facility Operations</b>	<b>\$ 70,559</b>	<b>\$ 61,480</b>	<b>\$ 209,553</b>	<b>\$ 177,545</b>

- (1) The calculation of Cash From Facility Operations includes integration, transaction-related and EMR roll-out costs of \$4.7 million and \$10.4 million for the three and nine months ended September 30, 2013, respectively. The calculation of Cash From Facility Operations includes integration, transaction-related and EMR roll-out costs of \$4.6 million and \$16.2 million for the three and nine months ended September 30, 2012, respectively.
- (2) Entrance fee receipts include promissory notes issued to the Company by the resident in lieu of a portion of the entrance fees due. Notes issued (net of collections) for the three months ended September 30, 2013 and 2012 were \$0.3 million and \$4.6 million, respectively, and for the nine months ended September 30, 2013 and 2012 were (\$0.1) million and \$2.9 million, respectively.
- (3) Total entrance fee receipts for the three months ended September 30, 2013 and 2012 were \$19.1 million and \$25.1 million, respectively, including \$9.2 million and \$12.9 million, respectively, of non-refundable entrance fee receipts included in net cash provided by operating activities. Total entrance fee receipts for both the nine months ended September 30, 2013 and 2012 were \$59.8 million, including \$30.6 million and \$30.3 million, respectively, of non-refundable entrance fee receipts included in net cash provided by operating activities.

### Facility Operating Income

#### Definition of Facility Operating Income

We define Facility Operating Income as follows:

Net income (loss) *before*:

- provision (benefit) for income taxes;
- non-operating (income) expense items;
- (gain) loss on sale or acquisition of communities (including gain (loss) on facility lease termination);
- depreciation and amortization (including non-cash impairment charges);
- facility lease expense;
- general and administrative expense, including non-cash stock-based compensation expense;

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- change in future service obligation;
- amortization of deferred entrance fee revenue; and
- management fees.

### *Management's Use of Facility Operating Income*

We use Facility Operating Income to assess our facility operating performance. We believe this non-GAAP measure, as we have defined it, is helpful in identifying trends in our day-to-day facility performance because the items excluded have little or no significance on our day-to-day facility operations. This measure provides an assessment of revenue generation and expense management and affords management the ability to make decisions which are expected to facilitate meeting current financial goals as well as to achieve optimal facility financial performance. It provides an indicator for management to determine if adjustments to current spending decisions are needed.

Facility Operating Income provides us with a measure of facility financial performance, independent of items that are beyond the control of management in the short-term, such as the change in the liability for the obligation to provide future services under existing lifecare contracts, depreciation and amortization (including non-cash impairment charges), straight-line lease expense (income), taxation and interest expense associated with our capital structure. This metric measures our facility financial performance based on operational factors that management can impact in the short-term, namely the cost structure or expenses of the organization. Facility Operating Income is one of the metrics used by our senior management and board of directors to review the financial performance of the business on a monthly basis. Facility Operating Income is also used by research analysts and investors to evaluate the performance of and value companies in our industry by investors, lenders and lessors. In addition, Facility Operating Income is a common measure used in the industry to value the acquisition or sales price of communities and is used as a measure of the returns expected to be generated by a community.

A number of our debt and lease agreements contain covenants measuring Facility Operating Income to gauge debt or lease coverages. The debt or lease coverage covenants are generally calculated as facility net operating income (defined as total operating revenue less operating expenses, all as determined on an accrual basis in accordance with GAAP). For purposes of the coverage calculation, the lender or lessor will further require a pro forma adjustment to facility operating income to include a management fee (generally 4% to 5% of operating revenue) and an annual capital reserve (generally \$250 to \$450 per unit). An investor or potential investor may find this item important in evaluating our performance, results of operations and financial position, particularly on a facility-by-facility basis.

### *Limitations of Facility Operating Income*

Facility Operating Income has limitations as an analytical tool. It should not be viewed in isolation or as a substitute for GAAP measures of earnings. Material limitations in making the adjustments to our earnings to calculate Facility Operating Income, and using this non-GAAP financial measure as compared to GAAP net income (loss), include:

- interest expense, income tax (benefit) provision and non-recurring charges related to gain (loss) on sale of communities and extinguishment of debt activities generally represent charges (gains), which may significantly affect our financial results; and
- depreciation and amortization, though not directly affecting our current cash position, represent the wear and tear and/or reduction in value of our communities, which affects the services we provide to our residents and may be indicative of future needs for capital expenditures.

An investor or potential investor may find this item important in evaluating our performance, results of operations and financial position on a facility-by-facility basis. We use non-GAAP financial measures to supplement our GAAP results in order to provide a more complete understanding of the factors and trends affecting our business.

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Facility Operating Income is not an alternative to net income, income from operations or cash flows provided by or used in operations as calculated and presented in accordance with GAAP. You should not rely on Facility Operating Income as a substitute for any such GAAP financial measure. We strongly urge you to review the reconciliation of Facility Operating Income to GAAP net income (loss), along with our condensed consolidated financial statements included herein. We also strongly urge you to not rely on any single financial measure to evaluate our business. In addition, because Facility Operating Income is not a measure of financial performance under GAAP and is susceptible to varying calculations, the Facility Operating Income measure, as presented in this report, may differ from and may not be comparable to similarly titled measures used by other companies.

The table below shows the reconciliation of net loss to Facility Operating Income for the three and nine months ended September 30, 2013 and 2012 (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Net loss	\$ (967)	\$ (12,216)	\$ (2,609)	\$ (41,775)
Provision for income taxes	960	747	3,272	2,559
Equity in (earnings) loss of unconsolidated ventures	(431)	249	(991)	211
Loss on extinguishment of debt	53	—	946	221
Other non-operating income	(279)	(500)	(1,365)	(392)
Interest expense:				
Debt	23,467	24,615	71,291	73,691
Capitalized lease obligation	6,175	7,647	19,165	23,052
Amortization of deferred financing costs and debt discount	4,100	4,543	13,017	13,602
Change in fair value of derivatives and amortization	1,377	(140)	(594)	371
Interest income	(472)	(676)	(1,027)	(2,220)
Income from operations	33,983	24,269	101,105	69,320
Gain on facility lease termination	—	—	—	(2,780)
Depreciation and amortization	68,644	62,876	200,557	189,781
Asset impairment	504	—	2,658	8,329
Loss on acquisition	—	—	—	636
Facility lease expense	69,232	71,167	207,028	213,240
General and administrative (including non-cash stock-based compensation expense)	45,824	43,158	138,470	134,202
Amortization of entrance fees	(7,013)	(6,459)	(21,178)	(18,835)
Management fees	(7,622)	(7,407)	(22,975)	(22,350)
<b>Facility Operating Income</b>	<b>\$ 203,552</b>	<b>\$ 187,604</b>	<b>\$ 605,665</b>	<b>\$ 571,543</b>

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

We are subject to market risks from changes in interest rates charged on our credit facilities, other floating-rate indebtedness and lease payments subject to floating rates. The impact on earnings and the value of our long-term debt and lease payments are subject to change as a result of movements in market rates and prices. As of September 30, 2013, we had approximately \$1.3 billion of long-term fixed rate debt, \$1.0 billion of long-term variable rate debt, excluding our line of credit, and \$299.3 million of capital and financing lease obligations. As of September 30, 2013, our total fixed-rate debt and variable-rate debt outstanding had a weighted-average interest rate of 4.5% (calculated using an imputed interest rate of 7.5% for our \$316.3 million convertible senior notes due 2018).

We enter into certain interest rate swap agreements with major financial institutions to manage our risk on variable rate debt. Additionally, we have entered into certain cap agreements to effectively manage our risk above certain interest rates. As of September 30, 2013, \$1.3 billion, or 57.1%, of our debt, excluding our line of credit and capital

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and financing lease obligations, either has fixed rates or variable rates that are subject to swap agreements. As of September 30, 2013, \$700.2 million, or 30.9%, of our debt, excluding our line of credit and capital and financing lease obligations, is subject to cap agreements. The remaining \$271.6 million, or 12.0%, of our debt is variable rate debt, not subject to any cap or swap agreements. A change in interest rates would have impacted our annual interest expense related to all outstanding variable rate debt, excluding our line of credit and capital and financing lease obligations, as follows (after consideration of hedging instruments currently in place): a 100 basis point increase in interest rates would have an impact of \$9.5 million, a 500 basis point increase in interest rates would have an impact of \$45.1 million and a 1,000 basis point increase in interest rates would have an impact of \$59.2 million.

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

#### *Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer each concluded that, as of September 30, 2013, our disclosure controls and procedures were effective.

#### *Changes in Internal Control over Financial Reporting*

There has not been any change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter ended September 30, 2013 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

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

The information contained in Note 9 to the Condensed Consolidated Financial Statements contained in Part I, Item 1 of this Quarterly Report on Form 10-Q is incorporated herein by this reference.

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

There have been no material changes to the risk factors set forth in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2012.

### **Item 6. Exhibits**

See Exhibit Index immediately following the signature page hereto, which Exhibit Index is incorporated by reference as if fully set forth herein.

**SIGNATURES**

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

**BROOKDALE SENIOR LIVING INC.**  
(Registrant)

By: /s/ Mark W. Ohlendorf  
Name: Mark W. Ohlendorf  
Title: President and Chief Financial Officer  
(Principal Financial and Accounting Officer)  
Date: November 8, 2013



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**EXHIBIT INDEX**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
3.1	Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K filed on February 26, 2010).
3.2	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 3, 2012).
4.1	Form of Certificate for common stock (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 (Amendment No. 3) (No. 333-127372) filed on November 7, 2005).
4.2	Stockholders Agreement, dated as of November 28, 2005, by and among Brookdale Senior Living Inc., FIT-ALT Investor LLC, Fortress Brookdale Acquisition LLC, Fortress Investment Trust II and Health Partners (incorporated by reference to Exhibit 4.2 to the Company's Annual Report on Form 10-K filed on March 31, 2006).
4.3	Amendment No. 1 to Stockholders Agreement, dated as of July 25, 2006, by and among Brookdale Senior Living Inc., FIT-ALT Investor LLC, Fortress Registered Investment Trust, Fortress Brookdale Investment Fund LLC, FRIT Holdings LLC, and FIT Holdings LLC (incorporated by reference to Exhibit 4.3 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2006).
4.4	Amendment Number Two to Stockholders Agreement, dated as of November 4, 2009 (incorporated by reference to Exhibit 4.4 to the Company's Quarterly Report on Form 10-Q filed on November 4, 2009).
4.5	Indenture, dated as of June 14, 2011, between the Company and American Stock Transfer & Trust Company, LLC, as Trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on June 14, 2011).
4.6	Supplemental Indenture, dated as of June 14, 2011, between the Company and American Stock Transfer & Trust Company, LLC, as Trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on June 14, 2011).
4.7	Form of 2.75% Convertible Senior Note due 2018 (included as part of Exhibit 4.6).
10.1	Third Amended and Restated Credit Agreement, dated as of September 20, 2013, among certain subsidiaries of Brookdale Senior Living Inc., General Electric Capital Corporation, as administrative agent, lender and swingline lender, and the other lenders from time to time parties thereto.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of September 20, 2013

among

THE PARTIES LISTED ON SCHEDULE 1.01 ATTACHED HERETO

as Borrowers,

GENERAL ELECTRIC CAPITAL CORPORATION,

as Administrative Agent, a Lender and Swingline Lender,

and

THE OTHER FINANCIAL INSTITUTIONS WHO ARE OR HEREAFTER  
BECOME PARTIES TO THIS CREDIT AGREEMENT,

as Lenders

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- I Form of Partial Release Letter

### THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This **THIRD AMENDED AND RESTATED CREDIT AGREEMENT** (as amended, modified, restated or supplemented from time to time, this "*Credit Agreement*" or this "*Agreement*") is entered into as of September 20, 2013 by and among **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation (in its individual capacity, "*GECC*" and in its capacity as agent for the Lenders, together with its successors, "*Administrative Agent*"), the financial institutions other than GECC who are or hereafter become parties to this Agreement (together with GECC, individually, a "*Lender*", and collectively, the "*Lenders*", as the context may require), and **THE PARTIES LISTED ON SCHEDULE 1.01 ATTACHED HERETO** (each of the foregoing entities and each of the entities from time to time executing a Joinder Agreement pursuant to Section 6.15 hereof shall be hereinafter referred to individually as "*Borrower*" and collectively as the "*Borrowers*").

#### RECITALS:

- A. Certain of the Lenders (the "*Original Lenders*") agreed, subject to the terms and conditions of that certain Credit Agreement dated as of February 23, 2010, by and among certain of the entities identified on Schedule 1.01 attached hereto (collectively, the "*Original Borrowers*"), Administrative Agent and the Original Lenders thereto, as amended by that certain First Amendment to Credit Agreement and Other Credit Documents, dated as of May 5, 2010 (as amended, the "*2010 Credit Agreement*") to make a revolving credit facility to Original Borrowers in the maximum principal amount of \$120,000,000.00 (the "*Original Loan*").
- B. BKD Kansas Properties, LLC, a Delaware limited liability company ("*BKD*"), became a Borrower under the 2010 Credit Agreement pursuant to that certain Joinder Agreement dated as of March 5, 2010. BLC Wellington-Cleveland, LLC, BLC Wellington-Colonial Heights, LLC, BLC Wellington-Gardens, LLC, AHC Southland-Ormond Beach, LLC, AHC Monroe Township, LLC, BLC Adrian-GC, LLC, BLC Las Vegas-GC, LLC, BLC Belleville-GC, LLC, and BLC Findlay-GC, LLC, each a Delaware limited liability company, became Borrowers under the 2010 Credit Agreement pursuant to that certain Joinder Agreement dated June 24, 2010 (together with BKD, collectively, the "*Joined Borrowers*"). BLC Wellington-Johnson City, LLC and BLC Wellington-Kingston, LLC, each a Delaware limited liability company, became Borrowers under the 2010 Credit Agreement pursuant to that certain Joinder Agreement dated as of September 16, 2010 (together with Original Borrowers [other than FIT Ramsey, LLC, which was released pursuant to the terms of the 2010 Credit Agreement] and Joined Borrowers, the "*2011 Borrowers*").
- C. Certain of the Lenders (the "*2011 Lenders*") and the 2011 Borrowers executed that certain Amended and Restated Credit Agreement (the "*2011 Original Credit Agreement*") dated as of January 31, 2011, pursuant to which the 2011 Lenders and 2011 Borrowers agreed to extend the maturity date and increase the revolving credit facility under the 2010 Credit Agreement as more fully set forth therein (as increased and extended, the "*2011 Credit Facility*") for the purposes of refinancing certain existing debt, which 2011 Credit Agreement amended, restated and consolidated in its entirety the 2010 Credit Agreement and was executed in full replacement of the 2010 Credit Agreement.



D. BLC Southerland Place-Midlothian, LLC, BLC Southerland Place-Germantown, LLC, BLC Windsor Place, LLC, BLC Emerald Crossings, LLC, BKD Sterling House of Duncan, LLC, BKD Sterling House of Edmond, LLC, BKD Sterling House of Enid, LLC, BKD Sterling House of Midwest City, LLC, BKD Sterling House of Oklahoma City North, LLC, BKD Sterling House of Oklahoma City South, LLC, BKD Sterling House of Ponca City, LLC, BKD Sterling House of Cedar Hill, LLC, BKD Sterling House of Palestine, LLC, BKD Sterling House of Waxahachie, LLC, BKD Wynwood of Madison West Real Estate, LLC ("**Madison**") and BKD Brookdale Place of Brookfield, LLC ("**Brookfield**"), each a Delaware limited liability company (collectively, the "**2011 Additional Borrowers**") became "Borrowers" under the 2011 Original Credit Agreement pursuant to that certain Joinder Agreement dated as of March 4, 2011 among Administrative Agent and 2011 Additional Borrowers.

E. Lake Seminole Square Management Company, Inc., and ARC Galleria Woods, Inc., each a Tennessee corporation, became "Borrowers" under the 2011 Original Credit Agreement pursuant to that certain Joinder Agreement dated October 27, 2011 (collectively, the "**2011 Joined Borrowers**").

F. The 2011 Original Credit Agreement was amended by (i) First Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated as of February 23, 2011, (b) Second Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated as of October 27, 2011 and (c) Third Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated as of December 17, 2012 (the 2011 Original Credit Agreement, as so amended, herein called the "**2011 Credit Agreement**").

G. The 2011 Borrowers, the 2011 Additional Borrowers (other than Madison and Brookfield) and the 2011 Joined Borrowers (collectively, the "**2012 Borrowers**"), Administrative Agent and Lenders executed that certain Second Amended and Restated Credit Agreement dated as of March 28, 2013 pursuant to which the parties agreed to, among other things, extend the maturity date of the revolving credit facility under the 2011 Credit Agreement and to grant the 2012 Borrowers the right upon satisfaction of certain conditions to increase the amount of the revolving credit facility for the purposes of refinancing certain existing debt and for the purposes hereinafter set forth (the "**March 2013 Credit Agreement**").

H. By Joinder Agreement dated as of July 12, 2013 (the "**July 2013 Joinder Agreement**"), BKD Sterling House Of Bowling Green, LLC, BKD Sterling House Of Mansfield, LLC, AHC Southland-Ormond Beach, LLC, Brookdale Place at Fall Creek, LLC, Brookdale Place at Willow Lake, LLC, Brookdale Place of West Hartford, LLC and Brookdale Place at Kenwood, LLC, each a Delaware limited liability company, became "Borrowers" under the March 2013 Credit Agreement (collectively, the "**2013 Joined Borrowers**").

I. The Borrowers have requested Lenders to incorporate a swingline feature to the credit facility (as amended, the "**Credit Facility**") and to execute and deliver this Credit Agreement pursuant to which the March 2013 Credit Agreement will be amended, restated and consolidated in its entirety in full replacement of the March 2013 Credit Agreement.

J. Lenders have agreed to provide the Credit Facility to the Borrowers, and amend and restate the March 2013 Credit Agreement in its entirety, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree the March 2013 Credit Agreement is amended and restated in its entirety as follows:

**ARTICLE I**  
**DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms.**

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

"Administrative Agent" means General Electric Capital Corporation in its capacity as administrative agent for the Lenders under any of the Credit Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrowers and the Lenders.

"Adjusted Expenses" means actual operating expenses related to the Borrowing Base Assets, excluding any rent and interest paid by Operating Tenants and depreciation recorded by the Operating Tenants or Borrowers on a stabilized accrual basis for the previous twelve (12) month period (as reasonably adjusted by Administrative Agent), including: (i) recurring expenses (e.g., tenant improvements, leasing commissions, carpeting replacement, appliance and drapery replacement and such others as determined by Administrative Agent), (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 Senior Housing Unit.

"Adjusted Net Operating Income" or "ANOI" means annualized Adjusted Revenue less Adjusted Expenses, based upon the financial reports provided by Borrowers under Section 6.01 and approved by Administrative Agent in its reasonable discretion; provided, however, if the actual Occupancy Rate of any Borrowing Base Asset exceeds 95%, ANOI for such Borrowing Base Asset shall be proportionately reduced assuming an Occupancy Rate of 95%.

"Adjusted Revenue" means revenues (excluding revenues from therapy and home health services to independent and assisted living residents of the Borrowing Base Assets, other than the Included Therapy Revenue) from the Borrowing Base Assets for the period in question (and if none specified, then for the most current twelve (12) months), as determined under GAAP, as adjusted based upon definitive changes (federal or state) in the Medicare and/or Medicaid reimbursement rates, but excluding (a) nonrecurring income and non-property related income (as determined by Administrative Agent in its sole discretion) and income from tenants and/or

residents that is classified as "bad debt" under generally accepted accounting principles, and (b) other revenue for such period not to exceed ten percent (10%) of the amounts included in clause (a) above for laundry, vending, parking and other occupancy payments (but excluding late fees and interest income) based upon collections for such period.

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

"Advance" or "Advances" have the meanings provided in Section 2.01(a).

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent-Related Persons" means the Administrative Agent, together with its Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Aggregate Commitments" means the Commitments of all the Lenders.

"Aggregate Committed Amount" has the meaning provided in Section 2.01(a), as increased pursuant to Section 2.01(b).

"Agreement" has the meaning provided in the introductory paragraph hereof.

"Allocable Amount" has the meaning provided in Section 2.13(i).

"Applicable Percentage" means each of the following percentages per annum, as applicable, based upon the Outstanding Amount Percentage:

<b>Outstanding Amount Percentage</b>	<b>Applicable Percentage</b>
≤25%	3.25%
>25%, but ≤50%	3.75%
>50, but ≤100%	4.25%

Any increase or decrease in the Applicable Percentage resulting from a change in the Outstanding Amount Percentage shall become effective as of the first Business Day immediately following the change in the Outstanding Amount Percentage.

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

"Arizona Facility" has the meaning provided in Section 5.13(b).

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

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.07(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent and, if such assignment and assumption requires their consent, the Borrowers.

"Assignment of Leases" means an assignment of leases, rents and profits to the Administrative Agent with respect to the applicable Borrower's interests in a Borrowing Base Asset (which assignment may be contained within the related Mortgage Instrument); provided that each such Assignment of Leases shall, subject to the terms and conditions of the applicable underlying lease, directly assign to the Administrative Agent the following: (a) all existing and future leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of such Borrowing Base Asset (including, without limitation, any applicable Facility Operating Lease), whether written or oral or for a definite period or month-to-month, together with any extensions, renewals, amendments, modifications or replacements thereof, and any options, rights of first refusal, pledges, security agreements and guarantees of any tenant's obligations under any lease or sublease now or hereafter in effect with respect to the Borrowing Base Asset (individually, for the purposes of this definition, a "*Lease*" and collectively, the "*Leases*"); and (b) all rents (including, without limitation, base rents, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents and payments which are characterized under the terms of the applicable Lease as payments of interest and/or principal with respect to the applicable Borrowing Base Asset), security deposits (in whatever form, including cash and letters of credit), tenant escrows, income, receipts, revenues, reserves, issues and profits of the Borrowing Base Asset from time to time accruing, including, without limitation, (i) all rights to receive payments arising under, derived from or relating to any Lease, (ii) all lump sum payments for the cancellation or termination of any Lease, the waiver of any term thereof, or the exercise of any right of first refusal, call option, put option or option to purchase, and (iii) the return of any insurance premiums or ad valorem tax payments made in advance and subsequently refunded. In furtherance (and not limitation) of the foregoing, each Assignment of Leases shall assign to the Administrative Agent any and all of the applicable Borrower's rights to collect or receive any payments with respect to the applicable Borrowing Base Asset. Finally, each Assignment of Leases shall, in any case, be in form and substance satisfactory to the Administrative Agent in its discretion and suitable for recording in the applicable jurisdiction; and "Assignments of Leases" means a collective reference to all such Assignments of Leases.

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

reasonable and documented cost of internal legal services and all expenses and disbursements of internal counsel.

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

"Audited Financial Statements" means the audited consolidated balance sheet of the Parent and its consolidated Subsidiaries for the fiscal year ended December 31, 2012, and the related consolidated statements of earnings, shareholders' equity and cash flows for such fiscal year of the Parent and its consolidated Subsidiaries, including the notes thereto.

"Availability Amount" means, as of any Determination Date, the sum of the following amounts: (a) the annualized ANOI (based on the trailing six (6) month period prior to the Determination Date) for the Performing Assets that are not skilled nursing facilities or Entrance Fee Facilities, divided by 12.5%, (b) the annualized ANOI (based on the trailing six (6) month period prior to the Determination Date) for the Performing Assets that are skilled nursing facilities, but not Entrance Fee Facilities, divided by 13.5%, and (c) the sum of (i) annualized ANOI (based on the trailing six (6) month period prior to the Determination Date) for Performing Assets that are Entrance Fee Facilities, divided by 11.75% and (ii) the amount of any Net Entrance Fees recorded or earned during the trailing 12-month period prior to the Determination Date, times 5.0, provided in no event may the Availability Amount derived from Entrance Fee Facilities exceed thirty percent (30%) of the total Availability Amount.

"Award" has the meaning provided in Section 6.23.

"Bankruptcy Event" means, with respect to any Person, the occurrence of any of the following: (a) the entry of a decree or order for relief by a court or governmental agency in an involuntary case under any applicable Debtor Relief Law or any other bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment by a court or governmental agency of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or the ordering of the winding up or liquidation of its affairs by a court or governmental agency and such decree, order or appointment is not vacated or discharged within sixty (60) days of its filing (or, if such order cannot be reasonably vacated or discharged within such period, ninety (90) days, so long as the applicable Person has diligently commenced the actions necessary to discharge or vacate such order and is diligently pursuing completion thereof); or (b) the commencement against such Person of an involuntary case under any applicable Debtor Relief Law or any other bankruptcy, insolvency or other similar law now or hereafter in effect, or of any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or for the winding up or

liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall remain undismissed for a period of sixty (60) consecutive days (or, if such proceeding cannot be reasonably dismissed within such period, ninety (90) consecutive days, so long as the applicable Person has diligently commenced the actions necessary to obtain such dismissal and is diligently pursuing completion thereof), or the repossession or seizure by a creditor of such Person of a substantial part of its Property; or (c) such Person shall commence a voluntary case under any applicable Debtor Relief Law or any other bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment of or the taking possession by a receiver, liquidator, assignee, creditor in possession, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its Property or make any general assignment for the benefit of creditors; or (d) the filing of a petition by such Person seeking to take advantage of any Debtor Relief Law or any other applicable Law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or (e) such Person shall fail to contest in a timely and appropriate manner (and if not dismissed within sixty (60) days (unless such dismissal cannot be reasonably obtained within such period, ninety (90) days, so long as the applicable Person has diligently commenced the actions necessary to dismiss such filing and is diligently pursuing completion thereof)) or shall consent to any petition filed against it in an involuntary case under such bankruptcy laws or other applicable Law or consent to any proceeding or action relating to any bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts with respect to its assets or existence, or (f) such Person shall admit in writing, or such Person's financial statements shall reflect, an inability to pay its debts generally as they become due.

"Base Rate" means for any day a fluctuating rate per annum equal to the rate of interest in effect for such day as publicly announced from time to time by the Base Rate Bank as its "prime rate," The "prime rate" is a rate set by the Base Rate Bank based upon various factors including Base Rate Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate announced by Base Rate Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Bank" means Bank of America, N.A.

t e d D e p o s i t A c c o u n t C o n t r o l A g r e e  
with respect to the Portfolio General Receivables Account and the Amended and Restated Collection Account Agreement executed with respect to the Third Party Payor Receivables Accounts, in each case executed by Borrower Representative, as agent for Borrowers, Administrative Agent and the bank named therein (the "**Blocked Account Bank**").

"Borrower" and "Borrowers" shall have the meanings given to such terms in the introductory paragraph hereof.

"Borrower Joinder Agreement" means a joinder agreement in the form of *Exhibit E* hereto, to be executed by each new Person who becomes a Borrower in accordance with Section 6.15 hereof.

"Borrower Representative" has the meaning provided in Section 2.14 hereof.

"Borrowing" means a borrowing hereunder consisting of (a) Advances under the Revolving Loan and/or (b) the Swing Loans, each made to or for the benefit of Borrowers by Lenders pursuant to Article 2 of this Agreement.

"Borrowing Base Amount" means, as of any Determination Date, an amount equal to the lesser of: (a) the Availability Amount as of such date and (b) the aggregate Collateral Value Amount as of such date for the Performing Assets.

"Borrowing Base Asset" means a Real Property Asset which, as of any date of determination, satisfies all of the following requirements: (a) such Real Property Asset is 100% owned by a Borrower in fee simple or pursuant to the terms of an Eligible Ground Lease; (b) the Administrative Agent, on behalf of the Lenders, shall have received each of the Borrowing Base Asset Deliverables with respect to such Real Property Asset, in each case in form and substance acceptable to the Administrative Agent in its discretion; (c) such Real Property Asset is not subject to any Lien (other than a Permitted Lien) or any Negative Pledge; (d) such Real Property Asset is free of all material mechanical and structural defects, environmental conditions (as evidenced by environmental reports acceptable to Administrative Agent) or other adverse matters except for defects, conditions or matters individually or collectively which are not material to the profitable operation of such Real Property Asset and the most recently -delivered FIRREA-compliant MAI appraisal with respect to such Real Property Asset is acceptable to the Administrative Agent in its discretion; (e) such Real Property Asset has been fully developed for use as a skilled nursing facility, domestic assisted living facility, independent living facility, rehabilitation hospital or other healthcare facility acceptable to the Administrative Agent and Required Lenders; (f) such Real Property Asset is leased to and operated by an Eligible Tenant pursuant to a Facility Operating Lease reasonably acceptable to the Administrative Agent; (g) no required rental payment, principal or interest payment, payments of real property taxes or payments of premiums on insurance policies payable to the applicable Borrower-owner with respect to such Real Property Asset is past due beyond the earlier of the applicable grace period with respect thereto, if any, and sixty (60) days; (h) no event of default has occurred and is then continuing under any Material Contract applicable to such Borrowing Base Asset; (i) no Material Contract applicable to such Borrowing Base Asset shall have been terminated without the prior written consent of the Required Lenders; (j) no condemnation or condemnation proceeding shall have been instituted (and remain undismissed for a period of ninety (90) consecutive days), in each case, with respect to a material portion of the Real Property Asset; (k) no material casualty event shall have occurred with respect to the improvements located on such Real Property Asset which is not able to be fully remediated with available insurance proceeds; and (l) no Hazardous Substances are located on or under such Real Property Asset and no other environmental conditions exist in connection with such Real Property Asset which constitute a violation of any Environmental Law.

"Borrowing Base Assets" means a collective reference to all Borrowing Base Assets in existence at any given time.

"Borrowing Base Asset Deliverables" means, with respect to any Real Property Asset which is proposed for qualification as a "Borrowing Base Asset" hereunder, a collective reference to each of the following (with each such item to be in form and substance acceptable to the Administrative Agent):

(a) a fully executed and notarized Mortgage Instrument and Assignments of Leases with respect to such Real Property Asset and a related legal opinion from special local counsel to the Borrowers opining as to the propriety of the form of such documents for recording in the applicable jurisdiction and such other matters as may be required by the Administrative Agent;

(b) a fully executed copy of any Facility Operating Lease applicable to such Real Property Asset, together with an estoppel certificate from the applicable Eligible Tenant and a subordination, non-disturbance and attornment agreement with respect to such Facility Operating Lease (the "**Facility Operating Lease SNDA**");

(c) in the case of a Real Property Asset which constitutes a leasehold interest, evidence that the applicable lease, a memorandum of lease with respect thereto, or other evidence of such lease in form and substance reasonably satisfactory to the Administrative Agent, has been properly recorded in all places to the extent necessary or desirable, in the reasonable judgment of the Administrative Agent, so as to enable the Mortgage Instrument encumbering such leasehold interest to effectively create a valid and enforceable first priority lien (subject to Permitted Liens and required landlord consents) on such leasehold interest in favor of the Administrative Agent (or such other Person as may be required or desired under local law) for the benefit of Lenders and that such lease qualifies as an Eligible Ground Lease hereunder, together with such estoppels, waivers and/or consents from the lessor under such Eligible Ground Lease as are required by the terms thereof or otherwise reasonably requested by the Administrative Agent;

(d) maps or plats of an as-built survey of the site constituting the Real Property Asset sufficient in all cases to delete the standard survey exception from the applicable Mortgage Policy;

(e) a FIRREA-compliant MAI appraisal, commissioned, reviewed and approved by the Administrative Agent (or otherwise acceptable to the Administrative Agent, in its discretion) with respect to such Real Property Asset;

(f) evidence as to the compliance of such Real Property Asset and the improvements related thereto with applicable zoning and use requirements;

(g) an ALTA mortgagee title insurance policy (or its equivalent in non-ALTA jurisdictions) with respect to the applicable Real Property Asset (each, a "**Mortgage Policy**" and collectively, the "**Mortgage Policies**"), assuring the Lender that the Mortgage Instrument creates a valid and enforceable first priority mortgage lien on the applicable Real Property Asset, free and clear of all defects and encumbrances except Permitted Liens, which Mortgage Policy shall (i) be in an amount acceptable to the Administrative Agent, (ii) be issued by an insurance company reasonably acceptable to the Administrative Agent, (iii) include such available



endorsements and reinsurance as the Administrative Agent may reasonably require and (iv) otherwise satisfy the reasonable title insurance requirements of the Administrative Agent;

(h) evidence as to whether the applicable Real Property Asset is in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards (a "**Flood Hazard Property**") and if such Real Property Asset is a Flood Hazard Property, (i) the applicable Borrower's written acknowledgment of receipt of written notification from the Administrative Agent (A) as to the fact that such Real Property Asset is a Flood Hazard Property and (B) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (ii) copies of insurance policies or certificates of insurance evidencing flood insurance satisfactory to the Administrative Agent and naming the Administrative Agent as sole loss payee on behalf of the Lenders under a standard mortgage endorsement;

(i) copies of any material subleases which would be required to be disclosed on Part V of Schedule 5.12 hereof with respect to such Real Property Asset if approved as a Borrowing Base Asset;

(j) evidence that the Operating Tenant under the applicable Facility Operating Lease is an Eligible Tenant;

(k) a Phase I environmental assessment from an environmental consultant acceptable to the Administrative Agent, dated as of a date acceptable to the Administrative Agent and indicating that, as of such date, no Hazardous Substances or other conditions on, under or with respect to the applicable Real Property Asset constitute a violation of any Environmental Laws and that, in any case, no commercially unreasonable amount of any Hazardous Substances are located on or under such Real Property Asset; and

(l) evidence of insurance coverage with respect to such Real Property Asset meeting the requirements set forth herein and establishing the Administrative Agent as loss payee, as required pursuant to the terms hereof.

"**Borrowing Base Certificate**" means a certificate substantially in the form of **Exhibit C-2** hereto delivered to the Administrative Agent pursuant to Section 6.02(b) or more frequently at the option of the Borrower Representative and (a) setting forth each Real Property Asset of the Borrowers, identifying which such Real Property Assets are Borrowing Base Assets, and certifying the Collateral Value Amount with respect to each such Borrowing Base Asset, (b) certifying (based upon its own information and the information made available to the Parent by the applicable Operating Tenants, which information the Parent believes in good faith to be true and correct in all material respects) (i) as to the calculation of the Borrowing Base Amount as of the date of such certificate and (ii) that each Real Property Asset used in the calculation of the Borrowing Base Amount meets each of the criteria for qualification as a Borrowing Base Asset and (c) providing such other information with respect to the Real Property Assets and/or Borrowing Base Assets as the Administrative Agent may reasonably require.

"**Business**" or "**Businesses**" means, at any time, a collective reference to the businesses operated by the respective Borrowers or Parent, as applicable, at such time.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of Illinois or the state where the Administrative Agent's Office is located and, if such day relates to determining the Eurodollar Rate hereunder, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

"Capitalized Loan Fees" means, with respect to the Parent and its Subsidiaries, and with respect to any period, (a) any up-front, closing or similar fees paid by such Person in connection with the incurrence or refinancing of Indebtedness during such period and (b) all other costs incurred in connection with the incurrence or refinancing of Indebtedness during such period, including, without limitation, appraisal fees paid to lenders, costs and expenses incurred in connection with Swap Contracts, engineering reports, phase I environmental report and other report review fees paid to lenders and legal fees, in each of the foregoing cases, that are capitalized on the balance sheet of such Person in accordance with GAAP and amortized over the term of such Indebtedness.

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

"Capital Lease Obligation" means, with respect to a Capital Lease, the amount of rental and other obligations of the lessee thereunder which would, in accordance with GAAP, appear on a balance sheet of such lessee in respect of such Capital Lease.

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

"Cash Equivalents" means (a) securities issued or directly and fully guaranteed or insured by (i) the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short -term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (each an "**Approved Bank**"), in each case with maturities of not more than two hundred seventy (270) days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at

least 100% of the amount of the repurchase obligations and (e) Investments (classified in accordance with GAAP as current assets) in money market investment programs registered under the Investment Company Act of 1940, as amended, that are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subclauses hereof.

"Cash Lease Expense" means for any period, the aggregate amount of fixed and contingent rentals payable (on a cash basis) by the Parent and its Subsidiaries for such period with respect to leases of real and personal property, determined on a consolidated basis, provided that payments in respect of Capital Lease Obligations shall not constitute Cash Lease Expense.

"Cash Management Agreement" means any agreement existing as of the date hereof, including the Blocked Account Agreement, or from time to time during the term of the Loan among Administrative Agent, Borrowers, Borrower Representative on behalf of the Borrowers and/or Operators 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.

"Casualty" has the meaning specified in Section 6.22.

"Change of Control" means the occurrence of any of the following events: (a) any Person or two or more Persons acting in concert, other than the Permitted Investors, shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, control over, voting stock of the Parent (or other securities convertible into such voting stock) representing forty-nine percent (49%) or more of the combined voting power of all voting stock of the Parent, (b) during any period of up to twenty-four (24) consecutive months, commencing after the Closing Date, individuals who at the beginning of such twenty-four (24) month period were directors of the Parent (together with any new director whose election by the Parent's Board of Directors or whose nomination for election by the Parent's shareholders was approved by a vote of at least fifty percent (50%) of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of the Parent then in office, or (c) the Parent shall fail to own (directly or indirectly) 100% of the Capital Stock of the Borrowers. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d -3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

"Closing Date" means the date hereof.

"CMS" means the Centers for Medicare & Medicaid Services, the federal agency responsible for administering the Medicare, Medicaid, SCHIP (State Children's Health Insurance), HIPAA, CLIA (Clinical Laboratory Improvement Amendments), and any other federal health-related programs affecting the operation of the Borrowing Base Assets.

"Collateral" means a collective reference to all real and personal Property (including without limitation, the Borrowing Base Assets) with respect to which Liens in favor of the Administrative Agent are either executed, identified or purported to be granted pursuant to and in

accordance with the terms of the Collateral Documents but excluding (a) revenues from therapy and home health services to independent and assisted living residents of the Borrowing Base Assets until such time as all or a portion of such revenue is deposited to an account subject to a Cash Management Agreement and (b) any other personal property specifically excluded pursuant to the terms of another Loan Document.

"Collateral Documents" means a collective reference to the Mortgage Instruments, the Security Agreement, the Assignments of Leases and any UCC financing statements securing payment hereunder, or any other documents securing the Obligations under this Credit Agreement or any other Credit Document.

"Collateral Value" means, with respect to any Borrowing Base Asset or Real Property Asset, an amount equal to the "as-is" appraised value of such Real Property Asset (on an individual, as opposed to portfolio values, basis), as determined by the most recently delivered FIRREA-compliant MAI appraisals commissioned, reviewed and approved by the Administrative Agent or otherwise acceptable to the Administrative Agent in its discretion.

"Collateral Value Amount" means an amount equal to (a) seventy percent (70%) multiplied by (b) the Collateral Value as of such date for each Borrowing Base Asset.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Advances under the Loan and to share in the Obligations hereunder up to such Lender's Commitment Percentage thereof.

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

"Commitment Period" means the period from and including the Closing Date to the earlier of (a) the Maturity Date or (b) the date on which the Commitments shall have been terminated as provided herein.

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

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Compensation Period" has the meaning provided in Section 2.10(c).

"Compliance Certificate" means a certificate substantially in the form of *Exhibit C-1*; provided, that each such Compliance Certificate shall, in any case, include (without limitation): (a) a Borrowing Base Certificate in the form of *Exhibit C-2*; (b) an updated version of Schedules 5.11, 5.12, 5.13 and 5.18, along with a summary of changes made to such schedules since the previous delivery thereof; provided, further, that upon the delivery of such updated schedules, then Schedule 5.11, Schedule 5.12, Schedule 5.13 and Schedule 5.18 shall each be deemed to have been amended and restated to read in accordance with the applicable updated schedule and the representations and warranties with respect thereto shall apply to such amended

and restated schedules and (c) supporting documents and materials reasonably required by the Administrative Agent for the evidencing of the calculations and certifications made in connection therewith.

"CON" has the meaning provided in Section 6.20.

"Condemnation" has the meaning provided in Section 6.23.

"Confidential Information" has the meaning provided in Section 10.08.

"Consolidated EBITDA" means, for any period, for any Person, net income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such consolidated net income for such period, the sum of (a) income tax expense, (b) interest expense of such Person and its Subsidiaries, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness whether paid, accrued or capitalized and including, without limitation, the interest component of Capital Lease Obligations, (c) depreciation and amortization expense, (d) net entrance fees received, (e) non-cash compensation expense, (f) amortization of intangibles (including, but not limited to, goodwill) and organization costs, (g) any extraordinary, unusual or non-recurring expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such consolidated net income for such period, losses on sales of assets outside of the ordinary course of business), (h) such Person's share of distributions from Unconsolidated Joint Ventures and (i) any other non-cash charges (such as loss on extinguishment of debt, equity in loss of unconsolidated ventures, change in fair value of derivatives and amortization, straight line rent, etc.), and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) any extraordinary, unusual or non-recurring income or gains (including, whether or not otherwise includable as a separate item in the statement of such consolidated net income for such period, gains on the sales of assets outside of the ordinary course of business), (b) any other non-cash income and (c) any cash payments made during such period in respect of items described in clause (e) above subsequent to the fiscal quarter in which the relevant non-cash expenses or losses were reflected as a charge in the statement of Consolidated Net Income, all as determined on a consolidated basis.

"Consolidated EBITDAR" means for any period, Consolidated EBITDA of the Parent and its Subsidiaries for such period plus Cash Lease Expense of the Parent and its Subsidiaries for such period.

"Consolidated Fixed Charge Coverage Ratio" means for any period, the ratio of (a) Consolidated EBITDAR of the Parent and its Subsidiaries for such period to (b) Consolidated Fixed Charges for such period plus Cash Lease Expense for such period provided:

- (i) the Consolidated EBITDA of any Person acquired by the Parent or its Subsidiaries during the last quarter of such four quarter period shall be included on a pro forma basis (assuming the consummation of such acquisition and the incurrence or assumption of any Indebtedness in connection therewith occurred on the first day of such quarter) determined on an annualized basis based on the most recent fiscal quarter of such

Person for which financial statements are available if the consolidated balance sheet of such acquired Person and its consolidated Subsidiaries as at the end of the period preceding the acquisition of such Person and the related consolidated statements of income and stockholders' equity and of cash flows for the period, in each case, to the extent available, in respect of which Consolidated EBITDA is to be calculated (x) have been previously provided to the Administrative Agent and the Lenders and (y) either (1) have been reported on without a qualification arising out of the scope of the audit by independent certified public accountants of nationally recognized standing or (2) have been found reasonably acceptable by the Administrative Agent;

(ii) the Consolidated EBITDA of any Person acquired during the first, second or third quarters of such four quarter period shall be deemed to be equal to Consolidated EBITDA of such Person for the number of fiscal quarters elapsed since the date of acquisition (after giving effect to any pro forma adjustment made pursuant to clause (i) above) multiplied by 4, 2 and 4/3, respectively; and

(iii) the Consolidated EBITDA of any Person Disposed of by the Parent or its Subsidiaries during such period shall be excluded for such four quarter period (assuming the consummation of such Disposition and the repayment of any Indebtedness in connection therewith occurred on the first day of such period).

"Consolidated Fixed Charges" means for any period, the sum (without duplication) of (a) Consolidated Interest Expense of the Parent and its Subsidiaries for such period, (b) cash income taxes actually paid by the Parent or any of its Subsidiaries on a consolidated basis during such period, (c) scheduled payments made during such period on account of principal of Indebtedness of the Parent or any of its Subsidiaries, (d) dividends accrued (whether or not declared or payable) on the preferred stock of the Parent and its Subsidiaries during such period, (e) the Parent's and its Subsidiaries' pro rata share of all expenses and payments referred to in the preceding clauses (a) and (b) of any unconsolidated Person in which they have an equity interest and (f) maintenance capital expenditures in an amount equal to the product of (i) \$575 per Senior Living Unit per annum, and (ii) the number of Senior Living Units owned or leased by the Parent and its Subsidiaries during such period measured at the end of the most recent calendar quarter ending prior to such date of determination.

"Consolidated Interest Expense" means with respect to any Person for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers' acceptance financing and net costs of such Person under Swap Contracts (but only to the extent included in interest expense in such Person's financial statement and to the extent actually paid) in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"Consolidated Net Income" means, with respect to any Person for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Parent and its Consolidated Subsidiaries for any period, there shall be excluded

(a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent or is merged into or consolidated with the Parent or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent) in which the Parent or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligations (other than under any Credit Document) or requirement of Law applicable to such Subsidiary.

"Consolidated Parties" means the Parent and its Consolidated Subsidiaries, as determined in accordance with GAAP.

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

"Consolidated Tangible Net Worth" means (i) Stockholders' Equity plus (ii) Minority Interests plus (iii) cumulative net additions of Depreciation and Amortization Expense deducted in determining income for all fiscal quarters ending after the date of Parent's formation plus (iv) non-cash deferred gains from sale-leaseback transactions and deferred entrance fee revenue, minus (v) Intangible Assets, in each case, for the most recent fiscal quarter ending prior to such date for which financial statements are available.

"Contract Rate" means (a) the Eurodollar Rate plus the Applicable Percentage or (b) if the provisions of Section 3.02 or Section 3.03 apply and Borrowers elect to request Borrowings using the Base Rate, in which event it shall mean the Base Rate plus the Applicable Percentage; provided that in no event would use of the Base Rate plus Applicable Percentage increase or decrease the Lender's rate of return over what it would have received at the Eurodollar Rate plus the Applicable Percentage.

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote twenty-five percent (25%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"Control Investment Affiliates" means, as to any Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, "control" of a Person means the power, directly or

indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"COSO" means the Committee of Sponsoring Organizations of the Treadway Commission.

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

"Credit Documents" means this Credit Agreement, the Collateral Documents, the Notes, the Guaranty, the Proposal, the Lender Joinder Agreements, the Borrower Joinder Agreements, the Borrowing Base Certificates, the Hazardous Materials Indemnity Agreement and the Compliance Certificates.

"Credit Party" means, as of any date, the Borrowers or Guarantor; and "Credit Parties" means a collective reference to each of them.

"Daily Unused Fee" means, for any day during the Commitment Period, an amount equal to (a) one-half of one percent (0.50%) multiplied by (b) the amount by which the Aggregate Commitments exceed the sum of the Outstanding Amount of Obligations (including Swing Loans) as of the beginning of such day, (c) divided by 365.

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

"Debt Yield" means the ratio, expressed as a percentage, as of the date of determination of (a) Adjusted Net Operating Income from Performing Assets as determined by the Administrative Agent for a particular period, to (b) the outstanding principal balance of the Loan as of such date.

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

"Default Rate" means an interest rate equal to the Contract Rate plus five percent (5%) per annum.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Advances required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder and has not cured such failure prior to the date of determination, (b) has notified the Borrowers, the Administrative Agent or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, (d) has otherwise failed to pay over to the Administrative Agent or any other Lender



any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, and has not cured such failure prior to the date of determination, or (e) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"Depreciation and Amortization Expense" means for any period, without duplication, the sum for such period of (i) total depreciation and amortization expense, whether paid or accrued, of the Parent and its Subsidiaries during such period, plus (ii) the Parent's and its Subsidiaries' pro rata share of depreciation and amortization expenses of Unconsolidated Joint Ventures for such period. For purposes of this definition, the Parent's and its Subsidiaries' pro rata share of depreciation and amortization expense of any Unconsolidated Joint Venture shall be deemed equal to the product of (i) the depreciation and amortization expense of such Unconsolidated Joint Venture, multiplied by (ii) the percentage of the total outstanding Equity Interests of such Unconsolidated Joint Venture held by the Parent or such Subsidiary, expressed as a decimal.

"Determination Date" has the meaning specified in Section 2.03.

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

"Disqualified Stock" means any capital stock, warrants, options or other rights to acquire capital stock (but excluding any debt security which is convertible, or exchangeable, for capital stock), which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable prior to the Maturity Date, pursuant to a sinking fund obligation or otherwise, or is or may be redeemable at the option of the holder thereof, in whole or in part, prior to the Maturity Date.

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

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; (d) a Permitted Investor; and (e) any other Person (other than a natural person) approved by the Administrative Agent (such approval not to be unreasonably withheld), (such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include the Parent or any of the Parent's Affiliates or Subsidiaries other than Permitted Investors.

"Eligible Ground Lease" means, at any time, a ground lease (a) under which a Borrower is the lessee or holds equivalent rights and is the fee owner of the improvements located thereon,

(b) that has a remaining term of not less than thirty (30) years, (c) under which any required rental payment, principal or interest payment or other payment due under such lease from such Borrower to the ground lessor is not more than sixty (60) days past due and any required rental payment, principal or interest payment or other payment due to such Borrower under any sublease of the applicable real property lessor is not more than sixty (60) days past due, (d) where no party to such lease is subject to a then -continuing Bankruptcy Event, (e) such ground lease (or a related document executed by the applicable ground lessor) contains customary provisions protective of any lender to the lessee and (f) where the Borrower's interest in the underlying Real Property Asset or the lease is not subject to (i) any Lien other than Permitted Liens and other encumbrances acceptable to the Administrative Agent and the Required Lenders, in their discretion, or (ii) any Negative Pledge.

"Eligible Tenant" means an Operating Tenant which (a) is not in arrears on any required rental payment, principal or interest payment, payments of real property taxes or payments of premiums on insurance policies with respect to its lease or sublease beyond the later of (i) the applicable grace period with respect thereto, if any, and (ii) forty-five (45) days; (b) is not subject to a then -continuing Bankruptcy Event; and (c) is reasonably acceptable in all material respects to the Administrative Agent and the Required Lenders (it being understood that for purposes of this clause (c), each Operating Tenant set forth on Schedule 5.12 hereto on the Closing Date (as updated pursuant to any Borrower Joinder Agreement), is deemed acceptable).

"Entrance Fee Facilities" means the two Borrowing Base Assets known as "Lake Seminole Square" located in Seminole, Pinellas County, Florida and "Galleria Woods" located in Birmingham, Jefferson County, Alabama, and such other Borrowing Base Assets that are approved by Administrative Agent from time to time to be included in the Collateral that provide for the payment of entrance payments and/or fees.

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

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

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

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

"Eurodollar Base Rate" means:

(a) For any Interest Period, the rate determined by the Administrative Agent to be the offered rate for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBOR01 Page as of 11:00 a.m. (London, England time) on the second full Business Day next preceding the first day of each Interest Period. In the event that such rate does not appear on the Reuters Screen LIBOR01 page at such time, the "***Eurodollar Base 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.

(b) Notwithstanding the foregoing, for purposes of this Agreement, the Eurodollar Base Rate shall in no event be less than 0.5% per annum at any time.

"Eurodollar Rate" means for any Interest Period, a rate per annum determined by the Administrative Agent pursuant to the following formula:

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

"Eurodollar Reserve Percentage" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred

to as "Eurocurrency liabilities"). The Eurodollar Rate shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Acceleration" means any of the events or conditions set forth in Sections 8.01(f), (g) or (j) with respect to the Parent or any Borrower.

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

"Excluded Rate Contract Obligation" means, with respect to any Guarantor, any guarantee of any Swap Obligations under a Secured Rate Contract if, and only to the extent that and for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligations under a Secured Rate Contract (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation under a Secured Rate Contract. If a Swap Obligation under a Secured Rate Contract arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation under a Secured Rate Contract that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Extension of Credit" means with respect to (a) any Lender, collectively, all Advances made by such Lender pursuant to this Agreement, and (b) the Swingline Lender, collectively, all Swing Loans made by Swingline Lender pursuant to this Agreement.

"Facility Operating Lease SNDA" shall have the meaning provided in the definition of "Borrowing Base Asset Deliverables" contained in this Section 1.01.

"Facility Operating Leases" means each lease or master lease with respect to any Borrowing Base Asset from the applicable Borrower as lessor, to an Eligible Tenant, which, in the reasonable judgment of the Administrative Agent, is a triple net lease such that such Eligible Tenant is required to pay all taxes, utilities, insurance, maintenance, casualty insurance payments and other expenses with respect to the subject Borrowing Base Asset (whether in the form of reimbursements or additional rent) in addition to the base rental payments required thereunder such that net operating income for such Borrowing Base Asset (before non-cash items) equals the base rent paid thereunder; provided, that each such lease or master lease shall be in form and substance reasonably satisfactory to the Administrative Agent; as the foregoing may be amended and extended from time to time after the Closing Date in accordance with and subject to the terms of this Agreement and the Facility Operating Lease SNDA applicable thereto.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day immediately succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the immediately

succeeding Business Day, and (b) if no such rate is so published on such immediately succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to the next 1/100th of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"FIG" means Fortress Investment Group LLC.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act and the regulations promulgated pursuant to such act.

"Flood Hazard Property" has the meaning provided in the definition of "Borrowing Base Asset Deliverables" contained in this Section 1.01.

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

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

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

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

(a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all purchase money indebtedness (including indebtedness and obligations in respect of conditional sales and title retention arrangements, except for customary conditional sales and title retention arrangements with suppliers that are entered into in the ordinary course of business) and all indebtedness and obligations in respect of the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and payable on customary trade terms);

(c) all direct obligations under letters of credit (including standby and commercial), bankers' acceptances and similar instruments (including bank guaranties, surety bonds, comfort letters, keep -well agreements and capital maintenance agreements) to the extent such instruments or agreements support financial, rather than performance, obligations;

(d) the Attributable Principal Amount of Capital Leases and Synthetic Leases;

(e) the Attributable Principal Amount of Securitization Transactions;

(f) all preferred stock and comparable equity interests providing for mandatory redemption, sinking fund or other like payments;

(g) Support Obligations in respect of Funded Debt of another Person (other than Persons in such group, if applicable); and

(h) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person (or, if applicable, any Person in such consolidated group) for payment thereof.

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

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

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

"Guarantor" means the Parent.

"Guaranty" means the Amended and Restated Guaranty in the form of *Exhibit G* dated as of the date hereof executed by the Parent, as amended, supplemented or otherwise modified from time to time.

"Hazardous Materials Indemnity Agreement" means the Second Amended and Restated Hazardous Materials Indemnity Agreement dated as of the date hereof executed by the Parent, as amended, supplemented or otherwise modified from time to time.

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

"Healthcare Facilities" means any skilled nursing facilities, mentally retarded and developmentally disabled facilities, rehab hospitals, long term acute care facilities, intermediate care facilities for the mentally disabled, medical office buildings, domestic assisted living

facilities, independent living facilities or Alzheimer's care facilities and any ancillary businesses that are incidental to the foregoing.

"Healthcare Laws" has the meaning provided in Section 5.19(a).

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the related regulations set forth at 45 CFR Parts 160 and 164.

"HMO" means any health maintenance organization, managed care organization, any Person doing business as a health maintenance organization or managed care organization, or any Person required to qualify or be licensed as a health maintenance organization or managed care organization under applicable federal or state law (including, without limitation, HMO Regulations).

"Included Therapy Revenue" means revenues from therapy and home health services to independent and assisted living residents of the Borrowing Base Assets which are deposited to an account subject to a Cash Management Agreement.

"Increase Option" has the meaning provided in Section 2.01(b).

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

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

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

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

"Indemnitees" has the meaning provided in Section 10.05.

"Intangible Assets" means assets that are considered intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents and Capitalized Loan Fees.

"Interest Period" means each period commencing on the first day of a calendar month and ending on the date three months thereafter, provided that:

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

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

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

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Borrower's internal controls over financial reporting, in each case as described in the Securities Laws.

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

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

"IRS" means the United States Internal Revenue Service.

"Joint Commission" has the meaning given to such term in Section 5.19(b).

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



"Lender" means each of the Persons identified as a "Lender" on the signature pages hereto and each Person who joins as a Lender pursuant to the terms hereof, together with their respective successors and assigns.

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

"Lending Office" means, as to any Lender, the office or offices of such Lender set forth in such Lender's Administrative Questionnaire or such other office or offices as a Lender may from time to time notify the Borrowers and the Administrative Agent.

"Licenses" has the meaning provided in Section 5.19(b)(i).

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

"Loan" means, collectively, the Revolving Loan and any Swing Loan to be made pursuant to the terms of this Credit Agreement.

"Loan Borrowing Notice" means a notice of a Borrowing, which, if in writing, shall be substantially in the form of *Exhibit A*.

"Management Agreements" means, collectively, those certain agreements between Borrowers and the Property Managers or between Operating Tenants and the Property Managers for the management of certain of the Borrowing Base Assets, and as described on Part II of Schedule 5.12.

"Material Action" means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have any Borrower or any Credit 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 any Borrower or any Credit Party, to file a petition seeking, or consent to, reorganization or relief with respect to any Borrower or any Credit 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 any Borrower or any Credit Party or a substantial part of its respective property, to make any assignment for the benefit of creditors of any Borrower or any Credit Party, the admission in writing by any Borrower or any Credit 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 Effect" means a material adverse effect on (i) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of (A) the Parent and its Consolidated Subsidiaries taken as a whole or (B) the Borrowers taken as a whole, (ii) the ability of the Parent or the Borrowers to perform any material obligation under the Credit Documents,

or (iii) the rights and remedies of the Administrative Agent and the Lenders under the Credit Documents.

"Material Contract" means, collectively, any Facility Operating Lease, any property management agreement, any cash management agreement, or any similar agreement with respect to any Borrowing Base Asset.

"Maturity Date" means, as applicable, the earlier of (a) March 31, 2018, or (b) any earlier date on which the all of the Obligations are required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Credit Documents.

"Maximum Rate" has the meaning provided in Section 10.10.

"Medicaid" means the medical assistance programs administered by state agencies and approved by CMS pursuant to the terms of Title XIX of the Social Security Act, codified at 42 U.S.C. 1396 *et seq.*

"Medical Services" means medical and health care services provided to a Person, including, but not limited to, medical and health care services provided to a Person which are covered by a policy of insurance, and includes physician services, nurse and therapist services, dental services, hospital services, skilled nursing facility services, comprehensive outpatient rehabilitation services, home health care services, residential and out-patient behavioral healthcare services, and medicine or health care equipment provided to a Person for a necessary or specifically requested valid and proper medical or health purpose.

"Medicare" means the program of health benefits for the aged and disabled administered by CMS pursuant to the terms of Title XVIII of the Social Security Act, codified at 42 U.S.C. 1395 *et seq.*

"Minority Interests" means that portion of "minority interests" as set forth in the Parent's financial statements which is attributable to the ownership interest in the Parent of Persons other than the Permitted Investors.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Instrument" means, for any Real Property Asset, a first lien priority mortgage, deed of trust or deed to secure debt in favor of the Administrative Agent (for the benefit of the Lenders) with respect to such Real Property Asset. Each Mortgage Instrument shall be in form and substance satisfactory to the Administrative Agent and suitable for recording in the applicable jurisdiction.

"Mortgage Policies" shall have the meaning assigned to such term in the definition of "Borrowing Base Asset Deliverables" contained in this Section 1.01.

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

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

"Net Entrance Fees" means the entrance fee sales at the Entrance Fee Facilities, less any refunds paid, during the period in question.

"Notes" or "Notes" means (a) the note or notes in the form of *Exhibit B* attached hereto given to the Lenders to evidence the Revolving Loan, as amended, restated, modified, supplemented, extended, renewed or replaced and (b) the Swingline Notes.

"Obligations" means, without duplication, all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Credit Document or otherwise with respect to the Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Credit Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Occupancy Rate" means, with respect to any Real Property Asset, the percentage of (a) total patient days relating to such Real Property Asset for any reporting period divided by (b) the product of (i) total number of in-service beds (as determined as of the date such Real Property Asset qualifies as a Borrowing Base Asset) at such Real Property Asset and (ii) the total days in such reporting period.

"Operating Tenant" means any Person who is a lessee with respect to the Facility Operating Leases or any other lease of an entire Borrowing Base Asset held by any Borrower as lessor or as an assignee of the lessor thereunder.

"Operator", individually, and "Operators", collectively, means the applicable Property Manager, Operating Tenant and any successor to such Operator approved by Administrative Agent. If there exists a Property Manager, Operating Tenant, or any combination thereof, with respect to any Borrowing Base Asset, then "Operator" shall refer to all such entities, collectively and individually as applicable and as the context may require.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non -U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement,

instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Original Closing Date" means January 31, 2011.

"Other Taxes" has the meaning provided in Section 3.01.

"Outstanding Amount" means the aggregate outstanding principal amount of the Loan after giving effect to any Borrowings and prepayments or repayments of the Loan, as the case may be, occurring on such date.

"Outstanding Amount Percentage" means a fraction, stated as a percentage, the numerator of which is the Outstanding Amount and the denominator of which is the Aggregate Committed Amount.

"Overpaying Borrower" has the meaning provided in Section 2.13(j).

"Overpayment Amount" has the meaning provided in Section 2.13(j).

"Parent" means Brookdale Senior Living Inc., a Delaware corporation.

"Parent Cash Management System" has the meaning provided in Section 6.24.

"Parent Sweep Account" means the account established at Bank of America, N.A., or another national bank or other financial institution approved by Administrative Agent into which deposits from the Portfolio General Receivables Account will be swept on a daily basis, all as more fully described in Section 6.24.

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

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

"Payment Date" has the meaning provided in Section 2.04(a)(ii), and is the date that a regularly scheduled payment of interest is due.

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Performing Assets" means Borrowing Base Assets that as of any Determination Date have positive ANOI.

"Permitted Investors" means, collectively, FIG and its Control Investment Affiliates, provided that, the definition of "Permitted Investors" shall not include any Control Investment Affiliate whose primary purpose is the operation of an on-going business (excluding any business whose primary purpose is the investment of capital or assets).

"Permitted Liens" means, as to any Person: (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA), in each case, which are not yet due and payable; (b) Liens evidencing the claims of materialmen, mechanics, carders, warehousemen or landlords for labor, materials, supplies or rentals, in each case, incurred in the ordinary course of business and which are not at the time required to be paid or discharged; provided, that with respect to any Borrowing Base Asset, no exception is taken therefor in the related Mortgage Policy or such Mortgage Policy otherwise affirmatively insures over such Liens in form and substance satisfactory to the Administrative Agent; (c) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workmen's compensation, unemployment insurance or similar applicable Laws; (d) zoning restrictions, easements, rights-of-way, covenants, reservations and other rights, restrictions or encumbrances of record on the use of Real Property Assets, which do not materially detract from the value of such property or materially impair the use thereof for the business of such Person; (e) Liens described on Schedule 7.01 and, with respect to the Borrowing Base Assets, as set forth on the Mortgage Policies (or updates thereto) delivered in connection herewith; and (f) Liens, if any, in favor of the Administrative Agent for the benefit of the Lenders.

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

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Parent or, with respect to any such plan that is subject to Section 412 of the Internal Revenue Code or Title IV of ERISA, any ERISA Affiliate.

"Portfolio General Receivables Account" means an account established at Wells Fargo Bank, National Association, or another national bank or other financial institution approved by Administrative Agent into which the Borrowers will deposit, or cause to be deposited, all general receivables and other income generated from the operations of the Borrowing Base Assets and proceeds of the Third Party Payor Receivables Accounts, and which account will be (a) in the name of Borrower Representative, as agent for all Borrowers, and (b) subject to a Blocked Account Agreement in form satisfactory to Administrative Agent.

"Principal Obligations" has the meaning provided in Section 2.06(b).

"Prohibited Person" means any Person (i) listed in the annex to, or who is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions, of the Executive Order; (iii) with whom a Person is prohibited from dealing or otherwise engaging in any transaction by any terrorism or

money laundering Law, including the Executive Order; (iv) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; (v) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list; or who is an Affiliate of a Person listed in clauses (i) - (v) above.

"Property Manager" means any manager under the Management Agreements listed on Part II of Schedule 5.12 and any successor property manager approved by Administrative Agent.

"Proposal" means the Proposal from GECC to the Parent, dated February 22, 2013, and accepted by the Parent on February 22, 2013 with respect to the 2011 Credit Agreement and this Credit Agreement.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation under a Secured Rate Contract, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation under a Secured Rate Contract or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Real Estate Taxes" means any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Borrowing Base Assets or become payable during the term of the Loan.

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

"Reduction Fee" means an amount calculated using the following formula: two-fifths of  $(.50\% \times A \times B)$  divided by 365, where A is the amount by which the Aggregate Commitments are reduced pursuant to Section 2.01(c) and B is the number of days remaining in the term of the Loan as of the date of the reduction.

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

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

"Regulation T" means Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Regulation X" means Regulation X of the Board of Governors of the Federal Reserve System, as in effect from time to time.

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

"Release Price" has the meaning provided in Section 7.12.

"Replacement Escrow Fund" has the meaning provided in Section 2.15(b).

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

"Required Lenders" means, as of any date of determination, three or more Lenders (except to the extent less than three Lenders exists as of such date in which event it shall mean two Lenders) having at least (i) 66 -2/3% of the Aggregate Commitments or, (ii) if the commitments of each Lender to make Advances have been terminated pursuant to Article VIII, Lenders holding in the aggregate at least 66-2/3% of the Obligations (other than the Swing Loans); provided that the 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.

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

"Restoration Threshold" means on a per Borrowing Base Asset basis, the lesser of (a) \$1,000,000 or (b) an amount equal to 20% times the pre-casualty value of the affected Borrowing Base Asset, as determined by Administrative Agent.

"Revolving Lenders" means all Lenders other than the Swingline Lender.

"Revolving Loan" means the Advances to be made by the Lenders from time to time pursuant to the terms of Section 2.01.

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

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

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

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

"Secured Rate Contract" means any Swap Contract between the Borrowers and the counterparty thereto, which (i) has been provided or arranged by GECC or any Lender hereunder or an Affiliate of GECC or any Lender, or (ii) Administrative Agent has acknowledged in writing constitutes a "Secured Rate Contract" hereunder.

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

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

"Security Agreement" means the Second Amended and Restated Security Agreement dated as of March 28, 2013 in the form of **Exhibit H**, as amended, supplemented, restated or otherwise modified from time to time.

"Senior Housing Units" means, collectively, each skilled nursing bed, assisted living unit, memory care unit and independent living unit located on and comprising the Borrowing Base Assets.

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

"State Regulator" means the applicable state department of health or other applicable state regulatory agency with jurisdiction over the Borrowers, the Operators or the Real Property



Assets with respect to the Healthcare Laws affecting the maintenance, use or operation of the Real Property Assets or the provision of services to the occupants of the Real Property Assets.

"Stockholders' Equity" means, as of any date of determination, the consolidated Stockholders' Equity of the Parent as at such date determined in accordance with GAAP and shown in the financial consolidated statements of the Parent and its Subsidiaries, provided that, there shall be excluded from Stockholders' Equity any amount attributable to Disqualified Stock.

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

"Support Obligations" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "*primary obligor*") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Support Obligations shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Support Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

"**Swap Loan**" has the meaning provided in [Section 2.05](#).

"**Swap Commitment**" means the amount of up to \$25,000,000.00.

"**Swap Lender**" means, each in its capacity as Swap Lender hereunder, GECC or, upon the resignation of GECC as Administrative Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of Administrative Agent (or, if there is no such successor Administrative Agent, the Required Lenders) and the Borrowers, to act as the Swap Lender hereunder.

"**Swap Notes**" means the note or notes executed by Borrowers and payable to the Swap Lender, in substantially the form of [Exhibit B-1](#) hereto, evidencing the Indebtedness of the Borrowers to the Swap Lender under the Swap Loans.

"**Swap Request**" has the meaning provided in [Section 2.05](#).

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

"**Tax Impound**" has the meaning provided in [Section 2.15\(a\)](#).

"**Taxes**" has the meaning provided in [Section 3.01](#).

"**Third Party Payor Programs**" means any participation or provider agreement with any third-party payor, including Medicare, Medicaid, Blue Cross and/or Blue Shield, Tricare and any other private commercial insurance managed care and employee assistance program.

"Third Party Payor Receivables Accounts" means the accounts of a national bank or other financial institution approved by Administrative Agent for each Borrowing Base Asset that is a skilled nursing facility and into which the Borrowers will deposit, or cause to be deposited, all Medicaid, Medicare and Tricare receivables generated from the operations at such Borrowing Base Assets, and which accounts will be (a) in the name of the Borrower Representative, as agent for Borrowers, to which such receivables are payable and (b) subject to a Blocked Account Agreement in form satisfactory to Administrative Agent.

"Threshold Amount" means (a) for any provision relating to the Borrowers as a whole, the Parent or the Consolidated Parties as a whole, \$10,000,000 and (b) for any Borrower, individually, \$500,000.

"Treasury Rate" means, as of any date of determination, (a) the yield reported, as of 10:00 a.m. (New York City time) on such date (or to the extent such date is not a Business Day, the Business Day immediately preceding such date) on the display designated as page "PX-1" of the Bloomberg Financial Markets Services Screen (or such other display as may replace page "PX -1" of the Bloomberg Financial Markets Services Screen) for actively traded U.S. Treasury securities having a ten (10) year maturity as of such date, or (b) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of such day in Federal Reserve Statistical Release H.15(519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to ten (10) years.

"Tricare" means the health care program of the United States Department of Defense Military Health System.

"Unconsolidated Joint Venture" means any Joint Venture of the Parent or any of its Subsidiaries in which the parent or such Subsidiary holds any Equity Interest but which would not be combined with the Parent in the consolidated financial statements of the Parent in accordance with GAAP.

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

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

"Unused Fee" shall have the meaning provided in Section 2.08(a).

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

## **1.02 Interpretive Provisions.**

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

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

## **1.03 Accounting Terms.**

- (a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Credit Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements for the fiscal year ended December 31, 2012, except as otherwise specifically prescribed herein.
- (b) The Parent will provide a written summary of material changes in GAAP or in the consistent application thereof with each annual and quarterly Compliance Certificate delivered in accordance with Section 6.02(a). If at any time any change in GAAP or in the consistent application thereof would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either the Parent or the Required Lenders shall object in writing to determining compliance based on such change, then such computations shall continue to be made on a basis consistent with the most recent financial statements delivered pursuant to Section 6.01(a) or (b) as to which no such objection has been made.

#### **1.04 Rounding.**

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

#### **1.05 References to Agreements and Laws.**

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

#### **1.06 Times of Day.**

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

## **ARTICLE II COMMITMENTS AND ADVANCES**

#### **2.01 Revolving Loan Commitments.** Subject to the terms and conditions set forth herein:

(a) Loan Advances. During the Commitment Period, each Lender severally agrees to make revolving credit advances (each an "*Advance*" and collectively, the "*Advances*") to the Borrower Representative on any Business Day; provided that after giving effect to any such Advance, (i) with regard to the Lenders collectively, the aggregate outstanding principal amount of the Obligations shall not exceed the lesser of (x) Two Hundred Fifty Million Dollars (\$250,000,000), (the "*Aggregate Committed Amount*") and (y) the Borrowing Base Amount and (ii) with regard to each Lender individually, such Lender's Commitment Percentage of Obligations shall not exceed its respective Committed Amount. The Loan may be repaid and reborrowed in accordance with the provisions hereof.

(b) Increase in Commitments. Subject to the terms and conditions set forth herein, the Borrower Representative shall have the one-time right, to be exercised at any time prior to the earlier of (i) March 28, 2016, or (ii) the exercise of its option to decrease the Aggregate Committed Amount under Section 2.01(c) below, to cause an increase in the Aggregate Committed Amount by up to One Hundred Million Dollars (\$100,000,000) (to an aggregate amount of not more than Three Hundred Fifty Million Dollars (\$350,000,000) (the "*Increase Option*"). The exercise of the Increase Option shall be conditioned and effective upon the satisfaction of the following conditions:

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

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

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

(4) the conditions to the making of an Advance set forth in Section 4.02 shall be satisfied; and

(5) Guarantor shall provide a resolution of its Board of Directors authorizing the increase of the Loan contemplated by the Increase Option and upon Administrative Agent's request, Guarantor shall execute a confirmation of the Guaranty.

In connection with any such increase in the Commitments, Schedule 2.01 shall be revised to reflect the modified Commitments and Commitment Percentages of the Lenders, and the Borrowers shall provide supporting corporate resolutions, legal opinions, promissory notes and other items as may be reasonably requested by the Administrative Agent and the Lenders in connection therewith.

(c) Reduction of Commitments. Subject to the terms and conditions set forth herein, the Borrower Representative shall have the one-time right, at any time during the term hereof, upon written notice to the Administrative Agent, to permanently reduce the Aggregate Committed Amount. Once decreased, the Aggregate Committed Amount may no longer be increased under Section 2.01(b). Any such decrease shall be conditioned and effective upon the satisfaction of each of the following conditions:

(i) any such notice thereof must be received by 11:00 a.m. at least five (5) Business Days prior to the date of reduction. The Administrative Agent will give prompt notice to the Lenders of any such reduction of the Credit Facility and Commitments.

(ii) the Commitments may not be reduced to an amount less than the Obligations then outstanding. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Commitment Percentage thereof. All commitment or other fees accrued until the effective date of any reduction of the Aggregate Commitments shall be paid on the effective date of such reduction.

(iii) effective upon such reduction, the Collateral Value Amount shall not be less than the reduced Aggregate Committed Amount.

(iv) If the right to reduce the Credit Facility and Commitments is exercised prior to March 28, 2016, Borrowers shall pay to Administrative Agent at the time of the reduction, for the account of the Lenders, the Reduction Fee.

In connection with any such decrease in the Commitments, Schedule 2.01 shall be revised to reflect the modified Commitments and Commitment Percentages of the Lenders, and the Borrowers shall provide supporting corporate resolutions, legal opinions, promissory notes and other items as may be reasonably requested by the Administrative Agent and the Lenders in connection therewith.

(d) Special Right to Terminate Credit Facility and Commitments. Subject to the terms and conditions set forth herein, the Borrower Representative shall have the one-time right, at any time during the term hereof, upon written notice to the Administrative Agent, to terminate the Credit Facility and the Commitments. Any such termination shall be conditioned and effective upon the satisfaction of the following conditions:

(i) any such notice of termination must be received by 11:00 a.m. at least thirty (30) days prior to the effective date of termination (the "**Termination Date**"). The Administrative Agent will give prompt notice to the Lenders of any such termination of the Credit Facility and Commitments.

(ii) Borrowers shall pay to Administrative Agent on the Termination Date all amounts outstanding under this Agreement, including all commitment or other fees accrued through and including the Termination Date.

(iii) If the right to terminate the Credit Facility and Commitments is exercised prior to March 28, 2016, Borrowers shall pay to Administrative Agent on the Termination Date, for the account of the Lenders, a termination fee in an amount equal to two-fifths (2/5) of the Unused Fee that would have been payable for the remainder of the Loan term based on the outstanding Aggregate Commitment Amount and the Outstanding Amount of Obligations as of the day immediately preceding the Termination Date.

## **2.02 Advances of the Revolving Loan.**

(a) Each Advance of the Revolving Loan shall be made upon the Borrower Representative's irrevocable Loan Borrowing Notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 2:00 p.m., on the date that is two (2) Business Days prior to the requested date of any Advance. Each telephonic notice pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Borrowing Notice, appropriately completed and signed by a Responsible Officer of the Parent. Each Borrowing shall be in a principal amount of not less than \$500,000. Each Loan Borrowing Notice (whether telephonic or written) shall specify (i) the requested date of such Borrowing (which shall be a Business Day) and (ii) the principal amount of Advances to be borrowed.

(b) Following receipt of a Loan Borrowing Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Commitment Percentage of the applicable Advance. Each Lender shall make the amount of its Advance available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 2:00 p.m. on the Business Day specified in the applicable Loan Borrowing Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Advance, Section 4.01), the Administrative Agent shall make all funds so received available to the party referenced in the applicable Loan Borrowing Notice in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable party on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower Representative.

### **2.03 Calculation of Availability Amount.**

(a) The Availability Amount shall be calculated as of (a) the end of each calendar quarter, and (b) one (1) Business Day immediately following the release or addition of a Borrowing Base Asset pursuant to the terms hereof (the "**Determination Date**").

(b) If (i) the Availability Amount is less than the Collateral Value Amount for two (2) consecutive calendar quarters, the provisions of Section 2.05(b)(i) shall apply and (b) if the Debt Yield is less than ten percent (10%) for any calendar quarter, (ii) the provisions of Section 2.05(b)(ii) shall apply.

### **2.04 Repayment of the Revolving Loan.**

The Revolving Loan shall be payable as follows:

(a) Interest Payments. Commencing on October 1, 2013, and continuing on the first (1st) day of each calendar month thereafter (each such date a "**Payment Date**"), the Borrowers shall pay interest only in arrears computed at the Contract Rate on the outstanding principal balance of the Revolving Loan.

(b) Maturity. On the Maturity Date, the Borrower shall pay to the Lender all outstanding principal, accrued and unpaid interest, default interest, late charges and any and all other Obligations due under the Credit Documents.

### **2.05 Swing Loans.**

(a) Availability. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, the Swingline Lender may, in its sole discretion, make loans (each a "**Swing Loan**") available to the Borrowers under the Swingline Commitment from time to time on any Business Day during the period from the Closing Date through the end of the Commitment Period in an aggregate principal amount at any time outstanding not to exceed the Swingline Commitment; provided, however, that the Swingline Lender may not make any Swing Loan (x) to the extent that after giving effect to such Swing Loan, the aggregate principal amount of the Swing Loan and all Revolving Loans would exceed the Borrowing Base Amount and (y) during the period



commencing on the first Business Day after it receives notice from Administrative Agent or the Required Revolving Lenders that one or more of the conditions precedent set forth in Section 4.02 have not been satisfied or duly waived. In connection with the making of any Swing Loan, the Swingline Lender may but shall not be required to determine that, or take notice whether, the conditions precedent set forth in Section 4.02 have been satisfied or waived. Each Swing Loan must be repaid as provided herein, but in any event must be repaid in full on the last day of the Commitment Period. Within the limits set forth in the first sentence of this clause (a), amounts of Swing Loans repaid may be reborrowed under this clause (a).

(b) Borrowing Procedures. In order to request a Swing Loan, the Borrower Representative shall give to Administrative Agent a notice to be received not later than 11:00 a.m. (Chicago time) on the day of the proposed Borrowing, which shall be made in a writing substantially in the form of Exhibit A-1 or in a writing in any other form acceptable to Administrative Agent duly completed (a "**Swingline Request**"). Administrative Agent shall promptly notify the Swingline Lender of the details of the requested Swing Loan. Upon receipt of such notice and subject to the terms of this Agreement, the Swingline Lender may make a Swing Loan available to the Borrower Representative by making the proceeds thereof available to Administrative Agent and, in turn, Administrative Agent shall make such proceeds available to the Borrowers on the date set forth in the relevant Swingline Request.

(c) Refinancing Swing Loans.

(i) The Swingline Lender may at any time after making a Swing Loan forward a demand to Administrative Agent (which Administrative Agent shall, upon receipt, forward to each Revolving Lender) that each Revolving Lender pay to Administrative Agent, for the account of the Swingline Lender, such Revolving Lender's Commitment Percentage of the outstanding Swing Loans.

(ii) Each Revolving Lender shall pay the amount owing by it to Administrative Agent for the account of the Swingline Lender on the Second Business Day following receipt of the notice or demand therefor. Payments received by Administrative Agent after 1:00 p.m. (Chicago time) may, in Administrative Agent's discretion, be deemed to be received on the next Business Day. Upon receipt by Administrative Agent of such payment (other than during the continuation of any Event of Default), such Revolving Lender shall be deemed to have made a Revolving Loan to the Borrowers, which, upon receipt of such payment by the Swingline Lender from Administrative Agent, the Borrowers shall be deemed to have used in whole to refinance such Swing Loan. In addition, regardless of whether any such demand is made, upon the occurrence of any Event of Default, each Revolving Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in each Swing Loan in an amount equal to such Revolving Lender's Commitment Percentage of such Swing Loan. If any payment made by any Revolving Lender as a result of any such demand is not deemed a Revolving Loan, such payment shall be deemed a funding by such Revolving Lender of such participation. Such participation shall not be otherwise required to be funded. Upon receipt by the Swingline Lender of any payment from any Revolving Lender pursuant to this clause (c) with respect to any portion of any Swing Loan, the Swingline Lender shall promptly pay over to such Revolving Lender all

payments of principal (to the extent received after such payment by such Lender) and interest (to the extent received after such payment by such Lender) and interest (to the extent accrued with respect to the periods after such payment) on account of such Swing Loan received by the Swingline Lender with respect to such portion.

(d) Obligation to Fund Absolute. Each Revolving Lender's obligations pursuant to clause (c) above shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including (A) the existence of any setoff, claim, abatement, recoupment, defense or other right that such Revolving Lender, Administrative Agent, any other Revolving Lender or any other Person may have against the Swingline Lender, Agent, any other Lender or any other Person, (B) the failure of any condition precedent set forth in Section 4.02 to be satisfied or the failure of the Borrowers to deliver a Swingline Request (each of which requirements the Revolving Lenders hereby irrevocably waive), and (C) any adverse change in the condition (financial or otherwise) of any Credit Party.

## **2.06 Prepayments.**

(a) Voluntary Prepayments. The Loan may be repaid in whole or in part without premium or penalty (except amounts payable pursuant to Section 3.05); provided that notice thereof must be received by 11:00 a.m. by the Administrative Agent at least three (3) Business Days prior to the date of prepayment. Each such notice of voluntary prepayment hereunder shall be irrevocable and shall specify the date and amount of prepayment. The Administrative Agent will give prompt notice to the applicable Lenders of any prepayment on the Loan and the Lender's interest therein. Prepayments hereunder shall be accompanied by accrued interest thereon and breakage amounts, if any, under Section 3.05.

(b) Mandatory Prepayments.

(i) If at any Determination Date, the aggregate principal amount of the Obligations (the "**Principal Obligations**") shall exceed the lesser of (x) the Aggregate Committed Amount and (y) the Borrowing Base Amount for such date, Borrowers shall within thirty (30) days after such determination, make a payment on the Loan in an amount equal to such excess.

(ii) If at any Determination Date, the Debt Yield is less than ten percent (10%), Borrowers shall, within thirty (30) days following the Determination Date, reduce the Principal Obligations by an amount necessary to achieve a Debt Yield of not less than 10.0%.

(c) Application. Prepayments on the Obligations will be paid by the Administrative Agent to the Lenders ratably in accordance with their respective interests therein.

## **2.07 Interest.**

(a) Subject to the provisions of subsection (b) below, the Loan and all Advances thereunder shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Contract Rate.

(b) If any amount payable by the Borrowers under any Credit Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law. Furthermore, upon the written request of the Required Lenders, while any Event of Default exists, the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) In addition to the application of the Default Rate of interest to past due amounts hereunder, if Borrowers fail to pay any installment of interest or principal within five (5) days after the date on which the same is due, Borrowers shall pay to Administrative Agent 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 foregoing late charge is intended to compensate Administrative Agent and Lenders for the expenses incident to handling any such delinquent payment and for the losses incurred by Administrative Agent and Lenders as a result of such delinquent payment. Borrowers agree 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 Administrative Agent and Lenders will incur by reason of late payment. Borrowers, Administrative Agent and Lenders 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 Default or Event of Default arising from the past due installment, and shall not prevent Administrative Agent from exercising any other rights or remedies available to Administrative Agent with respect to such Default or Event of Default.

(d) Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(e) Anything herein to the contrary notwithstanding, the obligations of the Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrowers shall pay such Lender interest at the highest rate permitted by applicable law ("**Maximum Lawful Rate**"); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Administrative Agent, on behalf of Lenders is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement.

## **2.08 Fees and Expenses.**

(a) Unused Fee. During the term of the Loan, the Borrowers agree to pay the Administrative Agent for the ratable benefit of the Lenders an unused fee (the "**Unused Fee**") for each calendar quarter (or portion thereof) in an amount equal to the sum of the Daily Unused Fees incurred during such period. The Unused Fee shall accrue at all times during the Commitment Period (and thereafter so long as Obligations shall remain outstanding), including periods during which the conditions to Advances in Section 4.02 may not be met, and shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date (and, if applicable, thereafter on demand); provided, that (i) no Unused Fee shall accrue on the Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (ii) any Unused Fee accrued with respect to the Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender. The Administrative Agent shall distribute the Unused Fee to the Lenders (other than Defaulting Lenders) pro rata in accordance with the respective Commitments of the Lenders.

(b) Annual Administrative Fee. During the term of the Loan, the Borrowers agree to pay Administrative Agent, for its sole benefit, an annual administrative agent fee in the amount of \$100,000.00. Such fee shall be payable in twelve (12) equal installments of \$8,333.303 each, which installments shall be due and payable on each Payment Date.

(c) Commitment Fee. On the exercise of the Increase Option, the Borrowers shall pay to the Administrative Agent, for the benefit and account of those Lenders committing to fund all or any portion of the Increase Option so exercised, a commitment fee equal to twenty-five hundredths of one percent (0.25%) times the difference between the Aggregate Committed Amount after the exercise of the Increase Option and the Aggregate Committed Amount prior to the exercise of the Increase Option.

(d) Collateral Monitoring Fee. The Borrowers shall pay to the 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 Credit Documents, the sum of One Hundred Fifty and No/100 Dollars (\$150.00) per Borrowing Base Asset as a collateral monitoring fee.

## **2.09 Computation of Interest.**

All computations of fees and interest shall be made on the basis of a 360 -day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 -day year).

## **2.10 Payments Generally.**

(a) All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date

specified herein. The Administrative Agent will promptly distribute to each Lender its Commitment Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the definition of "Interest Period," if any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

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

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

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

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

(d) If any Lender makes available to the Administrative Agent funds for any Advance to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Advance set forth in Section 4.02 are not satisfied or waived in accordance with the terms hereof or for any other reason, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

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

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Advance in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Advance in any particular place or manner.

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

## **2.11 Sharing of Payments.**

If any Lender shall obtain on account of the Advances made by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, but excluding any payments made to a Lender in error by the Administrative Agent (which such payments shall be returned by the Lender to the Administrative Agent immediately upon such Lender's obtaining knowledge that such payment was made in error)) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Advances made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Advances or such participations, as the case may be, pro rata with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrowers agree that any Lender so

purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Credit Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

## **2.12 Evidence of Debt.**

The Loan made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Advances made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. The Borrowers shall execute and deliver to the Administrative Agent a Note for each Lender requesting a Note, which Note shall evidence the Advance made by any such Lender under its Commitment and/or the Swing Loan made by Swingline Lender under its Swingline Commitment, in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Extension of Credit and payments with respect thereto.

## **2.13 Joint and Several Liability of the Borrowers.**

(a) Each of the Borrowers is accepting joint and several liability hereunder in consideration of the financial accommodation to be provided by the Lenders under this Credit Agreement, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each of the Borrowers to accept joint and several liability for the obligations of each of them.

(b) Each Borrower hereby agrees such Borrower is, and each such Borrower's heirs, personal representatives, successors and assigns are, jointly and severally liable for, and hereby absolutely and unconditionally guarantees to 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 of the Obligations arising under this Credit Agreement and the other Credit Documents, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. 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 Section 2.13 shall not be discharged until payment and performance, in full, of the Obligations has occurred, and that its obligations under this Section 2.13 shall be absolute and unconditional.

(c) If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations hereunder as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The guaranty obligations of each Borrower under the provisions of this Section 2.13 constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Credit Agreement or any other circumstances whatsoever, including without limitation, the following:

(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Credit Agreement, any other Credit Document or any other agreement, document or instrument to which any other Borrower is or may become a party;

(ii) the absence of any action to enforce this Credit Agreement (including this Section 2.13) or any other Credit Document or the waiver or consent by Administrative Agent and Lenders with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect any Lien or any security for the Obligations or any action, or the absence of any action, by Administrative Agent and Lenders in respect thereof (including the release of any such security);

(iv) the insolvency of any other Borrower;

(v) the institution of any proceeding under the Federal Bankruptcy Code, or any similar proceeding, by or against a Borrower or Administrative Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Federal Bankruptcy Code;

(vi) any borrowing or grant of a security interest by any Borrower as debtor-in-possession, under Section 364 of the Federal Bankruptcy Code;

(vii) the disallowance, under Section 502 of the Federal Bankruptcy Code, of all or any portion of Administrative Agent's claim(s) for repayment of any of the Obligations; or

(viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor other than the payment and performance, in full, of the Obligations.

Each Borrower shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guaranteed hereunder.



(e) Except as otherwise expressly provided herein, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of occurrence of any Default or Event of Default (except to the extent notice is expressly required to be given pursuant to the terms of this Credit Agreement), or of any demand for any payment under this Credit Agreement (except to the extent demand is expressly required to be given pursuant to the terms of this Credit Agreement), notice of any action at any time taken or omitted by the Administrative Agent or any Lender under or in respect of any of the Obligations hereunder, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Credit Agreement. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations hereunder, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Credit Agreement, any and all other indulgences whatsoever by the Lenders in respect of any of the Obligations hereunder, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of such Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or any failure to act on the part of the Lender, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder which might, but for the provisions of this Section 2.13, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 2.13, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the obligations of such Borrower under this Section 2.13 shall not be discharged except by performance and then only to the extent of such performance. The obligations of each Borrower under this Section 2.13 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or any Lender. The joint and several liability of the Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower or any Lender.

(f) Notwithstanding anything to the contrary in this Agreement or in any other Credit Document, and except as set forth in Section 2.13(j), each Borrower hereby expressly and irrevocably subordinates to payment of the Obligations 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 until the Obligations are indefeasibly paid in full in cash. Each Borrower acknowledges and agrees that this subordination 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 Section 2.13, and that Administrative Agent, Lenders and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 2.13.

(g) If Administrative Agent or any Lender may, under applicable Law, proceed to realize its benefits under any of the Credit 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 Section 2.13. 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 Credit 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 Section 2.13, 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 Lenders might otherwise be entitled but for such bidding at any such sale.

(h) The provisions of this Section 2.13 are made for the benefit of the Administrative Agent, the Lenders and their respective successors and assigns, and may be enforced by any such Person from time to time against any of the Borrowers as often as occasion therefor may arise and without requirement on the part of any Lender first to marshal any of its claims or to exercise any of its rights against any of the other Borrowers or to exhaust any remedies available to it against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy. The provisions of this Section 2.13 shall remain in effect until all the Obligations hereunder shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Lenders upon the insolvency, bankruptcy or reorganization of any of the Borrowers, or otherwise, the provisions of this Section 2.13 will forthwith be reinstated and in effect as though such payment had not been made.

(i) Each Borrower's liability under this Section 2.13 shall be limited to an amount not to exceed as of any date of determination the greater of the following:

(i) the amount of the Loan allocated to each Borrower as set forth on Schedule 2.13 hereto (the "***Allocable Amount***"); and

(ii) the amount that could be claimed by Administrative Agent and any Lender from such Borrower under this Section 2.13 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 2.13(j) below.

(j) Contribution with Respect to Guaranty Obligations.

(i) To the extent that any Borrower (the "**Overpaying Borrower**") incurs (i) any payment in excess of its Allocable Amount, or (ii) a loss of its Collateral due to the foreclosure (or other realization by lenders) of, or the delivery of deeds in lieu of foreclosure relating to its Collateral, and the value of such Collateral exceeded its Allocable Share (the "**Overpayment Amount**"), then such Overpaying Borrower shall be entitled, after indefeasible payment in full and the satisfaction of all Obligations to Lenders under the Credit Agreement, to contribution from each of the benefited Borrowers, on a pro rata basis, for the amounts so paid, advanced or benefited, in an amount equal to the difference between the Overpayment Amount and such benefited Borrower's then current Allocable Amount. Any such contribution payments shall be made within ten (10) Business Days after demand therefor.

(ii) This Section 2.13(j) is intended only to define the relative rights of Borrowers and nothing set forth in this Section 2.13(j) 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 2.13(a) above. Nothing contained in this Section 2.13(j) shall limit the liability of any Borrower to pay all or any part of 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.

(iii) 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.

(iv) The rights of the indemnifying Borrowers against other Borrowers under this Section 2.13(j) shall be exercisable only upon the full and indefeasible payment of the Obligations.

(k) The liability of Borrowers under this Section 2.13 is in addition to and shall be cumulative with all liabilities of each Borrower to Agent and Lender under this Agreement and the other Credit 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.

## **2.14 Appointment of Parent as Legal Representative for Credit Parties.**

Each of the Credit Parties hereby appoints the Parent to act as its exclusive legal representative for all purposes under this Credit Agreement and the other Credit Documents (including, without limitation, with respect to all matters related to Borrowings and the repayment of the Loan as described in Article II and Article III hereof) (in such capacity, the

"**Borrower Representative**"). Each of the Credit Parties acknowledges and agrees that (a) the Borrower Representative may execute such documents on behalf of all the Credit Parties (whether as Borrowers or Guarantor) as the Borrower Representative deems appropriate in its reasonable discretion and each Credit Party shall be bound by and obligated by all of the terms of any such document executed by the Borrower Representative on its behalf, (b) any notice or other communication delivered by the Administrative Agent or any Lender hereunder to the Borrower Representative shall be deemed to have been delivered to each of the Credit Parties and (c) the Administrative Agent and each of the Lenders shall accept (and shall be permitted to rely on) any document or agreement executed by the Borrower Representative on behalf of the Credit Parties (or any of them). The Borrowers must act through the Borrower Representative for all purposes under this Credit Agreement and the other Credit Documents. Notwithstanding anything contained herein to the contrary, to the extent any provision in this Credit Agreement requires any Credit Party to interact in any manner with the Administrative Agent or the Lenders, such Credit Party shall do so through the Borrower Representative.

## **2.15 Establishment of Impounds.**

(a) Real Estate Tax Impounds. Borrowers shall deposit with Administrative Agent, monthly on each Payment Date, a sum of money (the "**Tax Impound**") equal to one-twelfth (1/12th) of the annual Real Estate Taxes. At or before the initial Advance of the Loan, Borrowers shall deposit 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 Real Estate Taxes for the current year (after giving effect to any reassessment or, at Administrative Agent's election, on the basis of the Real Estate Taxes for the prior year, with adjustments when the Real Estate Taxes are fixed for the then current year). All funds so deposited shall be held by Administrative Agent or its servicer. So long as no Default or Event of Default exists hereunder, Administrative Agent shall credit for Borrowers' account interest at the interest rate actually available to Administrative Agent's or its servicer on the funds held in such account, as determined by Administrative Agent in its sole discretion. 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 Borrowers. Borrowers hereby grant to Administrative Agent for 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 Real Estate 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 Lenders, 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. Borrowers shall furnish Administrative Agent with bills for the Real Estate Taxes for which such deposits are required at least thirty (30) days prior to the date on which the Real Estate Taxes first become payable. If at any time the amount on deposit with Administrative Agent, together with amounts to be deposited by Borrowers before such Real Estate Taxes are payable, is insufficient to pay such Real Estate Taxes, Borrowers shall deposit any deficiency with Administrative Agent immediately upon demand. Administrative Agent shall pay such Real Estate Taxes when the amount on deposit with Administrative Agent is sufficient to pay such Real Estate Taxes and

Administrative Agent has received a bill for such Real Estate Taxes. The obligation of Borrowers to pay the Real Estate Taxes, as set forth in the Credit Documents, is not affected or modified by the provision of this paragraph; provided, however, that Borrowers shall not be in default under the Loan for failure to pay Real Estate Taxes if and to the extent there are sufficient funds on deposit in the Tax Impound to timely pay such Real Estate Taxes. On the Maturity Date, the monies then remaining on deposit with Administrative Agent under this Section 2.15(a) shall, at Administrative Agent's option, be applied against the Obligations or if no Event of Default exists hereunder, returned to Borrowers.

(b) Replacement Reserve. Borrowers shall deposit with Administrative Agent on each Payment Date the product of Twenty-Five Dollars (\$25.00) multiplied by the number of Senior Housing Units in the Borrowing Base Assets, which shall be held by Administrative Agent or its servicer for replacements and repairs required to be made to the Borrowing Base Assets during the term of the Loan (the "**Replacement Escrow Fund**"). So long as no Default or Event of Default exists hereunder, Administrative Agent shall credit for Borrowers' account interest at the interest rate actually available to Administrative Agent's servicer on the funds held in such account, as determined by Administrative Agent in its sole discretion. Borrowers hereby pledge to Administrative Agent for the benefit of the Lenders, and grant a security interest in, any and all monies now or hereafter deposited in the Replacement Escrow Fund as additional security for the payment of the Loan. Administrative Agent may reasonably reassess its estimate of the amount necessary for the Replacement Escrow Fund from time to time and may adjust the monthly amounts required to be deposited into the Replacement Escrow Fund upon thirty (30) days' notice to Borrowers. Administrative Agent shall make disbursements from the Replacement Escrow Fund as requested by Borrowers, and approved by Administrative Agent in its reasonable discretion, on a quarterly basis in increments of no less than \$5,000.00 upon delivery by Borrowers 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 for any draw request for an invoice exceeding \$15,000.00, 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 Borrowing Base Assets at Borrowers' expense prior to making a quarterly disbursement in order to verify completion of replacements and repairs for which reimbursement is sought. The Replacement Escrow Fund shall be held without interest in Administrative Agent's name and may be commingled with Administrative Agent's general funds at financial institutions selected by Administrative Agent in its reasonable discretion. Upon the occurrence of an Event of Default, Administrative Agent may apply any sums then present in the Replacement Escrow Fund to the payment of the Loan in any order in its reasonable discretion. Until expended or applied as above provided, the Replacement Escrow Fund shall constitute additional security for the Loan. Administrative Agent shall have no obligation to release any of the Replacement Escrow Fund while any Event of Default or Default exists. All costs and expenses incurred by Administrative Agent in the disbursement of any of the Replacement Escrow Fund shall be paid by Borrowers promptly upon demand or, at Administrative Agent's sole discretion, deducted from the Replacement Escrow Fund.

## **2.16 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.06), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower Representative, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Advances in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Advances were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Advances all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Advances owed to that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrowers and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Advances of the other

Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Advances (in the aggregate) to be held on a pro rata basis by the Lenders in accordance with their applicable Commitment Percentages, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

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

**3.01 Taxes.**

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

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

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

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

### **3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund its Extension of Credit using the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligation of such Lender to continue its Extension of Credit or make Advances at the Eurodollar Rate shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall either (a) agree to substitute the Base Rate for the Eurodollar Base Rate on the outstanding Extension of Credit or (b) upon demand from such Lender (with a copy to the Administrative Agent), prepay such Lender's Extension of Credit on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain its Extension of Credit to such day, or immediately, if such Lender may not lawfully continue to maintain its Extension of Credit. Upon any such prepayment or substitution of the Base Rate, the Borrowers shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

### **3.03 Inability to Determine Rates.**

If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate with respect to a proposed Advance under the Loan, or that the Eurodollar Rate for any requested proposed Advance does not adequately and fairly reflect the cost to such Lenders of funding such Advance, the Administrative Agent will promptly so notify the Parent and each Lender. Thereafter, the obligation of the Lenders to make further Advances or maintain the Extensions of Credit using the Eurodollar Rate shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes



such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing at the Eurodollar Rate or may substitute a request for a Borrowing using the Base Rate.

### **3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves.**

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

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Borrowers shall pay to such Lender such additional amounts as will compensate such Lender for such reduction; provided that 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, regardless of the date enacted, adopted or issued.

(c) The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "***Eurocurrency liabilities***"), additional interest on the unpaid principal amount of the Advances made by such Lender under the Loan equal to the actual costs of such reserves allocated to such portion of the Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on the Loan, provided the Borrowers shall have received at least fifteen (15) days' prior written notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Payment Date, such additional interest shall be due and payable fifteen (15) days from receipt of such notice.

(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 (a) above and/or a change in capital adequacy requirements under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

**3.05 Funding Losses.**

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any payment or prepayment of all or any portion of the Loan on a day other than the last day of the Interest Period for the Loan or portion thereof (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make an Advance) to prepay or borrow any Advance on the date or in the amount notified by the Borrowers; or

(c) any assignment of any portion of the Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 10.16;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the Loan or portion thereof or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Advance made by it at the Eurodollar Base Rate used in determining the Eurodollar Rate for such Advance by a matching deposit or other borrowing in the London interbank Eurodollar market for a comparable amount and for a comparable period, whether or not such Advance was in fact so funded.

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

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

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

(c) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Article III shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrowers shall not be required to compensate a

Lender pursuant to the foregoing provisions of this Article III for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrowers of the change in Law or other matter giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore (except that, if the change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

### **3.07 Survival.**

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

## **ARTICLE IV** **CONDITIONS PRECEDENT TO ADVANCES**

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

### **4.01 Conditions to Initial Advance.**

The obligation of the Lenders to make the initial Advance hereunder is subject to the satisfaction of such of the following conditions in all material respects on or prior to the Closing Date to the extent not previously satisfied in connection with the 2011 Credit Agreement, the March 2013 Credit Agreement or the July 2013 Joinder Agreement, or expressly waived in writing by the Administrative Agent and Lenders.

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

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

(iii) a Note executed by the Borrowers in favor of each Lender requesting a Note;

(iii) copies of the Organization Documents of the Parent and each Borrower certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of Parent and Borrowers to be true and correct as of the Closing Date;

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Credit Party as the Administrative Agent may require evidencing the identity, authority and capacity of each

Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Credit Agreement and the other Credit Documents to which such Credit Party is a party; and

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Parent and Borrowers are duly organized or formed, and are validly existing, in good standing and qualified to engage in business in (A) the jurisdiction of their incorporation or organization and (B) each jurisdiction where their ownership, lease or operation of properties or the conduct of their business requires such qualification.

(b) Opinions of Counsel. The Administrative Agent shall have received, in each case dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent:

(i) a legal opinion of counsel for the Credit Parties;

(ii) a legal opinion of special local counsel for the Borrowers for the states in which each Borrowing Base Asset is located with respect to licensing matters and local real estate finance matters and for any other state in which the Parent or any Borrower is organized, in each case addressed to the Administrative Agent, its counsel and the Lenders, but excluding those Borrowing Base Assets for which such legal opinions have been previously delivered to Administrative Agent in connection with the 2011 Credit Agreement.

(c) Personal Property Collateral. The Administrative Agent shall have received (in each case in form and substance reasonably satisfactory to the Administrative Agent):

(i) searches of Uniform Commercial Code filings in the state of organization of each Borrower or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the tangible personal property Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;

(ii) UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iii) duly executed notices of grant of security interest as are necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iv) all instruments and chattel paper in the possession of any of the Borrowers, together with allonges or assignments as may be necessary or appropriate to perfect the Administrative Agent's security interest in the Collateral;

(v) duly executed consents as are necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(vi) in the case of any tangible personal property Collateral located at a premises leased by a Borrower, such estoppel letters, consents and waivers from the landlords on such real property as may be required by the Administrative Agent; and

(vii) a copy of each Material Contract.

(d) Real Property Collateral (Borrowing Base Assets). The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, each of the Borrowing Base Asset Deliverables with respect to each Real Property Asset set forth on Schedule 5.12 attached hereto and shall have approved each such Real Property Asset as a Borrowing Base Asset hereunder.

(e) Property and Liability Insurance. The Administrative Agent shall have received copies of all insurance policies held by (or for the benefit of) the Parent, Borrowers and Operators with respect to the Real Property Assets of the Borrowers, each such policy shall name the Administrative Agent (on behalf of the Lenders) as an additional insured or sole loss payee under a standard mortgagee endorsement, as applicable and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent (i) thirty (30) days prior written notice before any such policy or policies shall be canceled and (ii) fifteen (15) days prior written notice before any such policy or policies shall be altered.

(f) Officer's Certificates. The Administrative Agent shall have received a certificate or certificates executed by a Responsible Officer of the Parent as of the Closing Date, in a form satisfactory to the Administrative Agent, stating that (i) each Borrower is in compliance with all existing financial obligations (whether pursuant to the terms and conditions of this Credit Agreement or otherwise) and Parent is in compliance with all financial obligations except when the failure to so comply would not reasonably be expected to have a Material Adverse Effect, (ii) all governmental, shareholder and third party consents and approvals, if any, with respect to the Credit Documents and the transactions contemplated thereby have been obtained, (iii) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental instrumentality that purports to affect any Consolidated Party or any transaction contemplated by the Credit Documents, if such action, suit, investigation or proceeding could reasonably be expected to have a Material Adverse Effect, (iv) immediately prior to and following the transactions contemplated herein, each of the Credit Parties shall be Solvent, and (v) immediately after the execution of this Credit Agreement and the other Credit Documents, (A) no Default or Event of Default exists and (B) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects.

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

(h) Financial Statements. Receipt by the Administrative Agent and the Lenders of (i) pro forma projections of financial statements (balance sheet, income and cash flows) for each of the fiscal years of the Consolidated Parties through December 31, 2012 and (ii) such other information relating to the Consolidated Parties as the Administrative Agent may reasonably

require in connection with the structuring and syndication of credit facilities of the type described herein.

(i) Opening Compliance Certificate. Receipt by the Administrative Agent of a Compliance Certificate as of the Closing Date signed by a Responsible Officer of the Parent and including (i) calculations for the fourth fiscal quarter of 2012, taking into account any Advances made or requested hereunder as of the Closing Date and (ii) pro forma calculations of all financial covenants contained herein for each of the following four (4) fiscal quarters (based on the projections set forth in the materials delivered pursuant to clause (h) of this Section 4.01).

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

(k) Material Adverse Change. No material adverse change shall have occurred since December 31, 2012 in the condition (financial or otherwise), business, assets, operations, management or prospects of (i) the Parent, (ii) the Parent and its Consolidated Subsidiaries taken as a whole, or (iii) the Borrowers taken as a whole.

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

(m) Fees and Expenses. Payment by the Credit Parties to the Administrative Agent of all fees and expenses relating to the preparation, execution and delivery of this Credit Agreement and the other Credit Documents which are due and payable on the Closing Date, including, without limitation, payment to the Administrative Agent of the fees set forth in the Proposal not previously paid, and reasonable and documented Attorney Costs, consultants' fees, travel expenses and all fees and expenses associated with the due diligence done in connection with and the preparation of documentation with respect to the Borrowing Base Assets or other Collateral.

(n) Other. Receipt by the Lenders or the Administrative Agent of such other documents, instruments, agreements or information as reasonably requested by any Lender or the Administrative Agent, including, but not limited to, additional legal opinions, contribution agreements, corporate resolutions, indemnifications, information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), real estate leases, material contracts, debt agreements, property ownership and contingent liabilities of the Credit Parties.

#### **4.02 Conditions to Advances and Swing Loans.**

The obligation of any Lender to make any Advance under the Revolving Loan after the initial Advance and the Swingline Lender to make any Swing Loan, as applicable hereunder, is subject to the satisfaction of such of the following conditions on or prior to the proposed date of the making of such Advance or Swing Loan, as applicable:

(a) The Administrative Agent shall receive the applicable Loan Borrowing Notice and the conditions set forth in Section 4.01 for the initial Advance shall have been met as of the Closing Date or the Original Closing Date, as applicable;

(b) No Default or Event of Default shall have occurred and be continuing immediately before the making of such Advance and no Default or Event of Default shall exist immediately thereafter;

(c) The representations and warranties of the Borrowers made in or pursuant to the Credit Documents shall be true in all material respects on and as of the date of such Extension of Credit, except for those (i) which expressly relate to an earlier date and (ii) relating to a Real Property Asset or a Borrower or an Operator of a Real Property Asset that is no longer qualified as a Borrowing Base Asset and is not included in the Borrowing Base Amount; and

(d) Immediately following the making of such Advance the sum of the outstanding principal balance of the Obligations shall not exceed the lesser of (i) the Aggregate Committed Amount and (ii) the Borrowing Base Amount.

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

### **ARTICLE V** **REPRESENTATIONS AND WARRANTIES**

The Borrowers hereby represent and warrant (on behalf of themselves, the Parent or the Credit Parties as a whole, as applicable) that:

#### **5.01 Financial Statements; No Material Adverse Effect; No Internal Control Event.**

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

(b) During the period from December 31, 2012, to and including the Closing Date, there has been no sale, transfer or other disposition by any Consolidated Party of any material

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

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

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

(e) Since the date of the Audited Financial Statements, no Internal Control Event has occurred.

## **5.02 Corporate Existence and Power.**

Each of the Credit Parties is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, has all organizational powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted and is duly qualified as a foreign entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

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

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

## **5.04 Binding Effect.**

This Credit Agreement has been, and each other Credit Document, when delivered hereunder, will have been, duly executed and delivered by each Credit Party that is a party thereto. This Credit Agreement constitutes, and each other Credit Document when so delivered will constitute, a legal, valid and binding obligation of such Credit Party, enforceable against each Credit Party that is a party thereto in accordance with its terms except as enforceability may



be limited by applicable Debtor Relief Laws and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**5.05 Litigation.**

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

**5.06 Compliance with ERISA.**

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

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

(c) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability except any such that would not reasonably be expected to have a Material Adverse Effect; (iii) neither the Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) the Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

## **5.07 Environmental Matters.**

(a) Each of the Borrowing Base Assets and all operations with respect to each of the Borrowing Base Assets and the Real Property Assets owned by the Borrowers are in compliance with all applicable Environmental Laws in all material respects and there are no conditions relating to the Borrowing Base Assets, the other Real Property Assets owned by the Borrowers or the Businesses of the Borrowers that are likely to give rise to liability under any applicable Environmental Laws.

(b) None of the Borrowing Base Assets or other Real Property Assets owned by the Borrowers contains, or, to the knowledge of the Responsible Officers of the Parent and the Borrowers, has previously contained, any Hazardous Substances at, on or under such property in amounts or concentrations that constitute a violation of, or could give rise to liability under, applicable Environmental Laws.

(c) Neither the Parent nor any Borrower has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Borrowing Base Assets, any of the other Real Property Assets owned by the Borrowers or the Businesses of the Borrowers, nor does any Responsible Officer of the Parent or any Borrower have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Neither the Parent nor any Borrower has generated, treated, stored or disposed of Hazardous Substances at, on or under any of the Borrowing Base Assets or any of the other Real Property Assets owned by the Borrowers in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law. No Hazardous Substances have been transported or disposed of from the Borrowing Base Assets or the other Real Property Assets owned by the Borrowers, in each case by or on behalf of any Borrower, in violation of, or in a manner that is likely to give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Responsible Officers of the Parent and the Borrowers, threatened, under any Environmental Law to which any Borrower is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Borrowers, the Borrowing Base Assets, the other Real Property Assets owned by the Borrowers or the Businesses of the Borrowers.

## **5.08 Margin Regulations; Investment Company Act.**

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

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

**5.09 Compliance with Laws.**

(a) Each Credit Party is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

(b) Each of the Borrowing Base Assets, and the uses of the Borrowing Base Assets, are in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to the Borrowing Base Assets (including, without limitation, building and zoning laws and Healthcare Laws), except in such instances in which such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

**5.10 Ownership of Property; Liens.**

Each Borrower has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business (including, in any case, each of the Borrowing Base Assets). Each Borrowing Base Asset is subject to no Liens, other than Permitted Liens. No Borrower owns any material intellectual property.

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

As of the Closing Date and as of each date on which such schedule is subsequently updated pursuant to the terms hereof through the delivery of a Compliance Certificate, Schedule 5.11 correctly sets forth the corporate structure of Parent and the entity and ownership structure of the Borrowers and the correct legal name and the jurisdiction of formation of the Parent and each of the Borrowers. Also included on Schedule 5.11 is a listing of the number of shares of each class of Capital Stock outstanding with respect to each Borrower, the Persons holding equity interests in such Borrowers, their percentage equity or voting interest in the Borrowers and the number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. Except as set forth on Schedule 5.11, as of the Closing Date: (i) no Borrower has issued to any third party any securities convertible into any equity interest in such Borrower, or any options, warrants or other rights to acquire any securities convertible into any such equity interest, and (ii) the outstanding Capital Stock of each Borrower is owned by the Persons indicated on Schedule 5.11, is validly issued, fully paid and non-assessable, and is free and clear of all Liens, warrants, options and rights of others of any kind whatsoever. Each Borrower is a Wholly Owned Subsidiary of the Parent. No Borrower holds or otherwise has any interest in any Capital Stock of any other Person.

## **5.12 Real Property Assets; Leases.**

(a) Part I of Schedule 5.12 (as updated pursuant to the terms hereof through the delivery of a Compliance Certificate) is a true and complete list as of the Closing Date of (i) the street address of each Borrowing Base Asset, (ii) the Borrower which owns each such Borrowing Base Asset, (iii) the facility type of each such Borrowing Base Asset, (iv) the number of Senior Housing Units at such Borrowing Base Asset, (v) the Facility Operating Leases to which each such Borrowing Base Asset is subject, and (vi) the name and address of the applicable Operating Tenant. The applicable Borrower has a fee simple title to or holds a ground lease interest pursuant to an Eligible Ground Lease in each Borrowing Base Asset listed on Schedule 5.12 hereto and such schedule correctly sets forth the type of interest (fee or leasehold) held by each Borrower in each Borrowing Base Asset. Each parcel of real property identified on Part I of Schedule 5.12 is a Real Property Asset that qualifies as a Borrowing Base Asset pursuant to the terms hereof and which is subject to a first priority lien (subject to Permitted Liens) in favor of the Administrative Agent (for the benefit of the Lenders) pursuant to a properly-recorded Mortgage Instrument and Assignment of Leases.

(b) Part II of Schedule 5.12 (as updated pursuant to the terms hereof through the delivery of a Compliance Certificate) properly sets forth all Management Agreements in existence as of the date hereof with respect to the Borrowing Base Assets, together with the applicable Property Manager. There are no other Management Agreements affecting the Borrowing Base Assets.

(c) Part III of Schedule 5.12 (as updated pursuant to the terms hereof through the delivery of a Compliance Certificate) properly sets forth the names and addresses of all Operating Tenants with respect to the Real Property Assets who are (i) delinquent in paying any franchise, business, intangible, personal property taxes or real estate taxes due beyond the later of the applicable grace period with respect thereto, if any, and forty five (45) days and/or (ii) the subject of any Bankruptcy Event.

(d) Part IV of Schedule 5.12 (as updated pursuant to the terms hereof through the delivery of a Compliance Certificate) properly identifies all Facility Operating Leases in existence as of the date hereof with respect to the Borrowing Base Assets, together with the applicable Operating Tenant and the remaining term of each such Facility Operating Lease. There are no other Facility Operating Leases affecting the Borrowing Base Assets.

(e) Part V of Schedule 5.12 (as updated pursuant to the terms hereof through the delivery of a Compliance Certificate) properly sets forth all subleases relating to any of the Borrowing Base Assets, the termination of which could result in a Material Adverse Effect on the operation of the Borrowing Base Assets, together with the applicable subtenant with respect thereto, the remaining term of such sublease and whether or not such subtenant is current on payments due thereunder. There are no other subleases the termination of which could result in a Material Adverse Effect on the operation of the Borrowing Base Assets affecting the Borrowing Base Assets.

(f) Each of the facilities located on the Borrowing Base Assets owned by the Borrowers is currently in good repair, working order and condition without any material

structural or engineering defects or conditions. No Condemnation has been instituted and remained undismissed for a period in excess of ninety (90) consecutive days, in each case, with respect to a material portion of any Real Property Asset listed as a Borrowing Base Asset on Part I of Schedule 5.12. No material casualty event has occurred with respect to the improvements located on any Real Property Asset listed as a Borrowing Base Asset on Part I of Schedule 5.12 which has not been (or, if applicable, will not be able to be) fully remediated with available insurance proceeds.

(g) No required rental payment, principal or interest payment, payments of real property taxes or payments of premiums on insurance policies payable to the Borrowers with respect to each Real Property Asset is past due beyond the earlier of the applicable grace period with respect thereto, if any, and sixty (60) days.

### **5.13 Material Contracts; Additional Contractual Obligations.**

(a) Schedule 5.13 (as updated pursuant to the terms hereof through the delivery of a Compliance Certificate) is a true, correct and complete listing of all Material Contracts with respect to the Borrowing Base Assets (other than those set forth on Part V of Schedule 5.12). No event of default, or event or condition which with the giving of notice, the lapse of time, a determination of materiality, the satisfaction of any other condition or any combination of the foregoing, would constitute such an event of default, exists with respect to any such Material Contract. Except as set forth on Schedule 5.13, no Borrower is a party to any contract or agreement that is subject to the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law.

(b) With respect to the Borrowing Base Asset located in Peoria, Arizona (the "*Arizona Facility*"), residents of the independent living facility located adjacent to the Arizona Facility have the right to receive services at the Arizona Facility at discounted rates. The existence of this program does not, and will not during the term of this Credit Agreement, result in a Material Adverse Effect on the operations of the Arizona Facility.

### **5.14 Investments.**

All Investments of each Borrower are Investments permitted pursuant to Section 7.04(b).

### **5.15 Solvency.**

The Credit Parties are Solvent on a consolidated basis.

### **5.16 Taxes.**

The Credit Parties have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other material governmental charges levied or imposed upon them or their properties (including all Real Property Assets), income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been established in accordance with GAAP. To the knowledge of

the Responsible Officers of the Parent and the Borrowers, there is no proposed tax assessment against any Credit Party that would, if made, have a Material Adverse Effect.

**5.17 Reserved.**

**5.18 Insurance.**

All insurance coverage of the Borrowers and all insurance coverage of the Operators with respect to the Borrowing Base Assets, in each case, as in existence as of the Closing Date and as of each date on which such schedule is subsequently updated pursuant to the terms hereof through the delivery of a Compliance Certificate, is in compliance with the requirements set forth on Schedule 5.18.

**5.19 Healthcare; Facility Representations and Warranties.**

(a) Compliance With Healthcare Laws. Without limiting the generality of Section 5.09 hereof or any other representation or warranty made herein, no Borrower and no Operator with respect to a Borrowing Base Asset is in material violation of any applicable statutes, laws, ordinances, rules and regulations of any Governmental Authority governing patient healthcare or the operation of any Healthcare Facility (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 "Stark Statute" (collectively, "**Healthcare Laws**"). Each of the Borrowers (if applicable) and each of the Operators, comply in all material respects with the applicable requirements of the Joint Commission, the Food and Drug Administration, Drug Enforcement Agency and State Boards of Pharmacy and the federal and state Medicare and Medicaid programs as required by the Healthcare Laws and there are no notices of material violations of the Healthcare Laws with respect to the Borrowers, any of the Borrowing Base Assets or the Operators, in their capacity as an operator of a Borrowing Base Asset.

(b) Licenses, Permits, and Certifications.

(i) Each Borrower and/or Operator has such permits, licenses, franchises, certificates and other approvals or authorizations (collectively, the "**Licenses**") of Governmental Authorities as are necessary under applicable law or regulations to own its properties and to conduct its business. Each Borrower and each Operator which owns or operates a Borrowing Base Asset that is a skilled nursing facility has such Licenses as are necessary under applicable law or regulations to provide any Medical Services offered at the Borrowing Base Asset and receive reimbursement under Medicare, Tricare (if applicable) and Medicaid (including without limitation such permits as are required under such federal, state and other health care laws, and under such HMO or similar licensure laws and such insurance laws and regulations, as are applicable thereto).

(ii) Each Borrower and/or each Operator which owns or operates a Borrowing Base Asset that is a skilled nursing facility has all Medicare, Tricare (if applicable), Medicaid and related provider or supplier billing number(s) and related documentation

necessary to submit reimbursement claims to Medicare, Tricare and/or Medicaid for any Medical Service furnished by such Person in any jurisdiction where it conducts business. No such Borrower or Operator is currently subject to suspension, revocation, renewal or denial of its Medicare, Tricare and/or Medicaid certification, supplier billing number(s), or Medicare, Tricare and/or Medicaid participation agreement(s).

(iii) Each of the facilities located on the Borrowing Base Assets is currently accredited by The Joint Commission (the "**Joint Commission**") or certified by any required Governmental Authority and is duly licensed to operate in the manner currently operated, as required under applicable Laws. In addition, each such facility is in compliance in all material respects with the applicable provisions of every Law of any Governmental Authority having jurisdiction over the operation thereof, including, without limitation, Healthcare Laws and fire safety codes.

(c) Covered Entities. Each of the Borrowers listed on Schedule 5.19 is a "covered entity" within the meaning of HIPAA.

(d) No Investigations or Proceedings. Neither the Parent nor any Borrower nor any Operator is the subject of any civil or criminal penalty, process, claim, action or proceeding, investigation or any administrative or other regulatory review, survey, process or proceeding with respect to a Borrowing Base Asset (other than routine surveys or reviews conducted by any government health plan or other accreditation entity) that if determined adversely would reasonably be expected to have a Material Adverse Effect.

## **5.20 Disclosure**

Each Credit Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Credit Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Credit Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

## **5.21 Collateral Documents**

The Collateral Documents create valid security interests in, and Liens on, the Collateral purported to be covered thereby, which security interests and Liens are currently perfected security interests and Liens, prior to all other Liens other than Permitted Liens which by operation of law or contract would have priority over the Liens securing the Obligations.

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

The Borrowers hereby covenant and agree (on their own behalf and on behalf of the Parent, as applicable) that until the Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Commitments hereunder shall have terminated:

**6.01 Financial Statements.**

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

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

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



## **6.02 Certificates; Other Information.**

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

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Parent;

(b) within thirty (30) days after the end of each fiscal quarter, a Borrowing Base Certificate calculated as of the end of the immediately prior fiscal quarter, duly completed and executed by a Responsible Officer of the Parent; provided, however, the Borrower Representative may, at its option, provide an updated Borrowing Base Certificate more frequently than quarterly;

(c) within thirty (30) days after the end of each calendar month for each Borrowing Base Asset, (A) a detailed operating statement (showing monthly activity and year-to-date) stating operating revenues, operating expenses and operating income for the calendar month just ended and year-to-date and (B) a current revenue journal which includes a schedule showing pay or mix in respect of Third Party Payor Programs and the calculation of the Occupancy Rate;

(d) within thirty (30) days after the end of each calendar quarter, internally prepared quarterly income statements prepared for the Borrowers with respect to the Borrowing Base Assets on a consolidated basis which fairly present the financial condition for the Borrowers with respect to the Borrowing Base Assets on a consolidated basis for such period and year-to-date;

(e) within thirty (30) days after the end of each fiscal year of the Parent, beginning with the fiscal year ending December 31, 2012, an annual operating forecast of the Parent containing, among other things, pro forma financial statements for the then current fiscal year and updated versions of the pro forma financial projections delivered in connection with Section 4.01(h) hereof;

(f) promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors by the independent accountants of the Parent (or the audit committee of the board of directors of the Parent) in respect of the Parent (and, to the extent any such reports, letters or recommendations are prepared separately for any one or more of the Borrowers, such Borrower(s)) by independent accountants in connection with the accounts or books of the Parent (or such Borrower(s)) or any audit of the Parent (or such Borrower(s));

(g) promptly after the same are available, (i) copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Parent, and copies of all annual, regular, periodic and special reports and registration statements which the Parent may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or to a holder of any Indebtedness owed by the Parent in its capacity as such holder and not otherwise required to be delivered to the Administrative Agent pursuant hereto and (ii) upon the request of the Administrative Agent, all reports and written information

to and from the United States Environmental Protection Agency, or any state or local agency responsible for environmental matters, the United States Occupational Health and Safety Administration, or any state or local agency responsible for health and safety matters, or any successor agencies or authorities concerning environmental, health or safety matters;

(h) promptly upon receipt thereof, a copy of any other report or "management letter" submitted by independent accountants to the Parent or any Borrower in connection with any annual, interim or special audit of the books of the Parent (or any such Borrower(s));

(i) promptly upon any Responsible Officer of the Parent or the Borrowers becoming aware thereof, notice of (i) the existence of any contemplated offering, placement or arrangement which has resulted or could reasonably be expected to result in an Event of Default under the terms of Section 8.01(k), (ii) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, (iii) the occurrence of any Internal Control Event and (iv) any other Default or Event of Default;

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

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

(l) promptly after receipt, copies of all financial statements and other reports and information required to be delivered by (i) the Operating Tenants under the Facility Operating Leases and (ii) the Property Managers under the Management Agreements.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(b), (c), (d), or (e) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Parent or the Borrowers post such documents, or provides a link thereto on the Parent's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted by the Administrative Agent (on the Borrowers' behalf) on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (A) the Borrowers shall deliver paper copies of such documents to the Administrative Agent or any Lender (through the Administrative Agent) that requests the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender (through the Administrative Agent) and (B) the Borrowers shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender (through the Administrative Agent) of the posting of any such documents (each Lender to which delivery of such documents shall be made by posting to any such website shall have been given access to such website on or prior to the date of such posting) and provide to the Administrative Agent by

electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Parent shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent and each of the Lenders (through the Administrative Agent). Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Parent or the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

**6.03 Preservation of Existence and Franchises.**

Each Credit Party will do all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority. Each Credit Party shall remain qualified and in good standing in each jurisdiction in which it is required to so qualify.

**6.04 Books and Records.**

Each Credit Party will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP.

**6.05 Compliance with Law.**

Each Borrower will comply with, and cause the Operators to comply in all material respects with, all Laws, rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities (including, without limitation, building and zoning laws and all Healthcare Laws), applicable to each Borrowing Base Asset. Each Borrower will comply in all material respects with all terms and conditions of all Material Contracts to which it is a party.

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

Each Credit Party will pay and discharge (or cause to be paid or discharged) (a) all taxes (including, without limitation, any corporate or franchise taxes), assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties (including, without limitation, each Borrowing Base Asset), before they shall become delinquent, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon any of its properties, and (c) except as prohibited hereunder, all of its other Indebtedness as it shall become due; provided, however, that (i) no Borrower shall be required to pay any such tax, assessment, charge, levy, claim or Indebtedness which is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP, unless the failure to make any such payment (1) could give rise to an immediate right to foreclose on a Lien securing such amounts in respect of any Borrowing Base Assets or (2) could be reasonably expected to have a Material Adverse Effect and (ii) Parent shall not be required to pay such tax, assessment, charge, levy, claim or Indebtedness unless failure to do so could be reasonably expected to have a Material Adverse Effect.

## **6.07 Insurance.**

In addition to the requirements of any of the other Credit Documents, the Parent and the Borrowers shall maintain, or with respect to any Borrowing Base Asset leased by a Borrower to an Eligible Tenant, cause the applicable Eligible Tenant, to maintain, insurance policies and coverages described on Schedule 5.18 attached hereto, subject to changes in policies and coverages based on the availability of insurance for Persons engaged in ownership and operation of similar types of properties in the applicable location, in each case as approved by the Administrative Agent in its reasonable discretion. The Borrowers will deliver to the Administrative Agent (a) within ten (10) days of receipt of notice from any insurer a copy of any notice of cancellation or material change in coverage from that existing on the date hereof or with respect to the Borrowing Base Assets and (b) promptly upon receipt, notice of any cancellation or nonrenewal of coverage by the Parent or any Borrower thereof. The Administrative Agent shall be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any insurance procured with respect to the Borrowing Base Assets and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent (i) thirty (30) days prior written notice before any such policy or policies shall be canceled and (ii) fifteen (15) days prior written notice before any policy or policies shall be altered.

## **6.08 Maintenance of Property.**

In addition to the requirements of any of the other Credit Documents, the Borrowers shall (a) protect and preserve, or cause to be protected and preserved all Borrowing Base Assets and maintain, or cause to be maintained, in good repair, working order and condition all Borrowing Base Assets, ordinary wear and tear excepted, and (b) from time to time make, or cause to be made, all needed and appropriate repairs, renewals, replacements and additions to such Borrowing Base Assets, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

## **6.09 Performance of Obligations.**

The Credit Parties will pay and discharge at or before maturity, or prior to expiration of applicable notice, grace and curative periods, all their respective material obligations and liabilities, except where the same may be contested in good faith by appropriate proceedings, and will maintain, in accordance with GAAP, appropriate reserves for the accrual of any of the same.

## **6.10 Visits and Inspections.**

The Borrowers (subject to applicable Facility Operating Leases and privacy rights of residents), shall permit representatives or agents of any Lender or the Administrative Agent, from time to time, and, if no Event of Default shall have occurred and be continuing, after reasonable prior notice, but not more than twice annually and only during normal business hours to: (a) visit and inspect all Borrowing Base Assets to the extent any such right to visit or inspect is within the control of such Person; (b) inspect and make extracts from their respective books and records, including but not limited to management letters prepared by independent

accountants but excluding any private records of residents; and (c) discuss with its principal officers, and its independent accountants, its business, properties, condition (financial or otherwise), results of operations and performance. If requested by the Administrative Agent, the Parent or the Borrowers, as applicable, shall execute an authorization letter addressed to its accountants authorizing the Administrative Agent or any Lender to discuss the financial affairs of the Parent or any Borrower with its accountants.

### **6.11 Use of Proceeds/Purpose of Loan.**

The Borrowers shall use the proceeds of the Loan only for the following purposes: (i) to refinance existing Indebtedness of the Borrowers and (ii) to finance general corporate working capital (including asset acquisitions and capital expenditures) or other corporate purposes of the Borrowers and the other Credit Parties (to the extent not inconsistent with the Credit Parties' covenants and obligations under this Credit Agreement and the other Credit Documents). The proceeds of Loan will only be used for commercial purposes and no portion of the proceeds will be used for consumer purposes.

### **6.12 Financial Covenants.**

(a) Consolidated Fixed Charge Coverage Ratio. The Borrowers shall cause the Consolidated Fixed Charge Coverage Ratio for any period of four consecutive calendar quarters ending on the last day of any calendar quarter, to be equal to or greater than 1.20 to 1.00.

(b) Consolidated Tangible Net Worth. The Borrowers shall cause the Consolidated Tangible Net Worth as of the end of any calendar quarter to be equal to or greater than \$800,000,000.

### **6.13 Environmental Matters.**

(a) The Borrowers shall comply, and cause the Operators to comply, with all Environmental Laws in respect of the Borrowing Base Assets. The Borrowers shall promptly take, or cause the Operators to take, all actions necessary to prevent the imposition of any Liens on any of the Borrowing Base Assets arising out of or related to any Environmental Laws.

(b) In respect of any Borrowing Base Asset, if any of the Parent or any Borrower shall (a) receive notice that any violation of any Environmental Law may have been committed or is about to be committed by such Person, (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Parent or any Borrower alleging violations of any Environmental Law or requiring any such Person to take any action in connection with the release of any Hazardous Substance or (c) receive any notice from a Governmental Authority or private party alleging that any such Person may be liable or responsible for costs associated with a response to or cleanup of a release of a Hazardous Substance or any damages caused thereby, the Parent or the applicable Borrower shall provide the Administrative Agent with a copy of such notice within ten (10) Business Days after the receipt thereof by the Parent or any Borrower. To the extent requested by the Administrative Agent, any Borrower owning any Borrowing Base Asset or any Real Property Asset which is proposed for qualification as such shall execute and deliver to the Administrative Agent an

environmental indemnity agreement with respect to thereto in form and substance acceptable to the Administrative Agent.

**6.14 Single Purpose Entity/Separateness.**

Each Borrower represents, warrants and covenants as follows:

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

(i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Borrowing Base Asset owned or leased by it (or an undivided interest therein) and to contract for the operation, maintenance, management and development of such Borrowing Base Asset;

(ii) to enter into and perform its obligations under the Credit Documents;

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

(iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies, limited partnerships or corporations organized under the laws of the state in which the applicable Borrower was formed that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

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

(i) other than with respect to the Indebtedness permitted under Section 7.02(d) and the pledge of its assets to secure the Indebtedness of the other Borrowers hereunder, 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;

(iii) incur, create or assume any Indebtedness 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 Borrowing Base Assets and which shall (1) not be evidenced by a note, and (2) be paid within sixty (60) days, and (C) Indebtedness described in Section 7.02.

(iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, other than (A) those investments permitted

under the Credit Documents and (B) the amounts reflected as "due from Parent" on accounting records in connection with the operation of the Parent Cash Management System;

(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 each Borrower's business, except as permitted under Section 7.03.

(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 Borrowing Base Assets (or an undivided interest therein) and incidental personal property necessary for the ownership or operation of the Borrowing Base Assets; or

(ix) take any Material Action without the unanimous written approval of all members or partners of each 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, each Borrower covenants that it will observe the following covenants:

(i) maintain books and records 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;

(vi) other than with respect to the consolidated tax returns of its Affiliates, prepare and file its own tax returns separate from those of any Person to the extent required by applicable law, and pay any taxes required to be paid by applicable law;

(vii) allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates;

(viii) not enter into any transaction with Affiliates except as permitted under Section 7.06 and under the Parent Cash Management System and 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;

(x) not commingle its assets or funds with those of any other Person, other than as (A) permitted or required by this Agreement and (B) contemplated by the Parent Cash Management System;

(xi) not assume, guarantee or pay the debts or obligations of any other Person, other than with respect to the pledge of its assets to secure the indebtedness of the other Borrowers hereunder and as described in Section 7.02(d).

(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, indemnities and pledge of assets set forth in the Credit Documents and in the Hazardous Materials Indemnity Agreement) and as permitted under Section 7.06;

(xiv) not make loans or advances to any other Person except as contemplated by the Parent Cash Management System;

(xv) pay its liabilities and expenses out of and to the extent of its own funds or from advances permitted under Section 7.06;

(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 or from advances permitted under Section 7.06;

(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 any Borrower; and

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

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

## **6.15 New Borrowers.**

Upon the acquisition, incorporation or other creation of any direct or indirect Subsidiary of the Parent which owns or is to own a Borrowing Base Asset or the determination that any Real Property Asset owned by a Subsidiary is to become a Borrowing Base Asset, the Borrowers shall (i) cause such Subsidiary to become a Borrower hereunder through the execution and delivery to



the Administrative Agent of a Borrower Joinder Agreement on or before the earlier of (A) the date on which a Real Property Asset owned by such Subsidiary is included in any calculation (pro forma or otherwise) of the Borrowing Base Amount and (B) the deadline for the delivery of the next Compliance Certificate pursuant to Section 6.02(a), and (ii) cause such Subsidiary to deliver such other documentation as the Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, certified resolutions and other organizational and authorizing documents of such Subsidiary, favorable opinions of counsel to such Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to the Administrative Agent.

#### **6.16 Pledged Assets.**

The Borrowers shall at all times subject all Borrowing Base Assets and all of their respective personal property to first priority Liens (subject in any case to Permitted Liens which by operation of law or contract would have priority over the Liens securing the Obligations) in favor of the Administrative Agent to secure the Obligations pursuant to the terms and conditions of the Credit Documents and such other additional security documents as the Administrative Agent shall reasonably request, and deliver all Borrowing Base Asset Deliverables (and any updates to any of the information or materials delivered as a portion thereof) and such other documentation as the Administrative Agent may reasonably request in connection with the foregoing, all in form, content and scope reasonably satisfactory to the Administrative Agent. In furtherance of the Borrowers' obligations under this Section 6.16, the Borrowers hereby agree that they shall, from time to time, at their own expense, promptly execute, deliver, file and/or record all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Administrative Agent may reasonably request (including, without limitation, the procurement of landlord consents with respect to the assignment of the applicable Borrower's interests in any Borrowing Base Assets), in order to (a) properly evidence the Borrowers' Obligations hereunder or under any Credit Document or (b) perfect, continue and protect the Liens and security interests granted or purported to be granted by any Collateral Documents and to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder and under any other Credit Document with respect to any Collateral. The applicable Borrower(s) shall promptly deliver to the Administrative Agent a copy of each such instrument and evidence of its proper filing or recording, as necessary or desirable.

#### **6.17 Appraisals.**

(a) The Borrowers agree that the Administrative Agent shall have the right, once prior to the Maturity Date (but to the extent no Default or Event of Default has occurred and is continuing, not during the six (6) month period immediately prior to the Maturity Date), to request new or updated appraisals with respect to the Borrowing Base Assets, that the Administrative Agent shall engage all appraisers with respect to such appraisals and that the Borrowers shall pay or reimburse to the Administrative Agent one-half of all reasonable and documented costs and expenses associated therewith to the extent required by and subject to the provisions of Section 10.04 hereof. Administrative Agent shall have the right to adjust the Collateral Values of the Projects based on the then current as-is fair market value of the Projects stated in such updated appraisals.

(b) From time to time, any Lender may request Borrowers to furnish to Administrative Agent appraisal reports or updates to appraisals (as directed by Administrative Agent) in form and substance and from appraisers reasonably satisfactory to Administrative Agent stating the then current fair market value of each Project within thirty (30) days following the request therefor from Administrative Agent; provided, however, that Borrowers shall not be required to pay for any such appraisal more frequently than once during the term of the Loan, unless a Potential Default or Event of Default exists.

(c) From time to time, Borrowers shall have the right to provide to Administrative Agent appraisal reports or updates to appraisals in form and substance and from appraisers reasonably satisfactory to Administrative Agent stating the then current as-is fair market value of one or more of the Projects for the purposes of establishing an updated Collateral Value for such Project, provided that such right may be exercised only one time with respect to any Project during the term of the Loan. Borrowers shall bear the full cost of any such appraisal or updated appraisal.

#### **6.18 Anti-Terrorism Laws.**

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

#### **6.19 Compliance With Material Contracts.**

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

#### **6.20 Health Care Covenants.**

Without limiting the generality of the provisions of Section 6.05, each Borrower hereby represents, covenants and agrees as follows:

(a) If and to the extent required under applicable Laws, each Borrower shall, and shall cause each Operator to, maintain in full force and effect a valid certificate of need ("**CON**") or similar certificate, license, or approval issued by the State Regulator for the requisite number of Senior Housing Units (other than the independent living units) in the Borrowing Base Assets, and a provider agreement or other required documentation of approved provider status for each provider payment or reimbursement program, if applicable. Each Borrower shall, and shall cause each Operator to, operate the Borrowing Base Assets in a manner such that the Licenses shall remain in full force and effect. True and complete copies of the Licenses have been delivered to Lender.

(b) The Licenses:

(i) Are not now and will not be (A) transferred to any location other than the applicable Borrowing Base Asset or (B) pledged as collateral security for any loan or indebtedness, other than the Loan; and

(ii) Shall continue in full force and effect throughout the term of the Credit Facility and will remain free from restrictions or known conflicts, and shall not be provisional, probationary or restricted in any manner which would materially impair the use or operation of the applicable Borrowing Base Asset as a skilled nursing facility, assisted living facility, memory care facility, or senior independent living facility, as applicable.

(c) The Borrowers shall not do, and shall not permit any Operator to do (or suffer to be done), any of the following with respect to the Borrowing Base Assets:

(i) Rescind, withdraw, revoke, or amend the number of Senior Housing Units permitted under the Licenses or otherwise amend the 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 Licenses or which could in any way be reasonably expected to materially impair the use or operation of the applicable Borrowing Base Asset as a skilled nursing facility, assisted living facility, memory care facility, or senior independent living facility, as applicable;

(ii) Replace or transfer all or any part of any Borrowing Base Asset's licensed beds or CON to another site or location other than another Borrowing Base Asset;

## **6.21 Public Company Status.**

The Parent shall, at all times during the term hereof, maintain its status as a publicly traded company whose shares are or are intended to be listed on the New York Stock Exchange or such other nationally recognized stock exchange.

## **6.22 Use and Application of Insurance Proceeds.**

(a) Notice; Repair Obligation. If any Borrowing Base Asset shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), the Borrowers shall give prompt notice thereof to the Administrative Agent. Following the occurrence of a Casualty, the

Borrowers, 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. The Administrative Agent shall apply insurance proceeds to costs of restoring the applicable Borrowing Base Asset or to the payment of the Loan as follows:

(i) if the loss is less than or equal to the Restoration Threshold, the Administrative Agent shall apply the insurance proceeds to restoration provided (A) no Event of Default exists, and (B) the applicable Borrower who owns the affected Borrowing Base Asset promptly commences and is diligently pursuing restoration of the applicable Borrowing Base Asset;

(ii) if the loss exceeds the Restoration Threshold, the Administrative Agent shall apply the insurance proceeds to restoration provided that (A) at all times during such restoration no Event of Default exists; (B) the Administrative Agent determines throughout the restoration that there are sufficient funds available to restore and repair the affected Borrowing Base Asset to a condition approved by the Administrative Agent; (C) the Administrative Agent determines that the revenues from the affected Borrowing Base Asset and the other Borrowing Base Assets during restoration, taking into account rent loss or business interruption insurance, will be sufficient to pay debt service on the Loan; (D) the Administrative Agent determines that the ratio of the outstanding principal balance of the Loan to appraised value of the affected Borrowing Base Asset and other Borrowing Base Assets after restoration will not exceed the loan-to-value ratio that existed on the Closing Date; (E) the Administrative Agent determines that restoration and repair of the affected Borrowing Base Asset to a condition approved by the Administrative Agent will be completed within nine (9) months after the date of loss or casualty and in any event at least ninety (90) days prior to the Maturity Date; (F) the applicable Borrower promptly commences and is diligently pursuing restoration of the Borrowing Base Asset; and (G) the affected Borrowing Base Asset after the restoration will be in compliance with and permitted under all applicable Laws, including 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, in the Administrative Agent's reasonable discretion, the Administrative Agent may apply any insurance proceeds it may receive to Obligations owing under the Credit Documents in such order and manner as the Administrative Agent in its sole discretion determines, or allow all or a portion of such proceeds to be used for the restoration of the affected Borrowing Base Asset.

(c) Disbursement of Insurance Proceeds. Insurance proceeds applied to restoration will be disbursed by the Administrative Agent on receipt of reasonably satisfactory plans and specifications, contracts and subcontracts, schedules, budgets, lien waivers and architects' certificates, 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).

### **6.23 Condemnation Awards.**

The Borrowers shall promptly give the Administrative Agent written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting any Borrowing Base Asset (a "**Condemnation**") and shall deliver to the Administrative Agent copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, the Borrower that owns the affected Borrowing Base Asset, 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 Law.

The Administrative Agent may participate in any such proceeding and the Borrowers will deliver to the Administrative Agent all instruments necessary or required by the Administrative Agent to permit such participation. Without the Administrative Agent's prior consent, the Borrowers (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 any Borrowing Base Asset or any part thereof are hereby assigned to and shall be paid to the Administrative Agent. The Administrative Agent is hereby irrevocably appointed as each 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 the Administrative Agent's sole discretion 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 affected Borrowing Base Asset; provided, however, if the Award is less than or equal to \$100,000 and the Borrowers request that such proceeds be used for non-structural site improvements (such as landscape, driveway, walkway and parking area repairs) required to be made as a result of such Condemnation, the Administrative Agent will apply the Award to such restoration in accordance with disbursement procedures applicable to insurance proceeds provided there exists no Default or Event of Default. The Borrowers, upon request by the Administrative Agent, shall execute all instruments requested to confirm the assignment of the Award to the Administrative Agent, free and clear of all liens, charges or encumbrances. Anything herein to the contrary notwithstanding, if a Default or an Event of Default exists, the Administrative Agent is authorized to adjust such Award without the consent of the Borrowers and to collect such Award in the name of the Administrative Agent and the Borrowers.

### **6.24 Cash Management System.**

(a) Borrowers covenant and agree that all revenue from the operations of the Borrowing Base Assets will be deposited on a daily basis into either the Portfolio General Receivables Account or one of the Third Party Payor Receivables Accounts, all of which accounts will be subject to a Blocked Account Agreement. Funds in the Third Party Payor Receivables Accounts will be swept on a daily basis into the Portfolio General Receivables Account, and all funds in the Portfolio General Receivables Account will then be swept on a daily basis into the Parent Sweep Account. All expenses of each Borrowing Base Asset will be paid directly from Parent Sweep Account or other Parent accounts. All cash swept to the Parent

Sweep Account from a Borrowing Base Asset and remaining after payment of expenses of such Borrowing Base Asset shall be reflected in the accounting records of Parent and its Subsidiaries with respect to such Borrowing Base Asset as "due from Parent", and all amounts by which expenses paid with respect to a Borrowing Base Asset exceed cash swept to the Parent Sweep Account from such Borrowing Base Asset shall be reflected in the accounting records of Parent and its Subsidiaries with respect to such Borrowing Base Asset as "due to Parent." Borrowers will not modify the cash management system described in this Section 6.24 ("**Parent Cash Management System**") without the prior written consent of Administrative Agent.

(b) During the existence of an Event of Default, all amounts in the Portfolio General Receivables Account will be under the sole control and domain of Administrative Agent and the Deposit Account Bank shall disburse all such funds to Administrative Agent. Administrative Agent shall disburse such funds to Borrowers on a daily basis up to the budgeted amount of operating expenses of the Projects contained in an operating budget approved by Administrative Agent, or for such other or additional operating expenses as may be approved by Administrative Agent. Administrative Agent shall apply the balance remaining in the Portfolio General Receivables Account as of the end of each month to the Obligations, in such order as Administrative Agent, in its sole discretion, may elect.

**6.25** Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under the Guaranty in respect of Swap Obligations under any Secured Rate Contract (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 6.25 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.25, or otherwise under the Guaranty and Security Agreement, voidable under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 6.25 shall remain in full force and effect until the guarantees in respect of Swap Obligations under each Secured Rate Contract have been discharged, or otherwise released or terminated in accordance with the terms of this Agreement. Each Qualified ECP Guarantor intends that this Section 6.25 constitute, and this Section 6.25 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

## **ARTICLE VII**

### **NEGATIVE COVENANTS**

The Borrowers hereby covenant and agree (on their own behalf and on behalf of the Parent, as applicable) that until the Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Commitments hereunder shall have terminated:

#### **7.01** Liens.

No Borrower shall, at any time, create, incur, assume or suffer to exist any Lien upon any of its assets or revenues, whether now owned or hereafter acquired, other than Permitted Liens.

The Parent shall not create, or permit the creation of, any Lien upon the Capital Stock of any Borrower.

**7.02 Indebtedness.**

No Borrower shall create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Credit Documents;
- (b) Indebtedness of the Borrowers set forth in Schedule 7.02 (and renewals, refinancings and extensions thereof in amounts no greater, and on terms and conditions no less favorable to such Person than such existing Indebtedness);
- (c) unsecured intercompany Indebtedness of any Borrower to any Credit Party; provided, that such Indebtedness shall be expressly subordinate in all respects to the Obligations on terms reasonably acceptable to the Administrative Agent; and
- (d) Indebtedness of the Borrowers under equipment leasing or financing arrangements for use at the Borrowing Base Assets, provided such Indebtedness shall not exceed (i) \$100,000 for any Borrowing Base Asset with fewer than 150 units and (ii) \$200,000 for any Borrowing Base Asset with 150 or more units.

**7.03 Fundamental Changes.**

No Borrower shall merge, dissolve, liquidate, consolidate with or into another Person, provided, that, notwithstanding the foregoing provisions of this Section 7.03, any Consolidated Party which is not a Borrower may be merged or consolidated with or into any Borrower provided that such Borrower shall be the continuing or surviving entity and such Borrower must continue to satisfy the requirements of Section 6.14.

**7.04 Dispositions; Acquisitions.**

(a) The Borrowers shall not make any sale, lease, transfer or other Disposition of (i) any Borrowing Base Asset, except to the extent permitted pursuant to Section 7.12 hereof; or (ii) any material assets of the Borrowers unless (A) such sale, lease, transfer or other Disposition is performed in the ordinary course of the Borrowers' Businesses or (B) the consideration paid in connection with such material assets (1) is in cash or Cash Equivalents, (2) is in an amount not less than the fair market value of the Property disposed of and (3) does not exceed, in the aggregate during any calendar year (for the all Borrowers and all such sales, leases, transfers or other Dispositions) \$1,000,000. The Parent shall not, in any case, transfer, sell, lease, pledge or otherwise Dispose of the Capital Stock of the Borrowers held by it without the prior written consent of the Administrative Agent (which consent may be granted or withheld in the sole discretion of the Administrative Agent).

(b) The Borrowers shall not, without the prior written consent of the Administrative Agent (which consent may be granted or withheld in the sole discretion of the Administrative Agent), make any Investments or otherwise acquire any material real or personal property other than: (i) acquisitions of personal property in the ordinary course of business to the extent

required to continue to operate the Borrowers' Businesses in the manner in which they are currently being operated, (ii) investments in cash or Cash Equivalents, (iii) investments in Borrowing Base Assets and (iv) the amounts reflected as "due from Parent" on accounting records in connection with the operation of the Parent Cash Management System.

#### **7.05 Business Activities.**

No Borrower shall engage in any business activities other than owning, holding, leasing, operating, developing, managing, improving and providing secured financing for real and personal property and similar interests in leasehold properties which are owned by or net leased to healthcare operators for use as Healthcare Facilities and activities incidental thereto.

#### **7.06 Transactions with Affiliates and Insiders.**

No Borrower shall, at any time, enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Borrower other than (a) advances by such Person of working capital to any such Borrower, (b) transfer of assets to any Borrower, provided such transfer is made without obligation on the receiving Borrower to return the assets transferred, (c) intercompany transactions expressly permitted by Section 7.02, Section 7.03 or Section 7.04 and under the Parent Cash Management System, (d) normal compensation and reimbursement of expenses of officers and directors and (e) except as otherwise specifically limited in this Credit Agreement, other transactions which are entered into in the ordinary course of such Borrower's business on terms and conditions substantially as favorable to such Borrower as would be obtainable by it in a comparable arms -length transaction with a Person other than an officer, director or Affiliate.

#### **7.07 Organization Documents; Fiscal Year.**

No Credit Party shall (a) amend, modify or change its organization documents in a manner adverse to the Lenders or (b) change its fiscal year.

#### **7.08 Modifications to Other Documents.**

The Borrowers shall not, without the prior written consent of the Required Lenders enter into any material amendment or modification or cancel or terminate any Material Contract (subject to the provisions of this Section 7.08 with respect to Facility Operating Leases) prior to its stated maturity. Notwithstanding the foregoing, with respect to any Facility Operating Lease, the Borrowers may amend or modify or permit the amendment or modification of any Facility Operating Lease without the Required Lenders' prior written consent, except to the extent such amendment or modification: (a) decreases the rent or any other monetary obligations under any Facility Operating Lease (except as set forth in the proviso to this sentence); (b) shortens the term of any Facility Operating Lease; (c) releases or limits the liability of any guarantor under any Facility Operating Lease; (d) releases any security deposits or letters of credit or any other security or collateral under any Facility Operating Lease or under any guaranty of or pledge or security agreement in respect of any Facility Operating Lease; (e) consents to the assignment, delegation or other transfer of rights and obligations under any Facility Operating Lease; (f) changes the terms of any purchase option under any Facility Operating Lease, including the purchase price or the time during which such option may be exercised; or (g) makes any other



material change to the terms and conditions of any Facility Operating Lease or increases in any material respect the obligations or liabilities of the applicable Borrower thereunder; provided, however, that to the extent such amendment, modification or restructuring of a Facility Operating Lease involves the replacement of an Operating Tenant, (A) the Borrowers shall have delivered to the Lenders and the Administrative Agent (1) the identity of such proposed new tenant (the "*New Tenant*"), (2) the proposed lease with such New Tenant (the "*New Lease*") and (3) such other information as reasonably requested and (B) provided that (1) such New Tenant is an Eligible Tenant, (2) the New Lease provides for rent payments in each year which are at least eighty percent (80%) of the rent payments in each year due under the lease being amended, modified or replaced (the "*Existing Facility Operating Lease*") and (3) the New Lease is otherwise substantially similar in all material respects to the Existing Facility Operating Lease, then within twenty (20) Business Days after receiving the foregoing information from the Borrowers, with a request that the Required Lenders approve the New Tenant and New Lease and which prominently states on the face of the request that it will be deemed approved if not approved or disapproved within twenty (20) Business Days after receipt by Administrative Agent, if the Required Lenders have not either approved or disapproved such proposal, the Required Lenders shall be deemed to have approved such proposal.

#### **7.09 Ownership of Subsidiaries.**

Notwithstanding any other provisions of this Credit Agreement to the contrary, (a) no Borrower shall own any Capital Stock of any other entity; (b) no Person other than the Parent or its Wholly Owned Subsidiaries shall own any Capital Stock of any Borrower; and (c) no Borrower shall permit the creation, incurrence, assumption or existence of any Lien on any Capital Stock of any Borrower.

#### **7.10 No Further Negative Pledges.**

No Borrower will enter into, assume or become subject to any Negative Pledges or agreement prohibiting or otherwise restricting the existence of any Lien upon any of its property in favor of the Administrative Agent (for the benefit of the Lenders) for the purpose of securing the Obligations, whether now owned or hereafter acquired, or requiring the grant of any security for any obligation if such property is given as security for the Obligations, except (a) in connection with any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, and (b) pursuant to customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 7.04, pending the consummation of such sale.

#### **7.11 Limitation on Restricted Actions.**

The Borrowers will not directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Person to (a) pay dividends or make any other distributions to the Parent on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (b) pay any Indebtedness or other obligation owed to any Credit Party, (c) make loans or advances to any Credit Party, (d) sell, lease or transfer any of its properties or assets to any Credit Party, or (e) act as a Borrower and

pledge its assets pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (a) -(d) above) for such encumbrances or restrictions existing under or by reason of (i) this Credit Agreement and the other Credit Documents, (ii) applicable Law, or (iii) any Lien or any documentation or instrument governing any Lien permitted under Section 7.01 provided that any such restriction contained therein relates only to the asset or assets subject to such Lien.

### **7.12 Addition/Replacement of Borrowing Base Assets.**

(a) The Borrowers shall not request a release of any Borrowing Base Assets from the Liens established pursuant to the applicable Mortgage Instrument and Assignment of Leases with respect thereto or add any Real Property Assets as Borrowing Base Assets hereunder except in accordance with the following:

(i) The Borrowers may at any time include additional Real Property Assets (which satisfy the requirements set forth in the definition of Borrowing Base Assets, including, without limitation, delivery of each of the Borrowing Base Asset Deliverables with respect thereto) as Borrowing Base Assets with the written approval of the Administrative Agent.

(ii) The Borrowers may obtain releases of Borrowing Base Assets from the Liens and security interests of the Administrative Agent hereunder and under the Collateral Documents relating thereto and the termination of the Borrowers who own such Borrowing Base Assets as Borrowers under this Credit Agreement through satisfaction of each of the following conditions: (A) the applicable Borrower shall deliver to the Administrative Agent, not less than thirty (30) days prior to the date of such requested release a written request for release of the applicable Borrower and Borrowing Base Asset, (B) the applicable Borrower shall deliver, together with such request for release, a pro forma Compliance Certificate showing that, on a pro forma basis, after giving effect to such release, (1) all financial covenants contained herein shall be satisfied and (2) the outstanding principal amount of Obligations shall not exceed the lesser of the Aggregate Committed Amount and the Borrowing Base Amount (after giving effect to the removal of such Borrowing Base Asset from the calculation of the Borrowing Base Amount or Borrowers shall pay to Administrative Agent an amount necessary to make such statement true (the "**Release Price**")), (C) a Responsible Officer of the Borrowers shall certify in writing to the Administrative Agent that no Default or Event of Default shall exist immediately after giving effect to the applicable release and (D) the Administrative Agent shall have received evidence, acceptable to it in its discretion that the matters set forth in such request, Compliance Certificate and certification are true and correct in all material respects. To the extent all such conditions to release are satisfied, including the payment of the Release Price, the Administrative Agent will, at the Borrowers' expense, deliver to the applicable Borrower a partial release letter in the form of **Exhibit I** attached hereto.

(b) The Borrowers shall not otherwise actively cause or willfully fail to take any commercially reasonable action that causes any Borrowing Base Asset to fail to qualify as such during the term of this Credit Agreement.

(c) Immediately upon a Responsible Officer of any Borrower obtaining knowledge that a Borrowing Base Asset fails to qualify as such, Borrowers shall deliver a pro forma Borrowing Base Certificate (which certificate shall include an update to the information set forth on Schedule 5.12) demonstrating that, upon giving effect to the removal of the Collateral Value or Availability Amount attributable to such former Borrowing Base Asset from the calculation of the Borrowing Base Amount, the Borrowers shall be in compliance with Section 2.01(a) hereof.

(d) The Borrowers shall not include any Real Property Asset as a Borrowing Base Asset on any schedule, Borrowing Base Certificate or Compliance Certificate delivered in connection with this Credit Agreement unless (i) such Real Property Asset meets the definition of Borrowing Base Asset and Borrowers have otherwise satisfied the requirements set forth in this Agreement and (ii) such Real Property Asset continues to qualify as a Borrowing Base Asset as of the date of such inclusion.

### **7.13 Limitation of Borrowing Base Assets in Metropolitan Statistical Area.**

Anything herein to the contrary notwithstanding, at no time shall the Collateral Value of the Borrowing Base Assets in any Metropolitan Statistical Area exceed twenty percent (20%) of the total Collateral Value of all Borrowing Base Assets, except those that exist as of the Closing Date and any that may be otherwise approved by the Required Lenders.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

### **8.01 Events of Default.**

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

(a) Non-Payment. The Borrowers or any other Credit Party fails to pay when and as required to be paid herein (i) any amount of principal of the Loan when due, (ii) within five (5) days after the same becomes due, any interest on the Loan or any Unused Fee, (iii) within ten (10) Business Days after the earlier of (A) a Responsible Officer of the Parent or any Borrower becoming aware that the same has become due or (B) written notice from the Administrative Agent to the Borrowers, any other fee payable herein or any other amount payable herein or under any other Credit Document becomes due, or (iv) the Obligations at the Maturity Date, whether by acceleration or otherwise; or

(b) Specific Covenants. The Borrowers fail to perform or observe any term, covenant or agreement contained in (i) any of Sections 6.01, 6.02 or 6.10 within ten (10) Business Days after the same becomes due or required or (ii) any of Sections 6.07, 6.11, 6.12, 6.14, 6.15 or Sections 7.02, 7.03, 7.05, 7.07, 7.09 through 7.12; or

(c) Other Defaults. Any Credit Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Credit Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of (i) a Responsible Officer of the Parent or any Borrower becoming aware of such default or (ii) written notice thereof by the Administrative Agent to the Borrowers (or, if such

failure cannot be reasonably cured within such period, sixty (60) days, so long as the applicable Credit Party has diligently commenced such cure and is diligently pursuing completion thereof); or

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

(e) Cross-Default. (i) Any Borrower (A) fails to perform or observe (beyond the applicable grace or cure period with respect thereto, if any) any Contractual Obligation, (B) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise and beyond the applicable grace or cure period with respect thereto, if any) in respect of any Indebtedness (other than Indebtedness hereunder) or otherwise fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which event of default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or cash collateral in respect thereof to be demanded, in each case to the extent such Contractual Obligation or Indebtedness or other obligation is in an amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount or (ii) there occurs a "default" or an "event of default" (as such terms are defined in the Facility Operating Leases) under any Facility Operating Lease; or

(f) Insolvency Proceedings, Etc. The Parent, any Borrower or any Operator institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its properties; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Parent, such Borrower or such Operator and the appointment continues undischarged or unstayed for sixty (60) days (or, if such appointment or proceeding cannot be reasonably discharged or stayed within such period, ninety (90) days, so long as the applicable party has diligently commenced the actions necessary to obtain such discharge or stay and is diligently pursuing completion thereof); or any proceeding under any Debtor Relief Law relating to the Parent, any Borrower or any Operator or to all or any material part of its property is instituted without the consent of the Parent, such Borrower or such Operator, as the case may be, and continues undismissed or unstayed for sixty (60) days (or, if such proceeding cannot be reasonably dismissed or stayed within such period, ninety (90) days, so long as the applicable party has diligently commenced the actions necessary to obtain such dismissal or stay and is diligently pursuing completion thereof), or an order for relief is entered in any such proceeding; or

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

(h) Judgments. There is entered against the Parent or any Borrower (i) any one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third -party insurance as to which the insurer does not dispute coverage or not otherwise paid in full), or (ii) any one or more non -monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

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

(j) Invalidity of Credit Documents; Guaranty. (i) Any Credit Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or as a result of satisfaction in full of all the Obligations or as a result of the Administrative Agent's failure to record and/or file where and/or when appropriate any Collateral Documents or any continuation statements, ceases to be in full force and effect; or any Credit Party contests in any manner the validity or enforceability of any Credit Document; or any Credit Party denies that it has any or further liability or obligation under any Credit Document, or purports to revoke, terminate or rescind any Credit Document; (ii) the Guaranty or the Hazardous Materials Indemnity Agreement shall cease to be in full force and effect, or the Guarantor shall deny or disaffirm its obligations under such Guaranty or Hazardous Materials Indemnity Agreement, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the Guaranty or Hazardous Materials Indemnity Agreement; or (iii) any Facility Operating Lease shall cease to be in full force and effect, or the Operating Tenant shall deny or disaffirm such Operating Tenant's obligations under such Facility Operating Lease; or (iv) any of the Eligible Ground Leases shall be terminated by the ground lessor thereunder or otherwise cease to be in full force and effect by action of the ground lessor thereunder; or

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

## **8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, upon written notice to the Borrowers in any instance, take any or all of the following actions:

(a) declare the commitment of each Lender to make Advances to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of the Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Credit Document to be immediately due and payable, without presentment, demand, protest or additional notice of any kind, all of which are hereby expressly waived by the Borrowers; and

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

provided, however, that upon the occurrence of an Event of Acceleration, the obligation of each Lender to make Advances shall automatically terminate, the unpaid principal amount of the Loan and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Administrative Agent or any Lender.

## **8.03 Application of Funds.**

(a) After the exercise of remedies in accordance with the provisions of Section 8.02 (or after the Loan has automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including Attorney Costs and amounts payable under Article III) payable to the Administrative Agent in its capacity as such or incurred by Administrative Agent in the exercise of its rights and remedies under this Agreement;

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

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

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loan, ratably among such parties in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

(b) Excluded Rate Contract Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to the Obligations otherwise set forth above in Section 8.03(a).

#### **8.04 Administrative Agent's Right to Perform the Obligations.**

Upon the occurrence of an Event of Default and during continuation thereof, then, without waiving or releasing any other right, remedy or recourse the Administrative Agent or Lenders may have because of such Event of Default, the Administrative Agent may (but shall not be obligated to) make such payment or perform any act required of the Borrowers under this Agreement for the account of and at the expense of the Borrowers, and shall have the right to enter upon the Borrowing Base Assets for such purpose and to take all such action thereon and with respect to the Borrowing Base Assets as it may deem necessary or appropriate. The Borrowers shall indemnify, defend and hold the Administrative Agent and Lenders 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 the Administrative Agent pursuant to the provisions of this Section 8.04, including those arising from the joint, concurrent, or comparative negligence of the Administrative Agent, except as a result of the Administrative Agent's and/or Lenders' gross negligence or willful misconduct. All sums paid by the Administrative Agent pursuant to this Section 8.04, and all other sums expended by the Administrative Agent to which it shall be entitled to be indemnified pursuant to this Section 8.04, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Obligations, shall be secured by the Credit Documents and shall be paid by the Borrowers to the Administrative Agent upon demand.

#### **8.05 Special Cure Right.**

Notwithstanding anything contained in this Article 8 to the contrary, if there occurs an Event of Default with respect to a particular Borrowing Base Asset (the "**Defaulting Asset**") or the Borrower which owns such Defaulting Asset (the "**Defaulting Borrower**"), then absent any other continuing Event of Default hereunder, such Event of Default with respect to the Defaulting Asset shall not constitute an "Event of Default" hereunder subject to satisfaction of each of the following:

(a) Borrowers shall within five (5) days following such Event of Default deliver to Administrative Agent a pro forma Compliance Certificate showing, on a pro forma basis (after giving effect to the removal of the Defaulting Asset(s) from such calculation) (i) the Borrowing Base Amount, and (ii) the Debt Yield.

(b) If the calculation of the Debt Yield is below 10%, Borrowers shall (i) within ten (10) days following the occurrence of such Event of Default, pay to the Administrative Agent a

prepayment of principal in an amount necessary to achieve a Debt Yield of not less than 10.0% and (ii) within thirty (30) days following the occurrence of such Event of Default, cure the Event of Default to the satisfaction of Administrative Agent or pay to the Administrative Agent a prepayment of principal in an amount necessary to reduce the Principal Obligations to an amount that does not exceed the Borrowing Base Amount (excluding for purposes of such calculation, the Defaulting Asset(s)).

(c) If the calculation of the Debt Yield is above 10%, Borrowers shall within thirty (30) days following the occurrence of such Event of Default, cure the Event of Default to the satisfaction of Administrative Agent or pay to the Administrative Agent a prepayment of principal in an amount necessary to reduce the Principal Obligations to amount that does not exceed the Borrowing Base Amount (excluding for purposes of such calculation, the Defaulting Asset(s)).

## **ARTICLE IX**

### **ADMINISTRATIVE AGENT**

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

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

#### **9.02 Delegation of Duties.**

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



### **9.03 Liability of Administrative Agent.**

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

### **9.04 Reliance by Administrative Agent.**

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

(b) For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Credit Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**9.05 Notice of Default.**

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

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

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

### **9.07 Indemnification of Administrative Agent.**

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Credit Party and without limiting the obligation of any Credit Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section.

Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Credit Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrowers. The undertaking in this Section shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

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

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

### **9.09 Successor Administrative Agent.**

The Administrative Agent may resign as Administrative Agent upon thirty (30) days' notice to the Lenders. If the Administrative Agent resigns under this Credit Agreement, the Required Lenders shall appoint from among the Lenders a successor administrative agent for the Lenders, which successor administrative agent shall be consented to by the Borrower Representative at all times other than during the existence of an Event of Default (which consent of the Borrower Representative shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of the

Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Borrower Representative, a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" thereafter shall mean such successor administrative agent and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated without any other or further act or deed on the part of such retiring Administrative Agent or any other Lender. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article IX and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Credit Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

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

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 2.07 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.07 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement,

adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**ARTICLE X**  
**MISCELLANEOUS**

**10.01 Amendments, Etc.**

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

(a) unless also signed by each Lender directly affected thereby, no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02), it being understood that the amendment or waiver of an Event of Default or a mandatory reduction or a mandatory prepayment in Commitments shall not be considered an increase in Commitments,

(ii) waive non-payment or postpone any date fixed by this Credit Agreement or any other Credit Document for any payment of principal, interest, fees or other amounts due to any Lender hereunder or under any other Credit Document,

(iii) reduce the principal of, or the rate of interest specified herein on the Loan, or any fees or other amounts payable hereunder or under any other Credit Document; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on the Loan or to reduce any fee payable hereunder,

(iv) change any provision of this Credit Agreement regarding pro rata sharing or pro rata funding with respect to (A) the making of advances (including participations), (B) the manner of application of payments or prepayments of principal, interest, or fees, or (C) the manner of reduction of commitments and committed amounts,

(v) change any provision of this Section 10.01(a) or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, or

(vi) release the Parent from its obligations hereunder or under any other Credit Document (other than as provided herein or as appropriate in connection with transactions permitted hereunder);

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

provided, however, that notwithstanding anything to the contrary contained herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender, (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy or insolvency reorganization plan that affects the Loan (iii) each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein, and (iv) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

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

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission). All such written notices shall be mailed certified or registered mail, faxed or delivered to the applicable address, facsimile number or (subject to subsection (c) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to any Borrower and the Administrative Agent.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower Representative may, in its respective discretion, agree to accept notices and other communications to it

hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

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

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(e) Change of Address, Etc. Each of the Borrowers and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

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

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the

Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Credit Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.10), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Credit Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.10, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

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

The Borrowers agree (a) to pay directly to the provider thereof or to pay or reimburse the Administrative Agent for all reasonable and documented costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Credit Agreement and the other Credit Documents, the preservation of any rights or remedies under this Credit Agreement and the other Credit Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs; (b) to pay or reimburse the Administrative Agent and each Lender for all reasonable costs and expenses incurred following an Event of Default in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Credit Agreement or the other Credit Documents (including all such costs and expenses incurred during any "workout" or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all Attorney Costs; (c) up to one-half of all reasonable and documented appraisal costs incurred by the Administrative Agent in connection with the Administrative Agent's procurement of FIRREA -compliant MAI appraisals with respect to any Borrowing Base Asset or any other Real Property Asset owned by any Borrower, to the extent any such appraisal is requested by the Administrative Agent (provided, that if no Event of Default exists hereunder, the Borrowers shall be required to pay such portion of the costs and expenses associated with any Administrative Agent -requested appraisal not more than once during the term of the Loan with respect to any Borrowing Base Asset; provided further, however, that if an Event of Default exists hereunder, the Borrowers shall be required to pay all of the costs and expenses associated with any such appraisal and the one-time limit shall no longer be applicable); and (d) any re-appraisals requested by any Borrower. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the reasonable and documented cost of independent public accountants and other outside experts retained by the Administrative Agent or any Lender. All amounts due under this Section 10.04 shall be payable within twenty (20) Business Days after written invoice therefor is received by the Borrowers. The agreements in this Section shall survive the termination of the Aggregate Commitments and repayment of all other Obligations.



## **10.05 Indemnification by the Borrowers.**

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

## **10.06 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrowers is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

## **10.07 Successors and Assigns.**

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) or (i) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and Extension of Credit at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and Extension of Credit at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes the Extension of Credit outstanding thereunder) subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower Representative otherwise consents (each such consent not to be unreasonably withheld or delayed) provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee

Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the Extension of Credit or the Commitment assigned; (iii) any assignment of a Commitment must be approved by the Administrative Agent, unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender and, if the assignor Lender retains a portion of the Loan, a Note to the assignor Lender. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

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

(d) Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrowers or any of the Borrowers' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a

portion of its Commitment and/or the Extension of Credit owing to it); provided that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification that extends the time for, reduces the amount or alters the application of proceeds with respect to such obligations and payments required therein that directly affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender, provided such Participant agrees to be subject to Section 2.11 as though it were a Lender.

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

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

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

(h) Anything herein to the contrary notwithstanding, with respect to any assignment by a Lender to a Permitted Investor under this Section 10.07 or if any Permitted Investor

becomes a Lender hereunder pursuant to Section 10.16 or otherwise, the following shall apply: (i) in no event may Permitted Investors own in the aggregate more than a thirty percent (30%) interest in the Loan; (ii) if as a result of any such transfer or series of transfers, Permitted Investors and GECC are the only Lenders hereunder, actions to be taken by Administrative Agent under this Credit Agreement or the other Credit Documents on behalf of the Lenders that require the consent of (A) all Lenders will not require the consent of the Permitted Investors and (B) the Required Lenders will not require the consent of the Permitted Investors; and (iii) if any action to be taken by Administrative Agent under this Agreement requires the consent of the Required Lenders, and the consent of the Permitted Investor causes the 66 2/3% percentage requirement set forth in the definition of "Required Investors" to be met, such action will nonetheless require the consent of one additional Lender hereunder. The execution by a Permitted Investor of an Assignment and Assumption Agreement and/or Lender Joinder Agreement will be sufficient to evidence such Permitted Investor's agreement to the terms of this Section 10.06(h), provided the Permitted Investor will execute any additional documents required by Administrative Agent to evidence the agreements contained in this Section 10.06(h).

#### **10.08 Confidentiality.**

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

the Lenders in connection with the administration and management of this Credit Agreement, the other Credit Documents, the Commitments, and the Extensions of Credit. Any Person required to maintain the confidentiality of Confidential Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as such Person would accord to its own confidential information.

For the purposes of this Section, "**Confidential Information**" means all information received from any Credit Party relating to any Credit Party, any of the other Consolidated Parties, or its or their business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Credit Party; provided, that, in the case of information received from a Credit Party after the date hereof, such information is clearly identified in writing at the time of delivery as confidential.

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

#### **10.09 Set-off.**

In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender and each of its Affiliates are authorized at any time and from time to time, without prior notice to the Borrowers or any other Credit Party, any such notice being waived by the Borrowers (on their own behalf and on behalf of each Credit Party) to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or Affiliate to or for the credit or the account of the respective Credit Parties against any and all Obligations owing to such Lender hereunder or under any other Credit Document (subject to Section 2.11), now or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Credit Agreement or any other Credit Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or indebtedness. Each Lender agrees promptly to notify the Borrowers and the Administrative Agent after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

#### **10.10 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loan or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such

Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.11 Counterparts.**

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

**10.12 Integration.**

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

**10.13 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Extension of Credit, and shall continue in full force and effect as long as the Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**10.14 Severability.**

If any provision of this Credit Agreement or the other Credit Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Credit Agreement and the other Credit Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## **10.15 Tax Forms.**

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

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

(iii) The Borrowers shall not be required to pay any additional amount to any Foreign Lender under Section 3.01 (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such



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

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

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

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

#### **10.16 Replacement of Lenders.**

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

execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Extension of Credit.

**10.17 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby, the Borrowers each acknowledge and agree, and acknowledge their respective Affiliates' understanding, that: (a) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between the Borrowers and their respective Affiliates, on the one hand, and the Administrative Agent, on the other hand, and each Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, the Administrative Agent is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrowers or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (c) the Administrative Agent has not assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrowers with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether the Administrative Agent has advised or is currently advising the Borrowers or any of their respective Affiliates on other matters) and the Administrative Agent has no obligation to the Borrowers or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; (d) the Administrative Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and their respective Affiliates, and the Administrative Agent has no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent has not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Credit Document) and each Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty.

**10.18 Source of Funds.**

Each of the Lenders hereby represents and warrants to the Borrowers that at least one of the following statements is an accurate representation as to the source of funds to be used by such Lender in connection with the financing hereunder:

(a) no part of such funds constitutes assets allocated to any separate account maintained by such Lender in which any employee benefit plan (or its related trust) has any interest;

(b) to the extent that any part of such funds constitutes assets allocated to any separate account maintained by such Lender, such Lender has disclosed to the Borrowers the name of each employee benefit plan whose assets in such account exceed ten percent (10%) of the total assets of such account as of the date of such purchase (and, for purposes of this subsection (b), all employee benefit plans maintained by the same employer or employee organization are deemed to be a single plan);

(c) to the extent that any part of such funds constitutes assets of an insurance company's general account, such insurance company has complied with all of the requirements of the regulations issued under Section 401(c)(1)(A) of ERISA; or

(d) such funds constitute assets of one or more specific benefit plans that such Lender has identified in writing to the Borrowers.

As used in this Section, the terms "employee benefit plan" and "separate account" shall have the respective meanings provided in Section 3 of ERISA.

### **10.19 GOVERNING LAW.**

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES; PROVIDED THAT THE ADMINISTRATIVE AGENT AND EACH LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF ILLINOIS SITTING IN CHICAGO OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWERS, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWERS, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY CREDIT DOCUMENT OR OTHER DOCUMENT RELATED THERETO. THE BORROWERS, THE ADMINISTRATIVE AGENT AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

### **10.20 WAIVER OF RIGHT TO TRIAL BY JURY.**

EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY CREDIT DOCUMENT OR IN ANY WAY CONNECTED

WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY CREDIT DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**10.21 No Conflict.**

To the extent there is any conflict or inconsistency between the provisions hereof and the provisions of any other Credit Document, this Credit Agreement shall control.

**10.22 USA Patriot Act Notice.**

Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Act*"), it is required to obtain, verify and record information that identifies the Borrowers (and to the extent applicable, the Parent), which information includes the name and address of the respective Borrowers (and to the extent applicable, the Parent) and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers (and to the extent applicable, the Parent) in accordance with the Act. The Borrowers shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

**10.23 Entire Agreement.**

THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

**10.24 California Real Property Assets.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, AT ANY TIME THAT ANY OF THE OBLIGATIONS SHALL BE SECURED BY REAL PROPERTY ASSETS LOCATED IN CALIFORNIA, NO LENDER SHALL EXERCISE A RIGHT OF SETOFF, LENDER'S LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR ANY CREDIT DOCUMENT UNLESS IT IS TAKEN WITH THE CONSENT OF THE REQUIRED LENDERS, IF SUCH SETOFF OR

ACTION OR PROCEEDING WOULD OR MIGHT (PURSUANT TO SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY, OR ENFORCEABILITY OF THE LIENS GRANTED TO THE ADMINISTRATIVE AGENT PURSUANT TO THE COLLATERAL DOCUMENTS OR THE ENFORCEABILITY OF THE OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY LENDER OR ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE PARTIES AS REQUIRED ABOVE, SHALL BE NULL AND VOID. THIS SECTION 10.24 SHALL BE SOLELY FOR THE BENEFIT OF EACH OF THE LENDERS.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -  
SIGNATURE PAGES AND SCHEDULES AND EXHIBITS TO FOLLOW]**

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

**BORROWERS:**

**BLC ATRIUM-JACKSONVILLE SNF, LLC,  
BLC WESTWOOD, LLC,  
BLC JACKSON OAKS, LLC,  
AHC STERLING HOUSE OF HARBISON,  
LLC,  
BROOKDALE PLACE OF BATH, LLC,  
BKD KANSAS PROPERTIES, LLC,  
BLC WELLINGTON-CLEVELAND, LLC,  
BLC WELLINGTON-COLONIAL HEIGHTS,  
LLC,  
BLC WELLINGTON-GARDENS, LLC,  
AHC SOUTHLAND-ORMOND BEACH, LLC,  
AHC MONROE TOWNSHIP, LLC,  
BLC ADRIAN-GC, LLC,  
BLC FINDLAY-GC, LLC,  
BLC WELLINGTON-KINGSTON, LLC,  
BLC WELLINGTON-JOHNSON CITY, LLC,  
BLC SOUTHERLAND PLACE-MIDLOTHIAN,  
LLC,  
BLC SOUTHERLAND PLACE-GERMANTOWN,  
LLC,  
BLC WINDSOR PLACE, LLC,  
BLC EMERALD CROSSINGS, LLC,  
BKD STERLING HOUSE OF DUNCAN, LLC,  
BKD STERLING HOUSE OF EDMOND, LLC,  
BKD STERLING HOUSE OF ENID, LLC,  
BKD STERLING HOUSE OF MIDWEST CITY,  
LLC,**

each a Delaware limited liability company

By: /s/ George T. Hicks  
Name: George T. Hicks  
Title: Executive Vice President

**AHC PROPERTIES, INC.**, a Delaware corporation

By: /s/ George T. Hicks  
Name: George T. Hicks  
Title: Executive Vice President

**[Signatures Continued on Next Page]**

**BORROWERS (CONT'D):**

**BKD STERLING HOUSE OF OKLAHOMA CITY  
NORTH, LLC,  
BKD STERLING HOUSE OF OKLAHOMA CITY  
SOUTH, LLC,  
BKD STERLING HOUSE OF PONCA CITY, LLC ,  
BKD STERLING HOUSE OF CEDAR HILL, LLC ,  
BKD STERLING HOUSE OF PALESTINE, LLC ,  
BKD STERLING HOUSE OF BOWLING GREEN,  
LLC  
BKD STERLING HOUSE OF MANSFIELD, LLC,  
BROOKDALE PLACE AT FALL CREEK, LLC,  
BROOKDALE PLACE AT WILLOW LAKE, LLC,  
BROOKDALE PLACE OF WEST HARTFORD,  
LLC,  
BROOKDALE PLACE AT KENWOOD, LLC,**  
each a Delaware limited liability company

By: /s/ George T. Hicks  
Name: George T. Hicks  
Title: Executive Vice President

**ARC HDV, LLC**, a Tennessee limited  
liability company  
**ARC GALLERIA WOODS, INC.**, a Tennessee  
corporation  
**LAKE SEMINOLE SQUARE MANAGEMENT  
COMPANY, INC.**, a Tennessee corporation

By: /s/ George T. Hicks  
Name: George T. Hicks  
Title: Executive Vice President

**[Signatures Continued on Next Page]**

**ADMINISTRATIVE AGENT:**

**GENERAL ELECTRIC CAPITAL  
CORPORATION**, as Administrative Agent

By: /s/ Jeffrey W. Bothwell

Name: Jeffrey W. Bothwell

Title: SVP & Authorized Signatory

**[Signatures Continued on Next Page]**

Signature Page

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**LENDERS:**

**GENERAL ELECTRIC CAPITAL CORPORATION**, as a Lender and Swingline Lender

By: /s/ Daniel Reilly  
Name: Daniel Reilly  
Title: Duly Authorized Signatory

**FIFTEENTH INVESTMENT HFS LIMITED**  
By: General Electric Capital Corporation, its agent and servicer

By: /s/ Daniel Reilly  
Name: Daniel Reilly  
Title: Duly Authorized Signatory

**BANK OF AMERICA, N.A.**

By: /s/ Zubin R. Shroff  
Name: Zubin R. Shroff  
Title: Director

**ROYAL BANK OF CANADA**

By: /s/ Dan LePage  
Name: Dan LePage  
Title: Authorized Signatory

**PNC BANK, NATIONAL ASSOCIATION**

By: /s/ Jason Schreibe  
Name: Jason Schreibe  
Title: Senior Vice President

**JOINDER OF GUARANTOR**

Guarantor joins in the execution of this Agreement to evidence its agreement to be bound by the terms of Section 6.25.

**GUARANTOR:**

**BROOKDALE SENIOR LIVING INC.,**  
a Delaware corporation

By: /s/ George T. Hicks  
Name: George T. Hicks  
Title: Executive Vice President

Signature Page

**EXHIBIT 31.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, T. Andrew Smith, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Brookdale Senior Living Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2013

/s/ T. Andrew Smith  
T. Andrew Smith  
Chief Executive Officer

**EXHIBIT 31.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark W. Ohlendorf, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Brookdale Senior Living Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2013

/s/ Mark W. Ohlendorf  
Mark W. Ohlendorf  
Chief Financial Officer

**EXHIBIT 32**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL  
OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Brookdale Senior Living Inc. (the "Company") for the period ended September 30, 2013, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), T. Andrew Smith, as Chief Executive Officer of the Company, and Mark W. Ohlendorf, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ T. Andrew Smith

Name: T. Andrew Smith  
Title: Chief Executive Officer  
Date: November 8, 2013

/s/ Mark W. Ohlendorf

Name: Mark W. Ohlendorf  
Title: Chief Financial Officer  
Date: November 8, 2013

