

# HIGHWOODS PROPERTIES INC

## FORM 8-K

(Unscheduled Material Events)

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Sector	Services
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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 27, 1996

## HIGHWOODS PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

**Maryland**

(State of Incorporation)

1-13100

(Commission File Number)

56-1871668

(IRS Employer Identification No.)

3100 Smoketree Court, Suite 600

Raleigh, North Carolina

(Address of principal executive offices)

27604

(Zip Code)

(919) 872-4924

(Registrant's telephone number, including area code)

## Item 5. Other Events.

On September 27, 1996, Highwoods Properties, Inc. (the "Company") completed the acquisition of Crocker Realty Trust, Inc. ("Crocker") and the related restructuring of the Company.

As previously reported under item 2 in an 8-K dated April 29, 1996 (as amended on Form 8-K/A on June 3, 1996 and June 18, 1996), the Company and Cedar Acquisition Corporation ("Cedar"), which was then a wholly owned subsidiary of the Company, entered into a Stock Purchase Agreement on April 29, 1996, with AP CRTI Holdings, L.P., AEW Partners, L.P., Thomas J. Crocker, Barbara F. Crocker, Richard S. Ackerman and Robert E. Onisko (the "Sellers") to purchase all of the Sellers' shares of Common Stock of Crocker (the "Shares"). The Company and Cedar also entered into an Agreement and Plan of Merger with Crocker on April 29, 1996 (the "Merger Agreement"). The Merger Agreement provided that Cedar would be merged into Crocker, with Crocker as the surviving entity (the "Merger").

On September 6, 1996, the Company closed the acquisition of the Shares. The purchase price was \$249.1 million (\$11.05 per Share) and included, as contemplated by the Stock Purchase Agreement, the \$1.1 million purchase of 1,056,000 options to purchase shares of Crocker owned by the Sellers. The acquisition was primarily funded (\$189 million) from a portion of the net proceeds raised by the Company in its recent 11.5 million share public offering. The remaining \$60 million of the purchase price was funded from a draw from a \$140 million credit facility with NationsBank, N.A., First Union National Bank of North Carolina and Wachovia Bank of North Carolina.

On September 20, 1996, the Merger was approved at a special meeting of the shareholders of Crocker. At 11:59 p.m. on September 20, 1996, the effective time of the Merger, each share of Crocker Common Stock held by Cedar and the Company (including the Shares) was canceled, each share of common stock of Cedar became a share of Common Stock of Crocker, and all other shares of Common Stock of Crocker were converted into and represented a right to receive \$11.05243 per share. Following the Merger, the Company entered into various restructuring transactions culminating in the merger of Crocker into the Company on September 26, 1996 and the subsequent contribution by the Company of Crocker's assets and liabilities to Highwoods/Forsyth Limited Partnership (the "Operating Partnership"). As a result of the Merger and subsequent transactions, substantially all of the assets and liabilities of Crocker at the time of the Merger are the assets and liabilities of the Operating Partnership. The Company is the sole general partner of the Operating Partnership and as of October 11, 1996, owned 87.9% of the partnership interests in the Operating Partnership.

The cost of acquiring the remaining shares of Crocker in the Merger was \$73.7 million, which the Company funded through a draw on the \$140 million credit facility. The total cost of the acquisition of all of the outstanding shares of Crocker was approximately \$565.8 million, which includes the assumption of \$243 million of Crocker debt discussed below. The effective purchase price was substantially the same as that estimated in the Company's April 29, 1996 8-K. The \$25.8 million increase in the purchase price was largely offset by the additional \$21 million in cash held by Crocker at the time of the Merger. The increase in the purchase price was due to an increase of approximately 2.1 million in the number of outstanding shares of Crocker from April 29, 1996. The additional shares were issued upon the exercise of outstanding warrants to purchase the shares of Crocker Common Stock (the "Warrants"). The increased cash held by Crocker was due to the \$10.00 exercise price of the Warrants. As of October 11, approximately 182,680 Warrants were outstanding, representing a \$192,000 obligation of the Company.

The Crocker portfolio obtained through the Merger consists of 58 suburban office properties and 12 service center properties (collectively, the "Crocker Properties"), totaling 5.7 million square feet. The Crocker Properties are located in 15 southeastern markets, of which four are existing Company markets and 11 represent new markets for the Company (including Greenville, SC; Tampa, FL; Memphis, TN; and Atlanta, GA). At September 30, 1996, the Crocker Properties were 94% leased. As previously disclosed, Crocker's undeveloped land (approximately 257.5 acres) and certain other assets and liabilities were distributed by Crocker to another entity prior to the Merger and therefore were not acquired in the Merger.

Following the Merger, the Company's portfolio is comprised of 70% suburban office space, 17% industrial space and 13% service center space and includes 168 suburban office properties, 36 industrial properties and 74 service center properties.

On September 27, 1996, the Operating Partnership obtained a \$280 million revolving line of credit (the "Revolving Loan") from NationsBank, N.A., First Union National Bank of North Carolina and other lenders. The Revolving Loan includes a \$10 million letter of credit facility and replaces the \$140 million credit facility.

The Revolving Loan will bear interest at a rate of the Applicable Percentage (defined below) plus (i) LIBOR or (ii) the higher of (x) NationsBank's prime rate or (y) the federal funds rate plus 1/2 of 1%. The Applicable Percentage varies with the Company's average unsecured long-term debt rating as follows:

LEVEL	AVERAGE UNSECURED LONG-TERM DEBT RATING	APPLICABLE PERCENTAGE FOR EURODOLLAR LOANS	APPLICABLE PERCENTAGE BASE RATE LOANS	APPLICABLE PERCENTAGE FOR LETTER OF CREDIT FEE
I	The equivalent of A- or better from S&P	1.00%	0%	1.00%
II	Less than the equivalent of A- from S&P but greater than or equal to the equivalent of BBB+ from S&P	1.20%	0%	1.20%
III	Less than the equivalent of BBB+ from S&P but greater than or equal to the equivalent of BBB from S&P	1.35%	.10%	1.35%
IV	Less than the equivalent of BBB from S&P but greater than or equal to the equivalent of BBB- from S&P	1.50%	.15%	1.50%
V	Worse than the equivalent of BBB- from S&P or unrated by either S&P or Moody's	1.75%	.30%	1.75%

The initial Applicable Percentage is based on Level IV and will remain at Level IV until the earlier of (i) January 25, 1997 or (ii) the date the Company receives an average unsecured long-term debt rating from S&P and Moody's. Thereafter, the Applicable Percentage will be determined in accordance with the schedule above and will be adjusted after an applicable rating change.

The Revolving Loan requires monthly payments of accrued and unpaid interest. The Operating Partnership is permitted to prepay the principal amount of the revolving loans under the facility. Unless accelerated sooner due to an event of default, the entire outstanding principal balance under the Revolving Loan and all accrued and unpaid interest will be due on October 31, 1999.

In addition to the interest charges set forth above, the Operating Partnership pays to NationsBank, N.A., as agent, (i) for the account of the lenders a commitment fee on the unused portion of the revolver at a rate ranging from .15% to .25% per year depending on the size of the unused commitment, (ii) for the account of the lenders a letter of credit fee on the aggregate amount then available for drawing under all letters of credit at a rate equal to the Applicable Percentage set forth above, and (iii) for the account of any issuing lender a letter of credit fee on the aggregate amount of all letters of credit issued by such lender at a rate per annum equal to 0.25%.

The obligations of the Operating Partnership under the Revolving Loan are guaranteed by the Company and certain of its subsidiaries.

The Revolving Loan contains customary representations, warranties and events of default and requires the Operating Partnership to comply with certain affirmative and negative covenants, including the following financial covenants:

- (i) adjusted net operating income divided by total liabilities of not less than 16.5%; (ii) total liabilities not greater than 45% of market capitalization;
- (iii) tangible net worth of not less than \$700 million, which amount shall be increased by not less than 85% of the net proceeds of any future offerings of the Company's capital stock; (iv) a ratio of total liabilities to total assets at a cost of no more than .50 to 1.0; (v) a ratio of earnings before interest, income tax, depreciation and amortization to interest expense plus capital expenditures of not less than 2.0 to 1.0, which increases to 2.2 and 2.5 to 1.0 on December 31, 1996 and June 30, 1997, respectively; (vi) a ratio of unencumbered assets to unsecured debt of not less than 2.25 to 1.0; (vii) a ratio of secured debt to total assets of not more than .40 to 1.0, which decreases to .3 and .25 to 1.0 on April 1, 1997 and April 1, 1998, respectively;
- (viii) a ratio of adjusted net operating income as derived from unencumbered assets to interest expense paid on unsecured debt of not less than 2.25 to 1.0;
- (ix) a ratio of adjusted net operating income derived from unencumbered assets to unsecured debt of not less than .18 to 1.0; and (x) a ratio of the value of speculative land acquired after September 27, 1996 to the value of improved properties of not less than .02 to 1.0.

In connection with the Merger, the Company assumed approximately \$243 million of indebtedness at an average rate of 8.6%. This indebtedness included:

- (i) a \$140 million mortgage note (the "Mortgage Note") with a fixed rate of 7.9%, (ii) variable rate mortgage loans in the aggregate amount of \$76 million and (iii) fixed rate mortgage loans in the amount of \$27 million. Substantially all of such debt, other than the Mortgage Note, was repaid by the Company following the Merger using funds available under the Revolving Loan.

#### Item 7(c). Exhibits

Item	Description
10.1	Credit Agreement among Highwoods/Forsyth Limited Partnership, Highwoods Properties, Inc., the Subsidiaries named therein and the Lenders named therein, dated as of September 27, 1996.

## **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.

### **HIGHWOODS PROPERTIES, INC**

*/s/ Carman J. Liuzzo*  
*Carman J. Liuzzo*  
*Vice President and Chief Financial Officer*

*Date:      October 15, 1996*

## Exhibits

Item	Description
10.1	Credit Agreement among Highwoods/Forsyth Limited Partnership, Highwoods Properties, Inc., the Subsidiaries named therein and the Lenders named therein, dated as of September 27, 1996.

**CREDIT AGREEMENT**

among

**HIGHWOODS/FORSYTH LIMITED PARTNERSHIP,  
as Borrower**

**AND**

**HIGHWOODS PROPERTIES, INC.,**

and certain Subsidiaries of the Borrower and Highwoods Properties, Inc. as Guarantors

**AND**

**THE LENDERS IDENTIFIED HEREIN**

**AND**

**NATIONSBANK, N.A.,  
as Administrative Agent**

**AND**

**FIRST UNION NATIONAL BANK OF NORTH CAROLINA,  
as Documentation Agent**

**DATED AS OF September 27, 1996**

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Exhibit 2.1(d)	Form of Notice of Continuation/Conversion
Exhibit 2.1(f)	Form of Revolving Note
Exhibit 7.1(c)	Form of Officer's Certificate
Exhibit 7.16	Form of Joinder Agreement
Exhibit 11.3	Form of Assignment Agreement

## CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of September 27, 1996 (this "Credit Agreement"), is entered into by and among HIGHWOODS/FORSYTH LIMITED PARTNERSHIP, a North Carolina limited partnership (the "Borrower"), HIGHWOODS PROPERTIES, INC., a Maryland corporation ("Highwoods Properties") (Highwoods Properties and certain Subsidiaries of the Borrower and Highwoods Properties, individually a "Guarantor" and collectively the "Guarantors"), the Lenders (as defined herein), NATIONSBANK, N.A., as Administrative Agent for the Lenders and FIRST UNION NATIONAL BANK OF NORTH CAROLINA as Documentation Agent.

### R E C I T A L S

WHEREAS, the Borrower has requested that the Lenders provide a \$280 million credit facility for the purposes hereinafter set forth; and

WHEREAS, the Lenders have agreed to make the requested credit facility available to the Borrower on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### SECTION 1

#### DEFINITIONS AND ACCOUNTING TERMS

1.1 Definitions. As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number the plural and in the plural the singular:

"Additional Credit Party" means each Person that becomes a Guarantor after the Effective Date, as provided in Section 7.16.

"Adjusted Base Rate" means the Base Rate plus the Applicable Percentage.

"Adjusted Eurodollar Rate" means the Eurodollar Rate plus the Applicable Percentage.

"Adjusted NOI" means, with respect to the applicable time period, the amount equal to (a) the sum of all revenues and income received by the Credit Parties with respect to the relevant Property or Properties minus (b) the sum of all reasonable and customary expenses incurred by the Credit Parties in the operation of such Property or Properties, including, but

not limited to, utility expenses, property taxes, insurance premiums, management fees and Capital Expenditures (but excluding interest, depreciation, amortization and income taxes).

"Administrative Agent" means NationsBank, N.A. (or any successor thereto) or any successor administrative agent appointed pursuant to Section 10.9.

"Affiliate" means a Person: (a) which directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control of the Borrower or a Guarantor; or (b) which beneficially owns or holds five percent (5%) or more of any class of the voting stock of a Guarantor or more than five percent (5%) of the partnership interests of the Borrower; or (c) of which five percent (5%) or more of the voting stock (or in the case of a Person which is not a corporation, five percent (5%) or more of the equity interest) is beneficially owned or held by the Borrower or a Guarantor.

"Agency Services Address" means NationsBank, N.A., Real Estate Loan Administration, One Hannover Square, Suite 301, Raleigh, North Carolina 27601, or such other address as may be identified by written notice from the Administrative Agent to the Borrower.

"Agents" means the Administrative Agent and the Documentation Agent and "Agent" means either the Administrative Agent or the Documentation Agent.

"Applicable Percentage" means, at any time, and with respect to all Eurodollar Loans, Base Rate Loans and Letters of Credit then outstanding, the applicable percentage corresponding to the then Average Unsecured Long Term Debt Rating of Highwoods Properties as follows:

LEVEL	AVERAGE UNSECURED LONG TERM DEBT RATING	APPLICABLE PERCENTAGE FOR EURODOLLAR LOANS	APPLICABLE PERCENTAGE BASE RATE LOANS	APPLICABLE PERCENTAGE FOR LETTER OF CREDIT FEE
I	the equivalent of A- or better from S&P	1.00%	0%	1.00%
II	less than the equivalent of A- from S&P but greater than or equal to the equivalent of BBB+ from S&P	1.20%	0%	1.20%

III	less than the equivalent of BBB+ from S&P but greater than or equal to the equivalent of BBB from S&P	1.35%	.10%	1.35%
IV	less than the equivalent of BBB from S&P but greater than or equal to the equivalent of BBB- from S&P	1.50%	.15%	1.50%
V	Worse than the equivalent of BBB- from S&P or Unrated by either S&P or Moody's	1.75%	.30%	1.75%

The initial Applicable Percentage for all Eurodollar Loans, Base Rate Loans and the Letter of Credit Fee shall be based on Level IV and shall remain at Level IV until the earlier of (i) the first 120 days subsequent to the Closing Date or (ii) the date Highwoods Properties receives an Average Unsecured Long Term Debt Rating from S&P and Moody's. Thereafter, the Applicable Percentage shall be determined in accordance with the data above and shall be adjusted on the date five Business Days after the Administrative Agent has knowledge of an applicable rating change.

The Borrower shall promptly deliver to the Administrative Agent, at the address set forth on Schedule 11.1 and at the Agency Services Address, information regarding any change in its unsecured debt rating from any rating agency.

"Authorized Officer" means the President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Secretary or Chairman of the Board of Highwoods Properties.

"Average Unsecured Long Term Debt Rating" means the unsecured debt rating of Highwoods Properties, as calculated from time to time by the Administrative Agent, using an average of all ratings then provided by rating agencies whose ratings are generally accepted by the market; provided that (a) the ratings assigned by S&P and Moody's shall be weighted three times heavier than any other agencies used in making such calculation and (b) if either S&P or Moody's fails to rank the senior unsecured debt of Highwoods Properties, the Applicable Percentage for Base Rate Loans and Eurodollar Loans shall be based on Level V. The calculation of the Average Unsecured Long Term Debt Rating (including but not limited to the method used to make such calculation) shall be in the sole discretion of the Administrative Agent and shall be conclusive absent manifest error.

"Bankruptcy Code" means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Base Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the greater of (a) the Federal Funds Rate in effect on such day plus 1/2 of 1% or (b) the Prime Rate in effect on such day. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable after due inquiry to ascertain the Federal Funds Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms hereof, the Base Rate shall be determined without regard to clause (a) of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or the Federal Funds Rate, respectively.

"Base Rate Loan" means any Loan bearing interest at a rate determined by reference to the Base Rate.

"Borrower" means Highwoods/Forsyth Limited Partnership, a North Carolina limited partnership, together with any permitted successors and assigns.

"Business Day" means any day other than a Saturday or Sunday or a legal holiday in Charlotte, North Carolina, or a day on which banking institutions are authorized by law or other governmental action to close; provided, however, if the applicable day relates to the determination of the Eurodollar Rate, such day must also be a day upon which banks are open for the transaction of business in London, England and dealings in U.S. dollar deposits are carried on in the London interbank market.

"Capital Expenditures" means all expenditures required for the leasing of space within Properties owned and previously leased by the Credit Parties, including upfit expenses and leasing commissions, together with expenses for renovation or improvement of existing properties that are classified as capital expenditures under GAAP. Leasing and tenant improvements expenditures with respect to space not previously leased shall not be included in any calculation of Capital Expenditures, but must be reported to the Administrative Agent on a quarterly basis as set forth in Section 7.1.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is or should be accounted for as a capital lease on the balance sheet of the Borrower.

"Cash Available for Distribution" means all Funds from Operations (as defined as of the Closing Date by the Board of Governors of the National Association of Real Estate Investment Trusts) less (a) Capital Expenditures and (b) principal payments made by the Credit Parties on Indebtedness (other than principal payments made as a result of terminating the Existing Credit Agreement).

"Cash Collateral Account" means an account maintained by the Borrower with the Administrative Agent, for the benefit of the Lenders, in which (a) the Administrative Agent has sole control and (b) the Administrative Agent, for the benefit of the Lenders, has a

perfected security in such account and the proceeds thereof and which is used by the Borrower to make deposits as required herein.

"Closing Date" means the date hereof.

"Code" means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder, as amended, modified, succeeded or replaced from time to time.

"Commitments" means the commitment of each Lender with respect to the Revolving Committed Amount.

"Credit Documents" means this Credit Agreement, the Notes, the Fee Letter and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto.

"Credit Parties" means the Borrower and the Guarantors and "Credit Party" means any one of them.

"Credit Party Obligations" means, without duplication, (a) all of the obligations of the Credit Parties to the Lenders (including the Issuing Lender) and the Agents, whenever arising, under this Credit Agreement, the Notes, or any of the other Credit Documents to which the Borrower or any Guarantor is a party and (b) all liabilities and obligations owing from such Credit Party to any Lender, or any Affiliate of a Lender, arising under Hedging Agreements.

"Default" means any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" means, at any time, any Lender that, (a) has failed to make a Loan or purchase a Participation Interest required pursuant to the terms of this Credit Agreement, (b) has failed to pay to the Agents or any Lender an amount owed by such Lender pursuant to the terms of this Credit Agreement (but only for so long as such amount has not been repaid) or (c) has been deemed insolvent or has become subject to a bankruptcy or insolvency proceeding or to a receiver, trustee or similar official.

"Documentation Agent" means First Union National Bank of North Carolina (or any successor thereto) or any successor documentation agent appointed pursuant to Section 10.9.

"Dollars" and "\$" means dollars in lawful currency of the United States of America.

"EBITDA" means, for any period, with respect to the Credit Parties, on a consolidated basis, the sum of (a) Net Income for such period (excluding the effect of any extraordinary or other non-recurring gains or non-cash losses outside of the ordinary course of business) plus (b) an amount which, in the determination of Net Income for such period has been deducted for (i) Interest Expense for such period, (ii) total Federal, state, foreign or other income taxes of the Credit Parties for such period and (iii) all depreciation and

amortization of the Credit Parties for such period, all as determined in accordance with GAAP.

"Effective Date" means the date on which the conditions set forth in Section 5.1 shall have been fulfilled (or waived in the sole discretion of the Lenders) and on which the initial Loans shall have been made and/or the initial Letters of Credit shall have been issued.

"Eligible Assignee" means (a) any Lender or Affiliate or subsidiary of a Lender and (b) any other commercial bank, financial institution, institutional lender or "accredited investor" (as defined in Regulation D of the Securities and Exchange Commission) with total assets of at least \$10 billion and with a rating on their long term unsecured debt of at least BBB with S&P or its equivalent and with an office in the United States.

"Environmental Claim" means any investigation, written notice, violation, written demand, written allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or written claim whether administrative, judicial, or private in nature arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Material, (c) from any assessment, abatement, removal, remedial, corrective, or other response action in connection with an Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

"Environmental Laws" means any current or future legal requirement of any Governmental Authority pertaining to (a) the protection of health, safety, and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water and groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any hazardous or toxic substance or material or (e) pollution (including any release to land surface water and groundwater) and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 ET SEQ., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendment of 1984, 42 USC 6901 ET SEQ., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 ET SEQ., Clean Air Act of 1966, as amended, 42 USC 7401 ET SEQ., Toxic Substances Control Act of 1976, 15 USC 2601 ET SEQ., Hazardous Materials Transportation Act, 49 USC App. 1801 ET SEQ., Occupational Safety and Health Act of 1970, as amended, 29 USC 651 ET SEQ., Oil Pollution Act of 1990, 33 USC 2701 ET SEQ., Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 ET SEQ., National Environmental Policy Act of 1969, 42 USC 4321 ET SEQ., Safe Drinking Water Act of 1974, as amended, 42 USC 300(f) ET SEQ., any analogous implementing or successor law, and any amendment, rule, regulation, order, or directive issued thereunder.

"Equity Issuance" means any issuance by a Credit Party to any Person of (a) shares of its capital stock or other equity interests (including, without limitation, participation units), (b) any shares of its capital stock or other equity interests (including, without limitation, participation units) pursuant to the exercise of options or warrants or (c) any shares of its capital stock or other equity interests (including, without limitation, participation units) pursuant to the conversion of any debt securities to equity.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means an entity, whether or not incorporated, which is under common control with any Credit Party within the meaning of Section 4001(a)(14) of ERISA, or is a member of a group which includes any Credit Party or any of its Subsidiaries and which is treated as a single employer under Sections 414(b), (c), (m), or (o) of the Code.

"Eurodollar Loan" means a Loan bearing interest based at a rate determined by reference to the Eurodollar Rate.

"Eurodollar Rate" means, for the Interest Period for each Eurodollar Loan comprising part of the same borrowing (including conversions, extensions and renewals), a per annum interest rate determined pursuant to the following formula:

Eurodollar Rate = London Interbank Offered Rate  
1 - Eurodollar Reserve Percentage

"Eurodollar Reserve Percentage" means for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D of the Board of Governors of the Federal Reserve System (or any successor), as such regulation may be amended from time to time or any successor regulation, as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to Eurocurrency liabilities as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Loans is determined), whether or not a Lender has any Eurocurrency liabilities subject to such reserve requirement at that time. Eurodollar Loans shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credits for proration, exceptions or offsets that may be available from time to time to a Lender. The Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Default" means any of the events or circumstances described in Section 9.1.

"Existing Loan Agreement" has the meaning set forth in Section 5.1(k).

"Extension of Credit" means, as to any Lender, the making of a Loan by such Lender (or a participation therein by a Lender) or the issuance of, or participation in, a Letter of Credit by such Lender.

"Federal Funds Rate" means for any day the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) 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 next 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 next preceding Business Day and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means that certain letter agreement, dated as of Closing Date, between the Administrative Agent and the Borrower, as amended, modified, supplemented or replaced from time to time.

"Funded Debt" means, without duplication, the sum of (a) all Indebtedness of the Credit Parties for borrowed money, (b) all purchase money Indebtedness of the Credit Parties, (c) the principal portion of all obligations of the Credit Parties under Capital Leases, (d) commercial letters of credit and the maximum amount of all performance and standby letters of credit issued or bankers' acceptance facilities created for the account of a Credit Party, including, without duplication, all unreimbursed draws thereunder, (e) all Guaranty Obligations of the Credit Parties with respect to Funded Debt of another Person, (f) all Funded Debt of another entity secured by a Lien on any property of the Credit Parties whether or not such Funded Debt has been assumed by a Credit Party, (g) all Funded Debt of any partnership or unincorporated joint venture to the extent a Credit Party is legally obligated or has a reasonable expectation of being liable with respect thereto, net of any assets of such partnership or joint venture and (h) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

"GAAP" means generally accepted accounting principles in the United States applied on a consistent basis and subject to Section .

"Governmental Authority" means any Federal, state, local, provincial or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Guarantors" means Highwoods Properties, Inc., a Maryland corporation, each of the Subsidiaries of Highwoods Properties and the Borrower other than the Non- Guarantor Subsidiaries and each Additional Credit Party that has executed a Joinder Agreement.

"Guaranty Obligations" means, with respect to any Person, without duplication, any obligations (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (a) to purchase any such Indebtedness or other obligation or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of such indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, comfort letters, take or pay arrangements, put agreements or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person, (c) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness or (d) to otherwise assure or hold harmless the owner of such Indebtedness or obligation against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"Hazardous Materials" means any substance, material or waste defined or regulated in or under any Environmental Laws.

"Hedging Agreements" means interest rate protection agreements, foreign currency exchange agreements, commodity purchase or option agreements or other interest or exchange rate or commodity price hedging agreements.

"Improved Properties" means all Properties of the Borrower other than Properties that have not been developed.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations, other than intercompany items, of such Person issued or assumed as the deferred purchase price of property or services purchased by such Person which would appear as liabilities on a balance sheet of such Person, (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (f) all Guaranty Obligations of such Person, (g) the principal portion of all obligations of such Person under (i) Capital Leases and (ii) any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product of such Person where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP, (h) all obligations of such Person in respect of interest rate

protection agreements, foreign currency exchange agreements, or other interest or exchange rate or commodity price hedging agreements, (i) the maximum amount of all performance and standby letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (j) all preferred stock issued by such Person and required by the terms thereof to be redeemed, or for which mandatory sinking fund payments are due, by a fixed date and (k) the aggregate amount of uncollected accounts receivable of such Person subject at such time to a sale of receivables (or similar transaction) regardless of whether such transaction is effected without recourse to such Person or in a manner that would not be reflected on the balance sheet of such Person in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any partnership or unincorporated joint venture in which such Person is legally obligated or has a reasonable expectation of being liable with respect thereto.

"Indenture" means that certain Indenture dated March 1, 1994 among AP Southeast Portfolio Partners, L.P. as Issuer, Bankers Trust Company of California, N.A., as Indenture Trustee and Bankers Trust Company, as Servicer evidencing 7.88% Mortgage Notes due January 31, 2001.

"Interest Expense" means, for any period, with respect to the Credit Parties, on a consolidated basis, all net interest expense, including the interest component under Capital Leases, as determined in accordance with GAAP; provided that Interest Expense shall not include the amortized cost of the \$80 million cap purchased by the Borrower in June 1994.

"Interest Payment Date" means (a) as to Base Rate Loans, on the fifteenth (15th) day of each month and on the Revolving Loan Maturity Date and (b) as to Eurodollar Loans, on the last day of each applicable Interest Period and on the Revolving Loan Maturity Date.

"Interest Period" means, as to Eurodollar Loans, a period of one month's duration, commencing, in each case, on the date of the borrowing (including continuations and conversions thereof); provided, however, (a) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that when the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (b) no Interest Period shall extend beyond the Revolving Loan Maturity Date and (c) where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month.

"Issuing Lender" means NationsBank, N.A.

"Issuing Lender Fees" has the meaning set forth in Section 3.4(b).

"Lender" means any of the Persons identified as a "Lender" on the signature pages hereto, and any Person which may become a Lender by way of assignment in accordance with the terms hereof, together with their successors and permitted assigns.

"Letter of Credit" means a Letter of Credit issued for the account of a Credit Party by the Issuing Lender pursuant to Section 2.2, as such Letter of Credit may be amended, modified, extended, renewed or replaced.

"Letter of Credit Fee" shall have the meaning assigned to such term in Section 3.4(b).

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind, including, without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof.

"Loan" or "Loans" means the Revolving Loans (or a portion of any Revolving Loan), individually or collectively, as appropriate.

"LOC Documents" means, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk or (b) any collateral security for such obligations; provided that no LOC Document shall impose an obligation on the Issuing Lender or the LOC Participants except for the honoring of Letters of Credit or as otherwise contemplated herein.

"LOC Obligations" means, at any time, the sum of (a) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (b) the aggregate amount of all drawings under Letters of Credit honored by an Issuing Lender but not theretofore reimbursed.

"LOC Participants" means the Lenders.

"London Interbank Offered Rate" means, with respect to any Eurodollar Loan for the Interest Period applicable thereto, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Telerate Page 3750, the applicable rate shall be the arithmetic mean of all such rates. If, for any reason, such rate is not available, the term "London Interbank Offered Rate" shall mean, with respect to any Eurodollar Loan for the Interest Period applicable thereto, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates.

"Market Capitalization" means (a) the market value of issued and outstanding common stock of Highwoods Properties based on the average closing price over the last twenty trading days plus (b) the value of limited partnership units of the Borrower if each such unit were converted to a share of common stock of the Guarantor, plus (c) total Funded Debt outstanding of the Credit Parties.

"Material Adverse Effect" means a material adverse effect on

(a) the operations, financial condition, business or prospects of the Borrower or a Guarantor, (b) the ability of the Borrower or a Guarantor to perform its respective obligations under this Credit Agreement or any of the other Credit Documents, or (c) the validity or enforceability of this Credit Agreement, any of the other Credit Documents, or the rights and remedies of the Lenders hereunder or thereunder taken as a whole.

"Moody's" means Moody's Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

"Multiemployer Plan" means a Plan covered by Title IV of ERISA which is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

"Multiple Employer Plan" means a Plan covered by Title IV of ERISA, other than a Multiemployer Plan, which any Credit Party or any of its Subsidiaries or any ERISA Affiliate and at least one employer other than a Credit Party or any of its Subsidiaries or any ERISA Affiliate are contributing sponsors.

"Net Cash Proceeds" means the gross cash proceeds received from an Equity Issuance net of (a) transaction costs payable to third parties and (b) a good faith estimate of the taxes payable with respect to such proceeds.

"Net Income" means, for any period, the net income after taxes for such period of the Credit Parties on a consolidated basis, as determined in accordance with GAAP.

"Non-Excluded Taxes" has the meaning set forth in Section 3.13.

"Non-Guarantor Subsidiaries" means AP Southeast Portfolio Partners, L.P., AP- GP Southeast Portfolio Partners, L.P., a Delaware limited partnership, Highwoods Realty GP Corp., a Delaware limited partnership and Forsyth-Carter Brokerage, L.L.C.

"Note" or "Notes" means the Revolving Loan Notes, individually or collectively, as appropriate.

"Notice of Borrowing" means a request by the Borrower for a Revolving Loan, in the form of Exhibit 2.1(b).

"Notice of Continuation/Conversion" means a request by the Borrower to continue an existing Eurodollar Loan to a new Interest Period or to convert a Eurodollar Loan to a Base Rate Loan or a Base Rate Loan to a Eurodollar Loan, in the form of Exhibit 2.1(d).

"Participation Interest" means the Extension of Credit by a Lender by way of a purchase of a participation in Letters of Credit or LOC Obligations as provided in Section 2.2 or in any Loans as provided in Section 3.8.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor thereto.

"Person" means any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise (whether or not incorporated), or any Governmental Authority.

"Plan" means any employee benefit plan (as defined in Section 3(3) of ERISA) which is covered by ERISA and with respect to which any Credit Party or any of its Subsidiaries or any ERISA Affiliate is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" within the meaning of Section 3(5) of ERISA.

"Prime Rate" means the per annum rate of interest established from time to time by the Administrative Agent at its principal office in Charlotte, North Carolina (or such other principal office of the Administrative Agent as communicated in writing to the Borrower and the Lenders) as its Prime Rate. Any change in the interest rate resulting from a change in the Prime Rate shall become effective as of 12:01 a.m. of the Business Day on which each change in the Prime Rate is announced by the Administrative Agent. The Prime Rate is a reference rate used by the Administrative Agent in determining interest rates on certain loans and is not intended to be the lowest rate of interest charged on any extension of credit to any debtor.

"Properties" means all real property, together with all improvements thereon, owned by the Credit Parties and "Property" means any one of them.

"Regulation D, G, U, or X" means Regulation D, G, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

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

"Reportable Event" means a "reportable event" as defined in Section 4043 of ERISA with respect to which the notice requirements to the PBGC have not been waived.

"Required Lenders" means Lenders whose aggregate Credit Exposure (as hereinafter defined) constitutes at least 66 2/3% of the Credit Exposure of all Lenders at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders the aggregate principal amount of Credit Exposure of such Lender at such time. For purposes of the preceding sentence, the term "Credit Exposure" as applied to each Lender shall mean (a) at any time prior to the termination of the Commitments, the sum of the Revolving Loan Commitment Percentage of

such Lender multiplied by the Revolving Committed Amount and (b) at any time after the termination of the Commitments, the sum of the principal balance of the outstanding Loans and LOC Obligations of such Lender.

"Requirement of Law" means, as to any Person, the articles or certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or to which any of its material property is subject.

"Revolving Committed Amount" means TWO HUNDRED EIGHTY MILLION DOLLARS (\$280,000,000) or such lesser amount as the Revolving Committed Amount may be reduced pursuant to Section 2.1(d) or Section 3.3(c).

"Revolving Loan Commitment Percentage" means, for each Lender, the percentage identified as its Revolving Loan Commitment Percentage on Schedule 1.1(a), as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 11.3.

"Revolving Loan Maturity Date" means October 31, 1999.

"Revolving Loans" means the Revolving Loans made to the Borrower pursuant to Section 2.1.

"Revolving Note" or "Revolving Notes" means the promissory notes of the Borrower in favor of each of the Lenders evidencing the Revolving Loans provided pursuant to Section 2.1, individually or collectively, as appropriate, as such promissory notes may be amended, modified, supplemented, extended, renewed or replaced from time to time and as evidenced in the form of Exhibit 2.1(g).

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc., or any successor or assignee of the business of such division in the business of rating securities.

"Secured Debt" means the principal amount of Indebtedness outstanding of the Borrower that is secured by a Lien on a Property.

"Securities Act" means the Securities Act of 1933, as amended, modified, succeeded or replaced from time to time, and the rules and regulations promulgated thereunder.

"Single Employer Plan" means any Plan which is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"Solvent" means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (b) 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 in their ordinary course, (c) 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 assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) 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. 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.

"Speculative Land" means any Property of the Borrower which has not been developed or which the Borrower does not plan to develop within six months after such Property is acquired.

"Subsidiary" means, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, and (b) any partnership, association, joint venture or other entity in which such person directly or indirectly through Subsidiaries has more than a 50% equity interest at any time.

"Tangible Net Worth" means the net worth of the Credit Parties, on a consolidated basis, as determined in accordance with GAAP, including the value of limited partnership units in the Borrower as if each such unit were converted to a share of Highwoods Properties' capital stock, less all intangible assets of the Credit Parties on a consolidated basis.

"Termination Event" means (a) with respect to any Single Employer Plan, the occurrence of a Reportable Event or the substantial cessation of operations (within the meaning of Section 4062(e) of ERISA); (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan; (c) the distribution of a notice of intent to terminate or the actual termination of a Plan pursuant to Section 4041(a)(2) or 4041A of ERISA; (d) the institution of proceedings to terminate or the actual termination of a Plan by the PBGC under Section 4042 of ERISA; (e) any event or condition which might reasonably constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; or (f) the complete or partial withdrawal of any Credit Party or any ERISA Affiliate from a Multiemployer Plan.

"Total Assets" means the total assets of the Credit Parties, on a consolidated basis, as determined in accordance with GAAP.

"Total Assets at Cost" means the sum of (a) for Properties owned by the Credit Parties on the Closing Date (including the assets of Crocker Realty Trust, Inc.), the original undepreciated cost of such real estate assets plus (b) for each Property acquired by the Credit Parties after the Closing Date, the lesser of (i) the actual cost of such Property or (ii) the Adjusted NOI for such Property for the twelve months prior to its acquisition divided by ten percent (10%).

"Total Liabilities" means (a) the total liabilities of the Credit Parties, on a consolidated basis, as determined in accordance with GAAP, plus (b) all contingent liabilities and unfunded Indebtedness of any Credit Party (other than unfunded Indebtedness under this Credit Agreement).

"Unencumbered Assets" means all Properties of the Credit Parties (a) that generate revenues from third parties, (b) in which at least 75% of the available space located therein has been leased and (c) that are not subject to any Lien.

"Unencumbered Assets at Cost" means the sum of (a) for all Unencumbered Assets owned by the Credit Parties on the Closing Date (including the assets of Crocker Realty Trust, Inc.), the original undepreciated cost of such Unencumbered Assets plus (b) for each Unencumbered Asset purchased after the Closing Date, the lesser of (i) the actual cost of such Unencumbered Asset or (ii) the Adjusted NOI for such Unencumbered Asset for the twelve months prior to its acquisition divided by ten percent (10%).

"Unsecured Debt" means the total aggregate principal amount of unsecured Indebtedness of the Credit Parties, on a consolidated basis, actually outstanding; it being understood that Unsecured Debt shall not include principal amounts available to be drawn (but not drawn) under outstanding commitments.

"Unused Commitment" means, for any period, the amount by which  
(a) the then applicable aggregate Revolving Committed Amount exceeds  
(b) the daily average sum for such period of the outstanding aggregate principal amount of all Revolving Loans plus the aggregate amount of LOC Obligations outstanding.

"Unused Fee Percentage" means (a) if the Unused Commitment is less than or equal to 33% of the Revolving Committed Amount, .15% per annum, (b) if the Unused Commitment is less than or equal to 66% of the Revolving Committed Amount but greater than 33% of the Revolving Committed Amount, .20% per annum and (c) if the Unused Commitment is greater than 66% of the Revolving Committed Amount, .25% per annum.

1.2 Computation of Time Periods and Other Definitional Provisions. For purposes of computation of periods of time hereunder, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding." References in this Agreement to "Articles",

"Sections", "Schedules" or "Exhibits" shall be to Articles, Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided.

1.3 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. All financial statements delivered to the Lenders hereunder shall be accompanied by a statement from the Borrower that GAAP has not changed since the most recent financial statements delivered by the Borrower to the Lenders or if GAAP has changed describing such changes in detail and explaining how such changes affect the financial statements. All calculations made for the purposes of determining compliance with this Credit Agreement shall (except as otherwise expressly provided herein) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial statements delivered pursuant to Section 7.1 (or, prior to the delivery of the first financial statements pursuant to Section 7.1, consistent with the financial statements described in Section 5.1(c)); provided, however, if (a) the Borrower shall object to determining such compliance on such basis at the time of delivery of such financial statements due to any change in GAAP or the rules promulgated with respect thereto or (b) either Agent or the Required Lenders shall so object in writing within 60 days after delivery of such financial statements (or after the Lenders have been informed of the change in GAAP affecting such financial statements, if later), then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Borrower to the Lenders as to which no such objection shall have been made.

## SECTION 2

### CREDIT FACILITIES

#### 2.1 Revolving Loans.

(a) Revolving Loan Commitment. Subject to the terms and conditions set forth herein, each Lender severally agrees to make revolving loans (each a "Revolving Loan" and collectively the "Revolving Loans") to the Borrower, in Dollars, at any time and from time to time, during the period from and including the Effective Date to but not including the Revolving Loan Maturity Date (or such earlier date if the Revolving Committed Amount has been terminated as provided herein); provided, however, that (i) the sum of the aggregate amount of Revolving Loans outstanding plus the aggregate amount of LOC Obligations outstanding shall not exceed the Revolving Committed Amount and (ii) with respect to each individual Lender, the Lender's pro rata share of outstanding Revolving Loans plus such Lender's pro rata share of outstanding LOC Obligations shall not exceed such Lender's Revolving Loan Commitment Percentage of the Revolving Committed Amount. Subject to the terms of this Credit Agreement (including Section 3.3), the Borrower may borrow, repay and reborrow Revolving Loans.

(b) Method of Borrowing for Revolving Loans. By no later than 10:00 a.m. (i) one Business Day prior to the requested borrowing of

Revolving Loans that will be Base Rate Loans or (ii) two Business Days prior to the date of the requested borrowing of Revolving Loans that will be Eurodollar Loans, the Borrower shall submit a written Notice of Borrowing in the form of Exhibit 2.1(b) to the Administrative Agent (which notice may be by telecopy with the original to follow) setting forth (A) the amount requested, (B) whether such Revolving Loans shall accrue interest at the Adjusted Base Rate or the Adjusted Eurodollar Rate, (C) how the proceeds from such Revolving Loans will be used and (D) certification that the Borrower has complied in all respects with Section 5.2;

(c) Funding of Revolving Loans. Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly inform the Lenders as to the terms thereof. Each Lender shall make its Revolving Loan Commitment Percentage of the requested Revolving Loans available to the Administrative Agent by 2:00 p.m. on the date specified in the Notice of Borrowing by deposit, in Dollars, of immediately available funds at the offices of the Administrative Agent at its principal office in Charlotte, North Carolina or at such other address as the Administrative Agent may designate in writing. The amount of the requested Revolving Loans will then be made available to the Borrower by the Administrative Agent by crediting the account of the Borrower on the books of such office of the Administrative Agent, to the extent the amount of such Revolving Loans are made available to the Administrative Agent.

No Lender shall be responsible for the failure or delay by any other Lender in its obligation to make Revolving Loans hereunder; provided, however, that the failure of any Lender to fulfill its obligations hereunder shall not relieve any other Lender of its obligations hereunder. Unless the Administrative Agent shall have been notified by any Lender prior to the date of any such Revolving Loan that such Lender does not intend to make available to the Administrative Agent its portion of the Revolving Loans to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on the date of such Revolving Loans, and the Administrative Agent in reliance upon such assumption, may (in its sole discretion but without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent, the Administrative Agent shall be able to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent will promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent shall also be entitled to recover from the Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent at a per annum rate equal to (i) from the Borrower at the applicable rate for such Revolving Loan pursuant to the Notice of Borrowing and (ii) from a Lender at the Federal Funds Rate.

(d) Continuations and Conversions. Upon receipt of a Notice of Continuation/Conversion, the Administrative Agent shall promptly inform the Lenders as to the terms thereof. Subject to the terms of Section 5.2, the Borrower shall have the option, on any Business Day, to continue existing Eurodollar Loans for a subsequent Interest Period, to convert Base Rate Loans into Eurodollar Loans or to convert Eurodollar Loans into Base

Rate Loans; provided, however, that (i) each such continuation or conversion must be requested by the Borrower pursuant to a written Notice of Continuation/Conversion, in the form of Exhibit 2.1(d), in compliance with the terms set forth below, (ii) except as provided in Section 3.11, Eurodollar Loans may only be continued or converted into Base Rate Loans on the last day of the Interest Period applicable thereto, (iii) Eurodollar Loans may not be continued nor may Base Rate Loans be converted into Eurodollar Loans during the existence and continuation of a Default or Event of Default and (iv) any request to continue a Eurodollar Loan that fails to comply with the terms hereof or any failure to request a continuation of a Eurodollar Loan at the end of an Interest Period shall constitute a conversion to a Base Rate Loan on the last day of the applicable Interest Period. Each continuation or conversion must be requested by the Borrower no later than 11:00 a.m. (A) one Business Day prior to a requested conversion of a Eurodollar Loan to a Base Rate Loan or (B) two Business Days prior to the date for a requested continuation of a Eurodollar Loan or conversion of a Base Rate Loan to a Eurodollar Loan, in each case pursuant to a written Notice of Continuation/Conversion submitted to the Administrative Agent.

(e) Minimum Amounts. Each request for a borrowing, conversion or continuation shall be subject to the requirements that (i) each Eurodollar Loan shall be in a minimum amount of \$5,000,000 and in integral multiples of \$500,000 in excess thereof, (ii) each Base Rate Loan shall be in a minimum amount of the lesser of \$1,000,000 (and integral multiples of \$500,000 in excess thereof) or the remaining amount available under the Revolving Committed Amount and (iii) no more than ten Eurodollar Loans shall be outstanding hereunder at any one time.

(f) Notes. The Revolving Loans made by each Lender shall be evidenced by a duly executed promissory note of the Borrower to each applicable Lender in the face amount of its Revolving Loan Commitment Percentage of the Revolving Committed Amount in substantially the form of Exhibit 2.1(f).

## 2.2 Letter of Credit Subfacility.

(a) Issuance. Subject to the terms and conditions hereof and of the LOC Documents and any other terms and conditions which the Issuing Lender may reasonably require (so long as such terms and conditions do not impose any financial obligation on or require any Lien (not otherwise contemplated by this Agreement) to be given by any Credit Party or conflict with any obligation of, or detract from any action which may be taken by, any Credit Party or their Subsidiaries under this Agreement), the Issuing Lender shall from time to time upon request issue (from the Effective Date to the Revolving Loan Maturity Date and in a form reasonably acceptable to the Issuing Lender), in Dollars, and the LOC Participants shall participate in, letters of credit (the "Letters of Credit") for the account of the Borrower; provided, however, that (i) the aggregate amount of LOC Obligations shall not at any time exceed TEN MILLION DOLLARS (\$10,000,000), (ii) the sum of the aggregate amount of LOC Obligations outstanding plus Revolving Loans outstanding shall not exceed the Revolving Committed Amount and (iii) with respect to each individual LOC Participant, the LOC Participant's pro rata share of outstanding Revolving Loans plus its pro rata share of outstanding LOC Obligations shall not exceed such LOC Participant's Revolving Loan

Commitment Percentage of the Revolving Committed Amount. The issuance and expiry date of each Letter of Credit shall be a Business Day. Except as otherwise expressly agreed upon by all the LOC Participants, no Letter of Credit shall have an expiry date extending beyond one month prior to the Revolving Loan Maturity Date. Each Letter of Credit shall be a standby letter of credit issued to support the obligations (including pension or insurance obligations), contingent or otherwise, of the Borrower.

(b) Notice and Reports. The request for the issuance of a Letter of Credit shall be submitted to the Issuing Lender at least two Business Days prior to the requested date of issuance. The Issuing Lender will promptly notify the Administrative Agent (who shall then promptly notify the Lenders) of a request for the issuance of a Letter of Credit and will, at least quarterly and more frequently upon request, provide to the Administrative Agent for dissemination to the Lenders a detailed report specifying the Letters of Credit which are then issued and outstanding and any activity with respect thereto which may have occurred since the date of the prior report, and including therein, among other things, the account party, the beneficiary, the face amount, and the expiry date as well as any payments or expirations which may have occurred. The Issuing Lender will further provide to the Administrative Agent, promptly upon request, copies of the Letters of Credit and the other LOC Documents.

(c) Participation. Each LOC Participant, upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a risk participation from the Issuing Lender in such Letter of Credit and each LOC Document related thereto and the rights and obligations arising thereunder and any collateral relating thereto, in each case in an amount equal to its Revolving Loan Commitment Percentage of the obligations under such Letter of Credit, and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to the Issuing Lender therefor and discharge when due, its Revolving Loan Commitment Percentage of the obligations arising under such Letter of Credit. Without limiting the scope and nature of each LOC Participant's participation in any Letter of Credit, to the extent that the Issuing Lender has not been reimbursed as required hereunder or under any such Letter of Credit, each such LOC Participant shall pay to the Issuing Lender its Revolving Loan Commitment Percentage of such unreimbursed drawing in same day funds on the day of notification by the Issuing Lender of an unreimbursed drawing pursuant to the provisions of subsection (d) hereof. The obligation of each LOC Participant to so reimburse the Issuing Lender shall be absolute and unconditional and shall not be affected by the occurrence of a Default, an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrower or any other Credit Party to reimburse the Issuing Lender under any Letter of Credit, together with interest as hereinafter provided.

(d) Reimbursement. In the event of any drawing under any Letter of Credit, the Issuing Lender will promptly notify the Borrower. Unless the Borrower shall immediately notify the Issuing Lender of its intent to otherwise reimburse the Issuing Lender, the Borrower shall be deemed to have requested a Revolving Loan at the Adjusted Base Rate in the amount of the drawing as provided in subsection (e) hereof, the proceeds of which will be used to satisfy the reimbursement obligations. The Borrower shall reimburse the Issuing Lender (by payment through the Administrative Agent) on the day of drawing under any

Letter of Credit either with the proceeds of a Revolving Loan obtained hereunder or otherwise in same day funds as provided herein or in the LOC Documents. If the Borrower shall fail to reimburse the Issuing Lender as provided hereinabove, the unreimbursed amount of such drawing shall bear interest, for the benefit of the Lenders, at a per annum rate equal to the Base Rate plus the Applicable Percentage for the Base Rate Loans that are Revolving Loans plus two percent (2%). The Borrower's reimbursement obligations hereunder shall be absolute and unconditional under all circumstances irrespective of (but without waiver of) any rights of set-off, counterclaim or defense to payment the applicable account party or the Borrower may claim or have against the Issuing Lender, the Agents, the Lenders, the beneficiary of the Letter of Credit drawn upon or any other Person, including without limitation, any defense based on any failure of the applicable account party, the Borrower or any other Credit Party to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit. The Issuing Lender will promptly notify the LOC Participants of the amount of any unreimbursed drawing and each LOC Participant shall promptly pay to the Administrative Agent for the account of the Issuing Lender, in Dollars and in immediately available funds, the amount of such LOC Participant's Revolving Loan Commitment Percentage of such unreimbursed drawing. Such payment shall be made on the day such notice is received by such LOC Participant from the Issuing Lender if such notice is received at or before 1:00 p.m., otherwise such payment shall be made at or before 12:00 Noon on the Business Day next succeeding the day such notice is received. If such LOC Participant does not pay such amount to the Issuing Lender in full upon such request, such LOC Participant shall, on demand, pay to the Administrative Agent for the account of the Issuing Lender interest on the unpaid amount during the period from the date the LOC Participant received the notice regarding the unreimbursed drawing until such LOC Participant pays such amount to the Issuing Lender in full at a rate per annum equal to, if paid within two Business Days of the date of drawing, the Federal Funds Rate and thereafter at a rate equal to the Base Rate. Each LOC Participant's obligation to make such payment to the Issuing Lender, and the right of the Issuing Lender to receive the same, shall be absolute and unconditional, shall not be affected by any circumstance whatsoever and without regard to the termination of this Credit Agreement or the Commitments hereunder, the existence of a Default or Event of Default or the acceleration of the obligations hereunder and shall be made without any offset, abatement, withholding or reduction whatsoever. Simultaneously with the making of each such payment by a LOC Participant to the Issuing Lender, such LOC Participant shall, automatically and without any further action on the part of the Issuing Lender or such LOC Participant, acquire a participation in an amount equal to such payment (excluding the portion of such payment constituting interest owing to the Issuing Lender) in the related unreimbursed drawing portion of the LOC Obligation and in the interest thereon and in the related LOC Documents, and shall have a claim against the Borrower and the other Credit Parties with respect thereto.

(e) Repayment with Revolving Loans. On any day on which the Borrower shall have requested, or been deemed to have requested, a Revolving Loan borrowing to reimburse a drawing under a Letter of Credit, the Administrative Agent shall give notice to the Lenders that a Revolving Loan has been requested or deemed requested in connection with a drawing under a Letter of Credit, in which case a Revolving Loan borrowing comprised solely of Base Rate Loans (each such borrowing, a "Mandatory Borrowing") shall be immediately made

from all applicable Lenders (without giving effect to any termination of the Commitments pursuant to Section 9.2) pro rata based on each Lender's respective Revolving Loan Commitment Percentage and the proceeds thereof shall be paid directly to the Issuing Lender for application to the respective LOC Obligations. Each such Lender hereby irrevocably agrees to make such Revolving Loans immediately upon any such request or deemed request on account of each such Mandatory Borrowing in the amount and in the manner specified in the preceding sentence and on the same such date notwithstanding (i) the amount of Mandatory Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (ii) whether any conditions specified in Section 5.2 are then satisfied, (iii) whether a Default or Event of Default then exists, (iv) failure of any such request or deemed request for Revolving Loans to be made by the time otherwise required hereunder, (v) the date of such Mandatory Borrowing, or (vi) any reduction in the Revolving Committed Amount or any termination of the Commitments. In the event that any Mandatory Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower or any other Credit Party), then each such Lender hereby agrees that it shall forthwith fund (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) its Participation Interest in the outstanding LOC Obligations; provided, further, that in the event any Lender shall fail to fund its Participation Interest on the day the Mandatory Borrowing would otherwise have occurred, then the amount of such Lender's unfunded Participation Interest therein shall bear interest payable to the Issuing Lender upon demand, at the rate equal to, if paid within two Business Days of such date, the Federal Funds Rate, and thereafter at a rate equal to the Base Rate.

(f) Modification and Extension. The issuance of any supplement, modification, amendment, renewal, or extensions to any Letter of Credit shall, for purposes hereof, be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(g) Uniform Customs and Practices. The Issuing Lender shall have the Letters of Credit be subject to either the Uniform Commercial Code in the applicable jurisdiction or The Uniform Customs and Practice for Documentary Credits, as published as of the date of issue by the International Chamber of Commerce (Publication No. 500 or the most recent publication, the "UCP"), in which case the UCP may be incorporated therein and deemed in all respects to be a part thereof, and the Issuing Lender shall act in conformance therewith.

(h) Responsibility of Issuing Lender. It is expressly understood and agreed as between the Lenders that the obligations of the Issuing Lender hereunder to the LOC Participants are only those expressly set forth in this Credit Agreement and that the Issuing Lender shall be entitled to assume that the conditions precedent set forth in Section 5 have been satisfied unless it shall have acquired actual knowledge that any such condition precedent has not been satisfied; provided, however, that nothing set forth in this Section 2.2 shall be deemed to prejudice the right of any LOC Participant to recover from the Issuing Lender any amounts made available by such LOC Participant to the Issuing Lender pursuant to this Section 2.2 in the event that it is determined by a court of competent jurisdiction that

the payment with respect to a Letter of Credit constituted gross negligence or willful misconduct on the part of the Issuing Lender.

(i) Conflict with LOC Documents. In the event of any conflict between this Credit Agreement and any LOC Document, this Credit Agreement shall govern.

(j) Indemnification of Issuing Lender.

(i) In addition to its other obligations under this Credit Agreement, the Borrower hereby agrees to protect, indemnify, pay and save the Issuing Lender and each LOC Participant harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Issuing Lender and each LOC Participant may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit or (B) the failure of the Issuing Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or governmental authority (all such acts or omissions, herein called "Government Acts") including, without limitation, due to failure of the applicable account party, the Borrower or any Credit Party to receive consideration or the legality, validity, regularity or unenforceability of a Letter of Credit.

(ii) As between the Borrower and the Issuing Lender, the Borrower shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. The Issuing Lender shall not be responsible for (except in the case of (A), (B) and (C) below if the Issuing Lender has actual knowledge to the contrary): (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (D) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (G) any consequences arising from causes beyond the control of the Issuing Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of the Issuing Lender's rights or powers hereunder.

(iii) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by the Issuing Lender, under or in connection with any Letter of Credit or the related certificates,

if taken or omitted in good faith, shall not put the Issuing Lender under any resulting liability to the Borrower or any other Credit Party. It is the intention of the parties that this Credit Agreement shall be construed and applied to protect and indemnify the Issuing Lender against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by the Borrower, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any present or future Government Acts. The Issuing Lender shall not, in any way, be liable for any failure by the Issuing Lender or anyone else to pay any drawing under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of the Issuing Lender.

(iv) Nothing in this subsection (j) is intended to limit the reimbursement obligation of the Borrower contained in this Section 2.2. The obligations of the Borrower under this subsection (j) shall survive the termination of this Credit Agreement. No act or omission of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the Issuing Lender to enforce any right, power or benefit under this Credit Agreement.

(v) Notwithstanding anything to the contrary contained in this subsection (j), the Borrower shall have no obligation to indemnify the Issuing Lender in respect of any liability incurred by the Issuing Lender arising solely out of the gross negligence or willful misconduct of the Issuing Lender, as determined by a court of competent jurisdiction. Nothing in this Agreement shall relieve the Issuing Lender of any liability to the Borrower in respect of any action taken by the Issuing Lender which action constitutes gross negligence or willful misconduct of the Issuing Lender or a violation of the UCP or Uniform Commercial Code (as applicable), as determined by a court of competent jurisdiction.

### SECTION 3

#### **GENERAL PROVISIONS APPLICABLE TO LOANS AND LETTERS OF CREDIT**

##### 3.1 Interest.

(a) Interest Rate. All Base Rate Loans shall accrue interest at the Adjusted Base Rate and all Eurodollar Loans shall accrue interest at the Adjusted Eurodollar Rate.

(b) Default Rate of Interest. Upon the occurrence, and during the continuance, of an Event of Default, the principal of and, to the extent permitted by law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents (including without limitation fees and expenses) shall bear interest, payable on demand, at a per annum rate equal to 4% plus the rate which would otherwise be applicable (or if no rate is applicable, then the rate for Revolving Loans that are Base Rate Loans plus four percent (4%) per annum).

(c) Late Charges. In the event any payment of interest or principal is delinquent more than fifteen (15) days, the Borrower will pay to the Administrative Agent for the benefit of the Lenders a late charge of four percent (4%) of the amount of the overdue payment. This provision for late charges shall not be deemed to extend the time for payment or be a "grace period" or "cure period" that gives the Borrower a right to cure a Default or Event of Default. Imposition of such late charges is not contingent upon giving of any notice or the lapse of any cure period provided for in the Credit Agreement.

(d) Interest Payments. Interest on Loans shall be due and payable in arrears on each Interest Payment Date. If an Interest Payment Date falls on a date which is not a Business Day, such Interest Payment Date shall be deemed to be the next succeeding Business Day, except that in the case of Eurodollar Loans where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day.

3.2 Place and Manner of Payments. All payments of principal, interest, fees, expenses and other amounts to be made by a Credit Party under this Agreement shall be received not later than 12:00 noon on the date when due, in Dollars and in immediately available funds, by the Administrative Agent at its offices in Charlotte, North Carolina. Payments received after such time shall be deemed to have been received on the next Business Day. The Borrower shall, at the time it makes any payment under this Agreement, specify to the Administrative Agent, the Loans, Letters of Credit, fees or other amounts payable by the Borrower hereunder to which such payment is to be applied (and in the event that it fails to specify, or if such application would be inconsistent with the terms hereof, the Administrative Agent shall, subject to Section 3.7, distribute such payment to the Lenders in such manner as the Administrative Agent may deem appropriate). The Administrative Agent will distribute such payments to the Lenders on the date received if any such payment is received prior to 12:00 p.m.; otherwise the Administrative Agent will distribute such payment to the Lenders on the next succeeding Business Day. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and fees for the period of such extension), except that in the case of Eurodollar Loans, if the extension would cause the payment to be made in the next following calendar month, then such payment shall instead be made on the next preceding Business Day. If the Administrative Agent fails to timely forward payment to a Lender it shall pay such Lender interest at the Federal Funds Rate until such payment is made.

### 3.3 Prepayments.

(a) Voluntary Prepayments. The Borrower shall have the right to prepay Loans in whole or in part from time to time without premium or penalty; provided, however, that (i) Eurodollar Loans may only be prepaid on two Business Days' prior written notice to the Administrative Agent and any prepayment of Eurodollar Loans will be subject to Section 3.14 and (ii) each such partial prepayment of Loans shall be in the minimum principal amount of \$100,000 and integral multiples of \$100,000 in excess thereof.

(b) Mandatory Prepayments. If at any time the sum of the aggregate amount of Revolving Loans outstanding plus LOC Obligations outstanding exceeds the Revolving Committed Amount, the Borrower shall immediately make a principal payment to the

Administrative Agent in the manner and in an amount necessary to be in compliance with Section 2.1.

(c) Application of Prepayments. All amounts required to be paid pursuant to Section 3.3(b) shall be applied first to Revolving Loans. If the amount required to be paid under Section 3.3(b) exceeds the aggregate amount of Revolving Loans outstanding, such excess shall be applied second to the Cash Collateral Account in respect of LOC Obligations. All prepayments hereunder shall be subject to Section 3.14.

### 3.4 Fees.

(a) Unused Fees. In consideration of the Revolving Committed Amount being made available by the Lenders hereunder, the Borrower agrees to pay to the Administrative Agent, for the pro rata benefit of each applicable Lender (based on each Lender's Revolving Loan Percentage of the Revolving Committed Amount), a fee equal to the Unused Fee Percentage on the Unused Commitment (the "Unused Fees"). The accrued Unused Fees shall commence to accrue on the Effective Date, shall be calculated as of the last day of each March, June, September and December and shall be due and payable in arrears on each April 15, July 15, October 15 and January 15 (as well as on the Revolving Loan Maturity Date and on any date that the Revolving Committed Amount is reduced) for the immediately preceding calendar quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date.

### (b) Letter of Credit Fees.

(i) Letter of Credit Fee. In consideration of the issuance of Letters of Credit hereunder, the Borrower agrees to pay to the Issuing Lender for the pro rata benefit of the applicable Lenders (based on each Lender's Revolving Loan Commitment Percentage of the Revolving Committed Amount), a fee (the "Letter of Credit Fee") equal to the Applicable Percentage for the Letter of Credit Fee on the average daily maximum amount available to be drawn under each such Letter of Credit from the date of issuance to the date of expiration. The Letter of Credit Fee will be payable in arrears on each April 15, July 15, October 15 and January 15 (as well as on the Revolving Loan Maturity Date) for the immediately preceding calendar quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date.

(ii) Issuing Lender Fees. In addition to the Letter of Credit Fees payable pursuant to subsection (i) above, the Borrower shall pay to the Issuing Lender for its own account, without sharing by the other Lenders, (A) a fee equal to one-fourth of one percent (.25%) per annum on the total sum of all Letters of Credit issued by the Issuing Lender, such fee to be paid when the Letter of Credit is issued and (B) the customary charges from time to time to the Issuing Lender for its services in connection with the issuance, amendment, payment, transfer, administration, cancellation and conversion of, and drawings under, such Letters of Credit (collectively, the "Issuing Lender Fees").

(c) Administrative Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, an annual fee as agreed to between the Borrower and the Administrative Agent in the Fee Letter.

3.5 Payment in full at Maturity. On the Revolving Loan Maturity Date, the entire outstanding principal balance of all Revolving Loans and all LOC Obligations, together with accrued but unpaid interest and all other sums owing with respect thereto, shall be due and payable in full, unless accelerated sooner pursuant to Section 9.

### 3.6 Computations of Interest and Fees.

(a) All computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days. Interest shall accrue from and include the date of borrowing (or continuation or conversion) but exclude the date of payment.

(b) It is the intent of the Lenders and the Credit Parties to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between the Lenders and the Borrower are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, or received under this Credit Agreement, under the Notes or otherwise, exceed the maximum nonusurious amount permissible under applicable law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such documents shall be automatically reduced to the maximum nonusurious amount permitted under applicable law, without the necessity of execution of any amendment or new document. If any Lender shall ever receive anything of value which is characterized as interest on the Loans under applicable law and which would, apart from this provision, be in excess of the maximum lawful amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Loans and not to the payment of interest, or refunded to the Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Loans. The right to demand payment of the Loans or any other indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lenders do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lenders with respect to the Loans shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Loans so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by applicable law.

3.7 Pro Rata Treatment. Except to the extent otherwise provided herein:

(a) Loans. Each Revolving Loan borrowing (including, without limitation, each Mandatory Borrowing), each payment or prepayment of principal and/or interest of any Loan, each payment of fees (other than the Issuing Lender Fees retained by the Issuing Lender for its own account and the Administrative Fees retained by the Administrative Agent for its own account), each reduction of the Revolving Committed Amount, and each conversion or continuation of any Loan, shall (except as otherwise provided in Section 3.11) be allocated pro rata among the relevant Lenders in accordance with the respective Revolving Loan Commitment Percentages of such Lenders (or, if the Commitments of such Lenders have expired or been terminated, in accordance with the respective principal amounts of the outstanding Loans and Participation Interests of such Lenders); provided that, if any Lender shall have failed to pay its applicable pro rata share of any Revolving Loan, then any amount to which such Lender would otherwise be entitled pursuant to this subsection (a) shall instead be payable to the Administrative Agent until the share of such Loan not funded by such Lender has been repaid; provided further, that in the event any amount paid to any Lender pursuant to this subsection (a) is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Base Rate plus two percent (2%) per annum; and

(b) Letters of Credit. Each payment of unreimbursed drawings in respect of LOC Obligations shall be allocated to each LOC Participant pro rata in accordance with its Revolving Loan Commitment Percentage; provided that, if any LOC Participant shall have failed to pay its applicable pro rata share of any drawing under any Letter of Credit, then any amount to which such LOC Participant would otherwise be entitled pursuant to this subsection (b) shall instead be payable to the Issuing Lender until the share of such unreimbursed drawing not funded by such Lender has been repaid; provided further, that in the event any amount paid to any LOC Participant pursuant to this subsection (b) is rescinded or must otherwise be returned by the Issuing Lender, each LOC Participant shall, upon the request of the Issuing Lender, repay to the Administrative Agent for the account of the Issuing Lender the amount so paid to such LOC Participant, with interest for the period commencing on the date such payment is returned by the Issuing Lender until the date the Issuing Lender receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Base Rate plus two percent (2%) per annum.

3.8 Sharing of Payments. The Lenders agree among themselves that, except to the extent otherwise provided herein, in the event that any Lender shall obtain payment in respect of any Loan, unreimbursed drawing with respect to any LOC Obligations or any other obligation owing to such Lender under this Credit Agreement through the exercise of a right of setoff, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any

applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, in excess of its pro rata share of such payment as provided for in this Credit Agreement, such Lender shall promptly pay in cash or purchase from the other Lenders a participation in such Loans, LOC Obligations, and other obligations in such amounts, and make such other adjustments from time to time, as shall be equitable to the end that all Lenders share such payment in accordance with their respective ratable shares as provided for in this Credit Agreement. The Lenders further agree among themselves that if payment to a Lender obtained by such Lender through the exercise of a right of setoff, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by payment in cash or a repurchase of a participation theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each Lender whose payment shall have been rescinded or otherwise restored. The Borrower agrees that any Lender so purchasing such a participation may, to the fullest extent permitted by law, exercise all rights of payment, including setoff, banker's lien or counterclaim, with respect to such participation as fully as if such Lender were a holder of such Loan, LOC Obligation or other obligation in the amount of such participation. Except as otherwise expressly provided in this Credit Agreement, if any Lender or an Agent shall fail to remit to an Agent or any other Lender an amount payable by such Lender or such Agent to such Agent or such other Lender pursuant to this Credit Agreement on the date when such amount is due, such payments shall be made together with interest thereon for each date from the date such amount is due until the date such amount is paid to such Agent or such other Lender at a rate per annum equal to the Federal Funds Rate. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 3.8 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 3.8 to share in the benefits of any recovery on such secured claim.

3.9 Capital Adequacy. If, after the date hereof, any Lender has determined that the adoption or the becoming effective of, or any change in, or any change by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof in the interpretation or administration of, any applicable law, rule or regulation regarding capital adequacy, or compliance by such Lender, or its parent corporation, with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's (or parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Lender, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's (or parent corporation's) policies with respect to capital adequacy), then, upon notice from such Lender to the Borrower, the Borrower shall be obligated to pay to such Lender such additional amount or amounts as will compensate such Lender on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified) for such reduction. Each determination by any such Lender of amounts owing under this Section shall, absent manifest error, be conclusive and binding on the parties hereto. This covenant shall survive the termination of this Credit Agreement and the payment of the Loans and all other amounts payable hereunder.

3.10 Inability To Determine Eurodollar Rate. If prior to the first day of any Interest Period, the Administrative Agent shall have determined in good faith (which determination shall be conclusive

and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the Lenders as soon as practicable thereafter, and will also give prompt written notice to the Borrower when such conditions no longer exist. If such notice is given (a) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (b) any Loans that were to have been converted on the first day of such Interest Period to or continued as Eurodollar Loans shall be converted to or continued as Base Rate Loans and (c) any outstanding Eurodollar Loans shall be converted, on the first day of such Interest Period, to Base Rate Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans shall be made or continued as such, nor shall the Borrower have the right to convert Base Rate Loans to Eurodollar Loans.

3.11 Illegality to Make Eurodollar Loans. Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof occurring after the Closing Date shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Credit Agreement, (a) such Lender shall promptly give written notice of such circumstances to the Borrower and the Administrative Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (b) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert a Base Rate Loan to Eurodollar Loans shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Loans, such Lender shall then have a commitment only to make a Base Rate Loan when a Eurodollar Loan is requested and (c) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days or the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.14.

3.12 Changes in Requirements of Law. If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof applicable to any Lender, or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case made subsequent to the Closing Date (or, if later, the date on which such Lender becomes a Lender):

(a) shall subject such Lender to any tax of any kind whatsoever with respect to any Letter of Credit, any Eurodollar Loans made by it or its obligation to make Eurodollar Loans, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes covered by Section 3.13 (including Non- Excluded Taxes imposed solely by reason of any failure of such Lender to comply with its obligations under Section 3.13(b)) and changes in taxes measured by or imposed upon the overall net income, or franchise tax (imposed in lieu of such net income tax), of such Lender or its applicable lending office, branch, or any affiliate thereof);

(b) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in

or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender which is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(c) shall impose on such Lender any other condition (excluding any tax of any kind whatsoever);

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit or to reduce any amount receivable hereunder in respect thereof, then, in any such case, upon notice to the Borrower from such Lender, through the Administrative Agent, in accordance herewith, the Borrower shall be obligated to promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified) for such increased cost or reduced amount receivable, provided that, in any such case, the Borrower may elect to convert the Eurodollar Loans made by such Lender hereunder to Base Rate Loans by giving the Administrative Agent at least one Business Day's notice of such election, in which case the Borrower shall promptly pay to such Lender, upon demand, without duplication, such amounts, if any, as may be required pursuant to Section 3.14. If any Lender becomes entitled to claim any additional amounts pursuant to this Section 3.12, it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in this Section 3.12 has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event and (z) as to the additional amount demanded by such Lender and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any additional amounts payable pursuant to this Section 3.12 submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive and binding on the parties hereto in the absence of manifest error. This covenant shall survive the termination of this Credit Agreement and the payment of the Loans and all other amounts payable hereunder.

### 3.13 Taxes.

(a) Except as provided below in this Section 3.13, all payments made by the Borrower under this Credit Agreement and any Notes shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any court, or governmental body, agency or other official, excluding taxes measured by or imposed upon the overall net income of any Lender or its applicable lending office, or any branch or affiliate thereof, and all franchise taxes, branch taxes, taxes on doing business or taxes on the overall capital or net worth of any Lender or its applicable lending office, or any branch or affiliate thereof, in each case imposed in lieu of net income taxes: (i) by the jurisdiction under the laws of which such Lender, applicable lending office, branch or affiliate is organized or is located, or in which its principal executive office is located, or any nation within which such jurisdiction is located or any political subdivision thereof; or (ii) by reason of any connection between the jurisdiction imposing such tax and such Lender, applicable lending office, branch or affiliate other than a connection arising solely from such Lender having executed, delivered or performed its obligations, or received payment under or enforced, this Credit Agreement or

any Notes. If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") are required to be withheld from any amounts payable to an Agent or any Lender hereunder or under any Notes, (A) the amounts so payable to an Agent or such Lender shall be increased to the extent necessary to yield to an Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Credit Agreement and any Notes, provided, however, that the Borrower shall be entitled to deduct and withhold any Non-Excluded Taxes and shall not be required to increase any such amounts payable to any Lender that is not organized under the laws of the United States of America or a state thereof if such Lender fails to comply with the requirements of paragraph (b) of this Section 3.13 whenever any Non-Excluded Taxes are payable by the Borrower, and (B) as promptly as possible after requested the Borrower shall send to such Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Agents and any Lender for any incremental taxes, interest or penalties that may become payable by an Agent or any Lender as a result of any such failure. The agreements in this subsection shall survive the termination of this Credit Agreement and the payment of the Loans and all other amounts payable hereunder.

(b) Each Lender that is not incorporated under the laws of the United States of America or a state thereof shall:

(i) (A) on or before the date of any payment by the Borrower under this Credit Agreement or Notes to such Lender, deliver to the Borrower and the Administrative Agent (x) two duly completed copies of United States Internal Revenue Service Form 1001 or 4224, or successor applicable form, as the case may be, certifying that it is entitled to receive payments under this Credit Agreement and any Notes without deduction or withholding of any United States federal income taxes and (y) an Internal Revenue Service Form W-8 or W-9, or successor applicable form, as the case may be, certifying that it is entitled to an exemption from United States backup withholding tax;

(B) deliver to the Borrower and the Administrative Agent two further copies of any such form or certification on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower; and

(C) obtain such extensions of time for filing and complete such forms or certifications as may reasonably be requested by the Borrower or the Administrative Agent; or

(ii) in the case of any such Lender that is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (A) represent to the

Borrower (for the benefit of the Borrower and the Agents) that it is not a bank within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (B) agree to furnish to the Borrower, on or before the date of any payment by the Borrower, with a copy to the Administrative Agent, two accurate and complete original signed copies of Internal Revenue Service Form W-8, or successor applicable form certifying to such Lender's legal entitlement at the date of such certificate to an exemption from U.S. withholding tax under the provisions of Section 881(c) of the Internal Revenue Code with respect to payments to be made under this Credit Agreement and any Notes (and to deliver to the Borrower and the Administrative Agent two further copies of such form on or before the date it expires or becomes obsolete and after the occurrence of any event requiring a change in the most recently provided form and, if necessary, obtain any extensions of time reasonably requested by the Borrower or the Administrative Agent for filing and completing such forms), and (C) agree, to the extent legally entitled to do so, upon reasonable request by the Borrower, to provide to the Borrower (for the benefit of the Borrower and the Agents) such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from withholding with respect to payments under this Credit Agreement and any Notes.

Notwithstanding the above, if any change in treaty, law or regulation has occurred after the date such Person becomes a Lender hereunder which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender so advises the Borrower and the Administrative Agent then such Lender shall be exempt from such requirements. Each Person that shall become a Lender or a participant of a Lender pursuant to Section 11.3 shall, upon the effectiveness of the related transfer, be required to provide all of the forms, certifications and statements required pursuant to this subsection (b); provided that in the case of a participant of a Lender, the obligations of such participant of a Lender pursuant to this subsection (b) shall be determined as if the participant of a Lender were a Lender except that such participant of a Lender shall furnish all such required forms, certifications and statements to the Lender from which the related participation shall have been purchased.

3.14 Indemnity as to Eurodollar Loans. The Borrower promises to indemnify each Lender and to hold each Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Credit Agreement, (b) default by the Borrower in making any prepayment of a Eurodollar Loan after the Borrower has given a notice thereof in accordance with the provisions of this Credit Agreement and (c) the making of a prepayment of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to (i) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein (excluding, however, the Applicable Percentage included

therein, if any) minus (ii) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. The agreements in this Section shall survive the termination of this Credit Agreement and the payment of the Loans and all other amounts payable hereunder.

## SECTION 4

### GUARANTY

4.1 Guaranty of Payment. Subject to Section 4.7 below, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Lender, each Affiliate of Lender that enters into a Hedging Agreement and the Agents the prompt payment of the Credit Party Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise). The Guarantors additionally, jointly and severally, unconditionally guarantee to each Lender, each Affiliate of a Lender that enters into a Hedging Agreement and the Agents the timely performance of all other obligations under the Credit Documents and the Hedging Agreements. This Guaranty is a guaranty of payment and not of collection and is a continuing guaranty and shall apply to all Credit Party Obligations whenever arising.

4.2 Obligations Unconditional. The obligations of the Guarantors hereunder are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents or the Hedging Agreements, or any other agreement or instrument referred to therein, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Each Guarantor agrees that this Guaranty may be enforced by the Lenders without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Notes or any other of the Credit Documents or any collateral, if any, hereafter securing the Credit Party Obligations or otherwise and each Guarantor hereby waives the right (including, without limitation, any rights under Section 26-7 et seq. of North Carolina General Statutes) to require the Lenders to proceed against the Borrower or any other Person (including a co-guarantor) or to require the Lenders to pursue any other remedy or enforce any other right. Each Guarantor further agrees that it shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor of the Credit Party Obligations for amounts paid under this Guaranty until such time as the Lenders (and any Affiliates of Lenders entering into Hedging Agreements) have been paid in full, all Commitments under the Credit Agreement have been terminated and no Person or Governmental Authority shall have any right to request any return or reimbursement of funds from the Lenders in connection with monies received under the Credit Documents. Each Guarantor further agrees that nothing contained herein shall prevent the Lenders from suing on the Notes or any of the other Credit Documents or any of the Hedging Agreements or foreclosing its security interest in or Lien on any collateral, if any, securing the Credit Party Obligations or from exercising any other rights available to it under this Credit Agreement, the Notes, any other of the Credit Documents, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of any of any Guarantor's obligations hereunder; it being

the purpose and intent of each Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Neither any Guarantor's obligations under this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Borrower or by reason of the bankruptcy or insolvency of the Borrower. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Credit Party Obligations and notice of or proof of reliance of by any Agent or any Lender upon this Guarantee or acceptance of this Guarantee. The Credit Party Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Guarantee. All dealings between the Borrower and any of the Guarantors, on the one hand, and the Agents and the Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Guarantee.

4.3 Modifications. Each Guarantor agrees that (a) all or any part of the security now or hereafter held for the Credit Party Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) the Lenders shall not have any obligation to protect, perfect, secure or insure any such security interests, liens or encumbrances now or hereafter held, if any, for the Credit Party Obligations or the properties subject thereto; (c) the time or place of payment of the Credit Party Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) the Borrower and any other party liable for payment under the Credit Documents may be granted indulgences generally; (e) any of the provisions of the Notes or any of the other Credit Documents may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be released; and (g) any deposit balance for the credit of the Borrower or any other party liable for the payment of the Credit Party Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the stated, extended or accelerated maturity of the Credit Party Obligations, all without notice to or further assent by such Guarantor, which shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

4.4 Waiver of Rights. Each Guarantor expressly waives to the fullest extent permitted by applicable law: (a) notice of acceptance of this Guaranty by the Lenders and of all extensions of credit to the Borrower by the Lenders; (b) presentment and demand for payment or performance of any of the Credit Party Obligations; (c) protest and notice of dishonor or of default (except as specifically required in the Credit Agreement) with respect to the Credit Party Obligations or with respect to any security therefor; (d) notice of the Lenders obtaining, amending, substituting for, releasing, waiving or modifying any security interest, lien or encumbrance, if any, hereafter securing the Credit Party Obligations, or the Lenders' subordinating, compromising, discharging or releasing such security interests, liens or encumbrances, if any; (e) all other notices to which such Guarantor might otherwise be entitled; and (f) demand for payment under this Guaranty.

4.5 Reinstatement. The obligations of the Guarantors under this Section 4 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Credit Party Obligations is rescinded or must be otherwise restored by any holder of any of the Credit Party Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Agents and each

Lender on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by an Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

4.6 Remedies. The Guarantors agree that, as between the Guarantors, on the one hand, and the Agents and the Lenders, on the other hand, the Credit Party Obligations may be declared to be forthwith due and payable as provided in Section 9 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 9) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Credit Party Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Credit Party Obligations being deemed to have become automatically due and payable), such Credit Party Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors.

4.7 Limitation of Guaranty. Notwithstanding any provision to the contrary contained herein or in any of the other Credit Documents, to the extent the obligations of any Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the Bankruptcy Code).

## SECTION 5

### CONDITIONS PRECEDENT

5.1 Closing Conditions. The obligation of the Lenders to enter into this Credit Agreement and make the initial Extension of Credit is subject to satisfaction of the following conditions:

(a) Executed Credit Documents. Receipt by the Agents of duly executed copies of: (i) this Credit Agreement; (ii) the Notes; and (iii) all other Credit Documents, each in form and substance reasonably acceptable to the Agents in their sole discretion.

(b) Partnership Documents. Receipt by the Agents of the following:

(i) Certificates of Authorization. Certificate of authorization of the general partner of the Borrower (and each other Credit Party that is a partnership) as of the Effective Date, approving and adopting the Credit Documents to be executed by the Borrower (or such other Credit Party) and authorizing the execution and delivery thereof.

(ii) Partnership Agreement. Certified copies of the partnership agreement of the Borrower (and each other Credit Party that is a partnership), together with all amendments thereto.

(iii) Certificates of Good Standing or Existence. Certificate of good standing or existence for the Borrower (and each other Credit Party that is a partnership) issued as of a recent date by its state of organization and each other state where the failure to qualify or be in good standing could have a Material Adverse Effect.

(c) Corporate Documents. Receipt by the Agents of the following:

(i) Charter Documents. Copies of the articles or certificates of incorporation or other charter documents of Highwoods Properties (and each other Credit Party that is a corporation) 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 and certified by a secretary or assistant secretary of Highwoods Properties (and each other Credit Party that is a corporation) to be true and correct as of the Effective Date.

(ii) Bylaws. A copy of the bylaws of Highwoods Properties (and each other Credit Party that is a corporation) certified by a secretary or assistant secretary of Highwoods Properties to be true and correct as of the Effective Date.

(iii) Resolutions. Copies of resolutions of the Board of Directors of Highwoods Properties (and each other Credit Party that is a corporation) approving and adopting the Credit Documents to which it is a party, the transactions contemplated therein and authorizing execution and delivery thereof, certified by a secretary or assistant secretary of Highwoods Properties (and each other Credit Party that is a corporation) to be true and correct and in force and effect as of the Effective Date.

(iv) Good Standing. Copies of (A) certificates of good standing, existence or its equivalent with respect to Highwoods Properties (and each other Credit Party that is a corporation) certified as of a recent date by the appropriate Governmental Authorities of the state or other jurisdiction of incorporation and each other jurisdiction in which the failure to so qualify and be in good standing could have a Material Adverse Effect and (B) to the extent available, a certificate indicating payment of all corporate franchise taxes certified as of a recent date by the appropriate governmental taxing authorities.

(v) Incumbency. An incumbency certificate of Highwoods Properties (and each other Credit Party that is a corporation) certified by a secretary or assistant secretary to be true and correct as of the Effective Date.

- (d) Financial Statements. Receipt by the Agents and the Lenders of the audited consolidated financial statements of the Credit Parties, dated as of December 31, 1995, and the unaudited consolidated financial statements of the Credit Parties dated as of June 30, 1996.
- (e) Opinion of Counsel. Receipt by the Agents of an opinion, or opinions (which shall cover, among other things, authority, legality, validity, binding effect, and enforceability), reasonably satisfactory to the Agents, addressed to the Agents on behalf of the Lenders and dated as of the Effective Date, from legal counsel to the Credit Parties.
- (f) Evidence of Insurance. Receipt by the Agents of copies of insurance policies or certificates of insurance of the Credit Parties evidencing liability and casualty insurance meeting the requirements set forth in the Credit Documents, including, but not limited to, naming the Administrative Agent as sole loss payee on behalf of the Lenders.
- (g) Material Adverse Effect. There shall not have occurred a change since December 31, 1995 that has had or could reasonably be expected to have a Material Adverse Effect.
- (h) Litigation. There shall not exist any pending or threatened action, suit, investigation or proceeding against a Credit Party that would have or would reasonably be expected to have a Material Adverse Effect.
- (i) Officer's Certificates. The Agents shall have received a certificate or certificates executed by the general partner of the Borrower and the chief financial officer of the Highwoods Properties as of the Effective Date stating that (i) each of the Borrower and Highwoods Properties is in compliance with all existing material financial obligations, (ii) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental instrumentality that purports to effect any Credit Party or any transaction contemplated by the Credit Documents, if such action, suit, investigation or proceeding could have or could be reasonably expected to have a Material Adverse Effect, (iii) the financial statements and information delivered pursuant to Section 5.1(d) are true and accurate in all material respects and (iv) immediately after giving effect to this Credit Agreement, the other Credit Documents and all the transactions contemplated therein to occur on such date, (A) each Credit Party is Solvent, (B) no Default or Event of Default exists, (C) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects, and (D) the Credit Parties are in compliance with each of the financial covenants set forth in Section 7.2 with evidence to support such compliance in a manner satisfactory to the Administrative Agent.
- (j) Fees and Expenses. Payment by the Credit Parties of all fees and expenses owed by them to the Lenders and the Agents, including, without limitation, payment to the Agents of the fees set forth in the Fee Letter.
- (k) Existing Indebtedness. Evidence of payment in full and termination of (i) that certain Loan Agreement, dated as of March 26, 1996, among the Borrower, Highwoods

Properties, NationsBank, N.A., First Union National Bank of North Carolina and Wachovia Bank of North Carolina (the "Existing Loan Agreement") and (ii) that certain Promissory Note dated September 19, 1996 executed by the Borrower in favor of NationsBank, N.A., First Union National Bank of North Carolina and Wachovia Bank of North Carolina in the face amount of \$30 million (the "Existing Note") and all documents and instruments executed and/or delivered in connection with the Existing Loan Agreement and the Existing Note.

(l) Acquisition of Crocker Realty. Evidence that the Credit Parties have consummated the acquisition of all of the assets of Crocker Realty Trust, Inc. on terms and conditions satisfactory to the Agents.

(m) Other. Receipt by the Lenders of such other documents, instruments, agreements or information as reasonably and timely requested by any Lender, including, but not limited to, 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.

5.2 Conditions to All Loans. In addition to the conditions precedent stated elsewhere herein, the Lenders shall not be obligated to make Loans (or continue or convert Loans) nor shall the Issuing Lender be required to issue or extend a Letter of Credit unless:

(a) Notice. The Borrower shall have delivered (i) in the case of any new Revolving Loan, a Notice of Borrowing, duly executed and completed, by the time specified in Section 2.1 and (ii) in the case of any Letter of Credit, the Issuing Lender shall have received an appropriate request for issuance in accordance with the provisions of Section 2.2;

(b) Representations and Warranties. The representations and warranties made by the Credit Parties in any Credit Document are true and correct in all material respects at and as if made as of such date except to the extent they expressly relate to an earlier date;

(c) No Default. No Default or Event of Default shall exist or be continuing either prior to or after giving effect thereto;

(d) No Material Adverse Effect. There shall not have occurred any Material Adverse Effect;

(e) Availability. Immediately after giving effect to the making of a Revolving Loan (and the application of the proceeds thereof) or to the issuance of a Letter of Credit, as the case may be, the sum of the Revolving Loans outstanding plus LOC Obligations outstanding shall not exceed the Revolving Commitment Amount; and

(f) Total Liabilities to Market Capitalization. The ratio of

(i) Total Liabilities to (ii) Market Capitalization shall be less than or equal to .45 to 1.0.

The delivery of each Notice of Borrowing, each Notice of Continuation/Conversion and each request for a Letter of Credit shall constitute a representation and warranty by the Borrower of the correctness of the matters specified in subsections (b), (c), (d), (e) and (f) above.

## SECTION 6

### REPRESENTATIONS AND WARRANTIES

The Credit Parties hereby represent to the Agents and each Lender that:

6.1 Financial Condition. The financial statements delivered to the Lenders pursuant to Section 5.1(d) and Section 7.1(a) and (b): (a) have been prepared in accordance with GAAP and (b) present fairly the consolidated financial condition, results of operations and cash flows of the Credit Parties as of such date and for such periods. Since December 31, 1995, there has been no sale, transfer or other disposition by any Credit Party of any material part of the business or property of any Credit Party 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 financial condition of any Credit Party in each case, which, is not (i) reflected in the most recent financial statements delivered to the Lenders pursuant to Section 7.1 or in the notes thereto or (ii) otherwise communicated to the Agents.

6.2 Organization and Good Standing. Each Credit Party is either (a) a limited partnership duly organized, validly existing and in good standing under the laws of the State of its organization or (b) a corporation duly incorporated, validly existing and in good standing under the laws of its incorporation. Each Credit Party (a) is duly qualified and in good standing and authorized to do business in every other jurisdiction where ownership of its properties or the conduct of its business requires it to be so unless the failure to be so qualified, in good standing or authorized would have a Material Adverse Effect and (b) has the requisite corporate or partnership power and authority to own its properties and to carry on its business as now conducted and as proposed to be conducted.

6.3 Due Authorization. Each Credit Party (a) has the requisite corporate or partnership power and authority to execute, deliver and perform this Credit Agreement and the other Credit Documents to which it is a party and to incur the obligations herein and therein provided for and (b) is duly authorized to, and has been authorized by all necessary corporate or partnership action, to execute, deliver and perform this Credit Agreement and the other Credit Documents to which it is a party.

6.4 No Conflicts. Neither the execution and delivery of the Credit Documents, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by such Credit Party will (a) violate or conflict with any provision of, as applicable, its articles or certificate of incorporation or bylaws or its partnership agreement or certificate of limited partnership, (b) violate, contravene or materially conflict with any Requirement of Law or any other law, regulation (including, without limitation, Regulation U or Regulation X), order, writ, judgment, injunction, decree or permit applicable to it, (c) violate, contravene or conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement,

mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which could have or might be reasonably expected to have a Material Adverse Effect, or (d) result in or require the creation of any Lien upon or with respect to its properties.

6.5 Consents. No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party in respect of any Credit Party is required in connection with the execution, delivery or performance of this Credit Agreement or any of the other Credit Documents by such Credit Party.

6.6 Enforceable Obligations. This Credit Agreement and the other Credit Documents have been duly executed and delivered and constitute legal, valid and binding obligations of each Credit Party enforceable against such Credit Party in accordance with their respective terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

6.7 No Default. No Credit Party is in default in any respect under any contract, lease, loan agreement, indenture, mortgage, security agreement or other agreement or obligation to which it is a party or by which any of its properties is bound which default would have or would be reasonably expected to have a Material Adverse Effect. No Default or Event of Default has occurred or exists except as previously disclosed in writing to the Lenders.

6.8 Ownership. Each Credit Party is the owner of, and has good and marketable title to, all of its respective assets.

6.9 Indebtedness. The Credit Parties have no Indebtedness except (a) as disclosed in the financial statements referenced in Section 6.1, (b) as set forth on Schedule 6.9 and (c) as otherwise permitted by this Credit Agreement.

6.10 Litigation. There are no actions, suits or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of any Credit Party, threatened against a Credit Party which could have or might be reasonably expected to have a Material Adverse Effect.

6.11 Taxes. Each Credit Party has filed, or caused to be filed, all tax returns (federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other taxes, fees, assessments and other governmental charges owing by it, except for such taxes (i) which are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. No Credit Party is aware of any proposed tax assessments against it.

6.12 Compliance with Law. Each Credit Party is in compliance with all Requirements of Law and all other laws, rules, regulations, orders and decrees (including without limitation Environmental Laws) applicable to it, or to its properties, unless such failure to comply would not have or would not be reasonably expected to have a Material Adverse Effect. No Requirement of Law would be reasonably expected to cause a Material Adverse Effect.

6.13 ERISA. Except as would not result or be reasonably expected to result in a Material Adverse Effect:

(a) During the five-year period prior to the date on which this representation is made or deemed made: (i) no Termination Event has occurred, and, to the best knowledge of the Credit Parties, no event or condition has occurred or exists as a result of which any Termination Event could reasonably be expected to occur, with respect to any Plan; (ii) no "accumulated funding deficiency," as such term is defined in Section 302 of ERISA and Section 412 of the Code, whether or not waived, has occurred with respect to any Plan; (iii) each Plan has been maintained, operated, and funded in compliance with its own terms and in material compliance with the provisions of ERISA, the Code, and any other applicable federal or state laws; and (iv) no lien in favor of the PBGC or a Plan has arisen or is reasonably likely to arise on account of any Plan.

(b) The actuarial present value of all "benefit liabilities" under each Single Employer Plan (determined within the meaning of Section 401(a)(2) of the Code, utilizing the actuarial assumptions used to fund such Plans), whether or not vested, did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the current value of the assets of such Plan allocable to such accrued liabilities.

(c) Neither any Credit Party nor any ERISA Affiliate has incurred, or, to the best knowledge of the Credit Parties, are reasonably expected to incur, any withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. Neither the Borrower, any of its Subsidiaries nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA), is insolvent (within the meaning of Section 4245 of ERISA), or has been terminated (within the meaning of Title IV of ERISA), and no Multiemployer Plan is, to the best knowledge of the Credit Parties, reasonably expected to be in reorganization, insolvent, or terminated.

(d) No prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary responsibility has occurred with respect to a Plan which has subjected or is reasonably likely to subject the Borrower or any of its Subsidiaries or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which a Credit Party or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability.

(e) The present value (determined using actuarial and other assumptions which are reasonable with respect to the benefits provided and the employees participating) of the liability of the Credit Parties and each ERISA Affiliate for post-retirement welfare benefits to be provided to their current and former employees under Plans which are welfare benefit plans (as defined in Section 3(1) of ERISA), net of all assets under all such Plans allocable to such benefits, are reflected on the Financial Statements in accordance with FASB 106.

(f) Each Plan which is a welfare plan (as defined in Section 3(1) of ERISA) to which Sections 601-609 of ERISA and Section 4980B of the Code apply has been administered in compliance in all material respects with such sections.

6.14 Subsidiaries. Set forth on Schedule 6.14 is a complete list of all Subsidiaries of each Credit Party and the type and amount of ownership of each.

6.15 Use of Proceeds; Margin Stock. The proceeds of the Loans hereunder will be used solely for the purposes specified in Section 7.10. None of the proceeds of the Loans will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation G, or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or any "margin security" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U, Regulation X, Regulation G or Regulation T. None of the Credit Parties owns any "margin stock".

6.16 Government Regulation. No Credit Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Investment Company Act of 1940 or the Interstate Commerce Act, each as amended. In addition, no Credit Party is (a) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, or controlled by such a company, or (b) a "holding company," or a "Subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "Subsidiary" or a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, as amended. No director, executive officer or principal shareholder of the Borrower or any of its Subsidiaries is a director, executive officer or principal shareholder of any Lender. For the purposes hereof the terms "director", "executive officer" and "principal shareholder" (when used with reference to any Lender) have the respective meanings assigned thereto in Regulation O issued by the Board of Governors of the Federal Reserve System.

6.17 Environmental Matters.

(a) Except as would not cause or be reasonably expected to cause a Material Adverse Effect:

(i) Each of the Properties and all operations at the Properties are in compliance with all applicable Environmental Laws, and there is no violation of any Environmental Law with respect to the Properties or the businesses operated by a Credit Party (the "Businesses"), and there are no conditions relating to the Businesses or Properties that would be reasonably expected to give rise to liability under any applicable Environmental Laws.

(ii) No Credit Party has received any written notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding Hazardous Materials or compliance with Environmental Laws with regard to any of the Properties or the Businesses, nor does any Credit Party have knowledge that any such notice is being threatened.

(iii) Hazardous Materials have not been transported or disposed at or from the Properties, or generated, treated, stored or disposed of at, on or under any of the Properties or any other location, in each case by, or on behalf or with the permission of, a Credit Party in a manner that would reasonably be expected to give rise to liability under any applicable Environmental Law.

(iv) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of a Credit Party, threatened, under any Environmental Law to which a Credit Party 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 a Credit Party, the Properties or the Businesses, in any amount reportable under the federal Comprehensive Environmental Response, Compensation and Liability Act or any analogous state law, except releases in compliance with any Environmental Laws.

(v) There has been no release or threat of release of Hazardous Materials at or from the Properties, or arising from or related to the operations (including, without limitation, disposal) of a Credit Party in connection with the Properties or otherwise in connection with the Businesses.

(vi) None of the Properties contains, or has previously contained, any Hazardous Materials at, on or under the Properties in amounts or concentrations that, if released, constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.

(vii) No Credit Party has assumed any liability of any Person under any Environmental Law.

(b) Each Credit Party has adopted procedures that are designed to (i) ensure that each Credit Party, any of its operations and each of the Properties remains in compliance with applicable Environmental Laws and (ii) minimize any liabilities or potential liabilities that each Credit Party, any of its operations and each of the Properties may have under applicable Environmental Laws.

6.18 Intellectual Property. Each Credit Party owns, or has the legal right to use, all trademarks, tradenames, copyrights, technology, know-how and processes (the "Intellectual Property") necessary for each of them to conduct its business as currently conducted except for those the failure to own or have such legal right to use would not have or be reasonably expected to have a Material Adverse Effect.

6.19 Solvency. Each Credit Party is and, after consummation of the transactions contemplated by this Credit Agreement, will be Solvent.

6.20 Disclosure. Neither this Agreement nor any financial statements delivered to the Lenders nor any other document, certificate or statement furnished to the Lenders by or on behalf of

any Credit Party in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading.

6.21 Licenses, etc. The Credit Parties have obtained and hold in full force and effect, all franchises, licenses, permits, certificates, authorizations, qualifications, accreditations, easements, rights of way and other rights, consents and approvals which are necessary for the operation of their respective businesses as presently conducted, except where the failure to obtain same would not have a Material Adverse Effect.

6.22 No Burdensome Restrictions. No Credit Party is a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any applicable law, rule or regulation which, individually or in the aggregate, would have or be reasonably expected to have a Material Adverse Effect.

## SECTION 7

### AFFIRMATIVE COVENANTS

Each Credit Party hereby covenants and agrees that so long as this Credit Agreement is in effect and until the Loans and LOC Obligations, together with interest and fees and other obligations hereunder, have been paid in full and the Commitments and Letters of Credit hereunder shall have terminated:

7.1 Information Covenants. The Borrower will furnish, or cause to be furnished, to the Administrative Agent and each of the Lenders:

(a) Annual Financial Statements. As soon as available, and in any event within 120 days after the close of each fiscal year of the Borrower, (i) a consolidated balance sheet and income statement of the Credit Parties, as of the end of such fiscal year, together with related consolidated statements of operations and retained earnings and of cash flows for such fiscal year, setting forth in comparative form consolidated figures for the preceding fiscal year, all such financial information described above to be in reasonable form and detail and audited by independent certified public accountants of recognized national standing reasonably acceptable to the Agents and whose opinion shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified in any manner, (ii) a detailed schedule for the Properties to include, without limitation, project names and locations, percentages of the Borrower's or any Guarantor's ownership interest, leasing status, net operating income, Adjusted NOI as to the Properties, current loan balances (if secured), debt service related thereto (if secured), the source of cash necessary to cover any operating deficit, the amount of and beneficiary of any cash distributions, and the amount of cash invested in or received from the Properties and (iii) a projected income statement (including projected Capital Expenditures) for the next fiscal year (twelve month period) for each Property.

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the close of each fiscal quarter of the Borrower, (i) a consolidated balance sheet and income statement of the Credit Parties, as of the end of such fiscal quarter, together with related consolidated statements of operations and retained earnings and of cash flows for such fiscal quarter in each case setting forth in comparative form consolidated figures for the corresponding period of the preceding fiscal year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Administrative Agent, and accompanied by a certificate of the general partner of the Borrower to the effect that such quarterly financial statements fairly present in all material respects the financial condition of the Credit Parties and have been prepared in accordance with GAAP, subject to changes resulting from normal year-end audit adjustments, (ii) a schedule of the Properties summarizing total revenues, expenses, net operating income, Adjusted NOI, and occupancy rates as of the last day of the applicable quarter, (iii) a listing of all Properties under development showing the total capital obligation of the Credit Parties and funds expended to date, (iv) a summary of land purchases by the Credit Parties for the prior quarter and (v) an accounting of all Revolving Loans used for the purposes set forth in the proviso to Section 7.10(c).

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(b) above, a certificate of the general partner of the Borrower substantially in the form of Exhibit 7.1(c), (i) demonstrating compliance with the financial covenants contained in Section 7.2 by calculation thereof as of the end of each such fiscal period, and (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto.

(d) Compliance With Certain Provisions of the Credit Agreement. Within 120 days after the end of each fiscal year of the Borrower, a certificate of the general partner of the Borrower containing information regarding the amount of any Equity Issuances that were made during the prior fiscal year.

(e) Accountant's Certificate. Within the period for delivery of the annual financial statements provided in Section 7.1(a), a certificate of the accountants conducting the annual audit stating that they have reviewed this Credit Agreement and stating further whether, in the course of their audit, they have become aware of any Default or Event of Default and, if any such Default or Event of Default exists, specifying the nature and extent thereof.

(f) Auditor's Reports. Promptly upon receipt thereof, a copy of any "management letter" submitted by independent accountants to the Credit Parties in connection with any annual, interim or special audit of the books of any Credit Party.

(g) Reports. Promptly upon transmission or receipt thereof,

(a) copies of any filings and registrations with, and reports to or from, the Securities and Exchange Commission (including, without limitation, 10-K and 10-Q reports), or any successor agency, and copies of all financial statements, proxy statements, notices and reports as a Credit Party shall send to its shareholders or partners generally and

(b) upon the written request of an

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) Notices. Upon a Credit Party obtaining knowledge thereof, such Credit Party will give written notice to the Administrative Agent immediately of (a) the occurrence of an event or condition consisting of a Default or Event of Default, specifying the nature and existence thereof and what action the Borrower proposes to take with respect thereto, and (b) the occurrence of any of the following with respect to a Credit Party: (i) the pendency or commencement of any litigation, arbitral or governmental proceeding against a Credit Party which if adversely determined would have or would be reasonably expected to have a Material Adverse Effect, or (ii) the institution of any proceedings against a Credit Party with respect to, or the receipt of notice by such Person of potential liability or responsibility for violation, or alleged violation of any federal, state or local law, rule or regulation, including but not limited to, Environmental Laws, the violation of which would have or would be reasonably expected to have a Material Adverse Effect.

(i) ERISA. Upon any of the Credit Parties or any ERISA Affiliate obtaining knowledge thereof, Borrower will give written notice to the Administrative Agent and each of the Lenders promptly (and in any event within five Business Days) of: (i) any event or condition, including, but not limited to, any Reportable Event, that constitutes, or might reasonably lead to, a Termination Event; (ii) with respect to any Multiemployer Plan, the receipt of notice as prescribed in ERISA or otherwise of any withdrawal liability assessed against a Credit Party or any of their ERISA Affiliates, or of a determination that any Multiemployer Plan is in reorganization or insolvent (both within the meaning of Title IV of ERISA); (iii) the failure to make full payment on or before the due date (including extensions) thereof of all amounts which a Credit Party or any of its ERISA Affiliates is required to contribute to each Plan pursuant to its terms and as required to meet the minimum funding standard set forth in ERISA and the Code with respect thereto; or (iv) any change in the funding status of any Plan that could have a Material Adverse Effect; together, with a description of any such event or condition or a copy of any such notice and a statement by the general partner of the Borrower briefly setting forth the details regarding such event, condition, or notice, and the action, if any, which has been or is being taken or is proposed to be taken by the Credit Parties with respect thereto. Promptly upon request, the Borrower shall furnish the Administrative Agent and each of the Lenders with such additional information concerning any Plan as may be reasonably requested, including, but not limited to, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(j) Environmental.

(i) Subsequent to a notice from any Governmental Authority that would reasonably cause concern or during the existence of an Event of Default, and upon the written request of an Agent, the Borrower will furnish or cause to be furnished to the Administrative Agent, at the Borrower's expense, a report of an environmental assessment of reasonable scope, form and depth, including, where appropriate, invasive soil or groundwater sampling, by a consultant reasonably acceptable to the Agents as to the nature and extent of the presence of any Hazardous Materials on any property owned, leased or operated by a Credit Party and as to the compliance by the Credit Parties with Environmental Laws. If the Borrower fails to deliver such an environmental report within seventy-five (75) days after receipt of such written request then the Agents may arrange for same, and the Credit Parties hereby grant to the Agents and their representatives access to the Properties and a license of a scope reasonably necessary to undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling).

(ii) Each Credit Party will conduct and complete all investigations, studies, sampling, and testing and all remedial, removal, and other actions necessary to address all Hazardous Materials on, from, or affecting any real property owned or leased by a Credit Party to the extent necessary to be in compliance with all Environmental Laws and all other applicable federal, state, and local laws, regulations, rules and policies and with the orders and directives of all Governmental Authorities exercising jurisdiction over such real property to the extent any failure would have or be reasonably expected to have a Material Adverse Effect.

(k) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Credit Parties as an Agent may reasonably request, including, but not limited to, rent rolls for each Property.

7.2 Financial Covenants.

(a) At the end of each fiscal quarter of the Borrower, the ratio of (i) Adjusted NOI of all Properties during the prior twelve months (except for the fiscal quarter ending September 30, 1996 for which Adjusted NOI shall be calculated for the prior nine months and multiplied by 1.33) to (ii) Total Liabilities shall not be less than .165 to 1.0.

(b) At all times, the Tangible Net Worth shall be greater than or equal to the sum of (i) \$700 million plus (ii) 85% of the Net Cash Proceeds of any Equity Issuance subsequent to the Closing Date.

(c) At all times, the ratio of (i) Total Liabilities to (ii) Total Assets At Cost shall be less than or equal to .50 to 1.0.

- (d) (i) As of September 30, 1996, the ratio of (A) EBITDA for the prior nine months to (B) the sum of Interest Expense for the prior nine months plus Capital Expenditures for the prior nine months shall be greater than or equal to 2.0 to 1.0.
- (ii) As of December 31, 1996 and March 31, 1997, the ratio of (A) EBITDA for the prior twelve months to (B) the sum of Interest Expense for the prior twelve months plus Capital Expenditures for the prior twelve months shall be greater than or equal to 2.2 to 1.0.
- (iii) As of June 30, 1997 and as of the end of each fiscal quarter of the Borrower thereafter, the ratio of (A) EBITDA for the prior twelve months to (B) the sum of Interest Expense for the prior twelve months plus Capital Expenditures for the prior twelve months shall be greater than or equal to 2.5 to 1.0.
- (e) At all times, the ratio of (i) Unencumbered Assets at Cost to (ii) Unsecured Debt shall be greater than or equal to 2.25 to 1.0.
- (f) The ratio of (i) Secured Debt to (ii) Total Assets shall be less than or equal to (A) from the Closing Date to March 31, 1997, .40 to 1.0, (B) from April 1, 1997 to March 31, 1998, .30 to 1.0 and (C) from April 1, 1998 thereafter, .25 to 1.0.
- (g) At the end of each fiscal quarter of the Borrower, the ratio of (i) Adjusted NOI for the prior 12 months (except for the fiscal quarter ending September 30, 1996 for which Adjusted NOI shall be calculated for the prior nine months) with respect to Properties that are Unencumbered Assets to (ii) Interest Expense for the prior 12 months (except for the fiscal quarter ending September 30, 1996 for which Interest Expense shall be calculated for the prior nine months) paid on Unsecured Debt shall be greater than or equal to 2.25 to 1.0.
- (h) At the end of each fiscal quarter of the Borrower, the ratio of (i) Adjusted NOI for the prior 12 months (except for the fiscal quarter ending September 30, 1996 for which Adjusted NOI shall be calculated for the prior nine months and multiplied by 1.33) with respect to Properties that are Unencumbered Assets to (ii) Unsecured Debt shall be greater than or equal to .18 to 1.0.
- (i) At all times, the ratio of (i) the value at cost of all Speculative Land (excluding Speculative Land owned by the Borrower as of September 30, 1995, to the extent it remains Speculative Land owned by the Borrower) to (ii) the value at cost of all Improved Properties shall be less than or equal to .02 to 1.0.

7.3 Preservation of Existence, Franchises and REIT Status. Each of the Credit Parties will do all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority. Highwoods Properties will maintain its status as a REIT.

7.4 Books and Records. Each of the Credit Parties will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

7.5 Compliance with Law. Each of the Credit Parties will comply with all material laws, rules, regulations and orders, and all applicable material restrictions imposed by all Governmental Authorities, applicable to it and its property (including, without limitation, Environmental Laws).

7.6 Payment of Taxes and Other Indebtedness. Each of the Credit Parties will pay, settle or discharge (a) all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien upon any of its properties, and (c) all of its other Indebtedness as it shall become due; provided, however, that a Credit Party shall not 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 (i) would give rise to an immediate right to foreclose on a Lien securing such amounts or (ii) would have a Material Adverse Effect.

7.7 Insurance. Each of the Credit Parties will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice. All liability policies shall have the Administrative Agent, on behalf of the Lenders, as an additional insured and all casualty policies shall have the Administrative Agent, on behalf of the Lenders, as loss payee. Each such policy will require and the certificates will state, that no such policy will be terminated without at least thirty (30) days prior written notice having been delivered to the Administrative Agent.

7.8 Maintenance of Property. Each of the Credit Parties will maintain and preserve its properties and equipment in good repair, working order and condition, normal wear and tear excepted (subject to damage by casualties), and will make, or cause to be made, in such properties and equipment from time to time all repairs, renewals, replacements, extensions, additions, betterments and improvements thereto as may be needed or proper, to the extent and in the manner customary for companies in similar businesses.

7.9 Performance of Obligations. Each of the Credit Parties will perform in all material respects all of its obligations under the terms of all material agreements, indentures, mortgages, security agreements or other debt instruments to which it is a party or by which it is bound.

7.10 Use of Proceeds. The Credit Parties will use the proceeds of the Loans solely (a) to repay amounts owing under the Existing Credit Agreement, (b) to finance the acquisition of Crocker Realty Trust, Inc. and (c) for working capital and other general purposes of the Credit Parties in the ordinary course of business; provided that at no time may Revolving Loans be outstanding that exceed \$14,000,000, in the aggregate, that are used for (i) Speculative Land Acquisition (as defined below), (ii) dividend payments and (iii) Capital Expenditures in connection with the refurbishment and reletting of space previously leased by the Credit Parties. Speculative Land Acquisition means the acquisition of land which is not anticipated to be (or is not) developed within six months after the acquisition thereof.

7.11 Audits/Inspections. Upon reasonable notice and during normal business hours and in a manner that will not unreasonably interfere with its business operations, each Credit Party will permit representatives appointed by an Agent, including, without limitation, independent accountants, agents, attorneys and appraisers to visit and inspect such Credit Party's property, including its books and records, its accounts receivable and inventory, its facilities and its other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit an Agent or its representatives to investigate and verify the accuracy of information provided to the Lenders, including, without limitation, to discuss all such matters with the officers, employees and representatives of the Credit Parties.

7.12 Interest Rate Protection Agreements. The Borrower shall, within 30 days of the Closing Date, enter into, and maintain until the Revolving Loan Maturity Date, interest rate protection agreements, in form and substance (including, without limitation, the level thereof) reasonably acceptable to the Agents, protecting against fluctuations in interest rates, for a period expiring no earlier than the Revolving Loan Maturity Date and in a notional amount of at least \$80 million. Furthermore, with respect to any other Indebtedness of the Credit Parties (with a term greater than 12 months) that is subject to a floating interest rate, such Credit Party shall promptly enter into interest rate protection agreements, in form and substance reasonably acceptable to the Agents, protecting against such fluctuation in interest rates.

7.13 Capital Expenditures. Upon the request of the Administrative Agent, the Borrower shall provide an annual capital expenditure budget of the Credit Parties which shall be acceptable to the Administrative Agent in its reasonable discretion.

7.14 Principal Offices. Each Credit Party will maintain its principal office in Raleigh, North Carolina.

7.15 Management. Each of O. Temple Sloan, Ronald P. Gibson and Carman Liuzzo shall remain active in the management of the Borrower; provided that upon the death or disability of any of the above-referenced individuals, the Borrower shall have six months to provide the Administrative Agent with substitute personnel as replacement; such substitute personnel to be acceptable to the Administrative Agent in its sole reasonable discretion.

7.16 Additional Credit Parties. At the time any Person becomes a Subsidiary of a Credit Party, or if at any time a Non-Guarantor Subsidiary could become a Credit Party without violating the terms of any material contract, agreement or document to which it is a party, the Borrower shall so notify the Administrative Agent and promptly thereafter shall cause such Person to execute a Joinder Agreement in substantially the same form as Exhibit 7.16. If a Non-Guarantor Subsidiary executes and delivers a Joinder Agreement it shall no longer be deemed to be a Non-Guarantor Subsidiary under this Agreement.

7.17 Equity Issuance. All Net Cash Proceeds received from an Equity Issuance by a Credit Party shall be promptly reported to the Agents and the amount of such Net Cash Proceeds shall be verified to the satisfaction of the Agents.

7.18 Upstream of Excess Cash Flow. Each Credit Party shall cause all "Excess Cash Flow" (as defined below) of a Non-Guarantor Subsidiary to be transferred to a Credit Party as promptly as possible but at least once a month. For the purposes of this Section 7.18, "Excess Cash Flow" means an amount equal to all net operating income of such Non-Guarantor Subsidiary minus all debt service payments of such Non-Guarantor Subsidiary minus all amounts required to fund reserves of such Non-Guarantor Subsidiary.

## SECTION 8

### NEGATIVE COVENANTS

Each Credit Party hereby covenants and agrees that so long as this Credit Agreement is in effect and until the Loans and LOC Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Commitments and Letters of Credit hereunder shall have terminated:

8.1 Indebtedness. No Credit Party will, nor will it permit any of its Subsidiaries to, contract, create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness arising under this Credit Agreement and the other Credit Documents;
- (b) Indebtedness existing as of the Closing Date as referenced in Section 6.10 (and renewals, refinancings or extensions thereof on terms and conditions no more favorable, in the aggregate, to such Person than such existing Indebtedness and in a principal amount not in excess of that outstanding as of the date of such renewal, refinancing or extension);
- (c) Indebtedness in respect of current accounts payable and accrued expenses incurred in the ordinary course of business including, to the extent not current, accounts payable and accrued expenses that are subject to bona fide dispute;
- (d) Indebtedness arising from obligations of the Credit Parties evidenced by the interest rate protection agreements referred to in Section 7.12;
- (e) Other unsecured Indebtedness as long as the incurrence of such unsecured Indebtedness does not cause a breach of the other terms of this Credit Agreement, including, but not limited to, Section 7.2; and
- (f) Other secured Indebtedness that is nonrecourse to all Credit Parties (subject to normal and customary recourse carveouts in the ordinary course of business) as long as the incurrence of such secured Indebtedness does not cause a breach of the other terms of this Credit Agreement, including, but not limited to, Section 7.2.

8.2 Nature of Business. No Credit Party will alter the character of its business from that conducted as of the Closing Date or engage in any business other than the business conducted as of the Closing Date.

8.3 Consolidation and Merger. No Credit Party will enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided that notwithstanding the foregoing provisions of this Section 8.3, any Person (other than the Borrower) may be merged or consolidated with or into Highwoods Properties if (a) Highwoods Properties is the continuing or surviving corporation, (b) the Administrative Agent is given prior written notice of such action, and (c) after giving effect thereto no Default or Event of Default exists.

8.4 Restrictions on Loans. No Credit Party will make any loans or engage in any lending activity other than (a) loans to another Credit Party or (b) loans to tenants of a Credit Party to be used for tenant improvements and to be repaid during the course of such tenant's lease; provided that the aggregate amount of such tenant loans made after the Closing Date shall not exceed .20% of Total Assets.

8.5 Dividends. Other than as set forth below, no Credit Party will, directly or indirectly, declare or pay any dividends or make any other distribution upon any shares of its capital stock of any class or make any distributions to limited partners; provided that (i) the Credit Parties may make distributions, in the aggregate, in an amount not to exceed one hundred percent (100%) of Cash Available for Distribution, (ii) Highwoods Properties may pay such dividends as are necessary to retain its status as a REIT and (iii) Subsidiaries of the Borrower may make distributions to the Borrower.

8.6 Transactions with Affiliates. No Credit Party will enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any officer, director, shareholder, Subsidiary or Affiliate other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an officer, director, shareholder, Subsidiary or Affiliate.

8.7 Fiscal Year; Organizational Documents. No Credit Party will (a) change its fiscal year or (b) change its partnership agreement (other than a change limited solely to add additional limited partners or authorize the issuance of additional units) or its articles of incorporation or its bylaws.

8.8 Negative Pledges. No Credit Party will enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation.

8.9 Non-Guarantor Subsidiaries. Notwithstanding any other provision of this Agreement, the Credit Parties shall prohibit any Non-Guarantor Subsidiary from (a) forming or acquiring any new Subsidiary, (b) incurring any new Indebtedness other than Indebtedness in respect of current accounts payable and accrued expenses incurred in the ordinary course of business, (c) purchasing or acquiring any new assets or (d) incurring any change in its ownership.

- 8.10 Investments. No Credit Party shall make (a) any deposit with or advance, loan or other extension of credit to any Non-Guarantor Subsidiary or
- (b) any capital contribution to or investment in any Non-Guarantor Subsidiary, including, without limitation, any guaranty on behalf of, or for the benefit of, a Non-Guarantor Subsidiary.
- 8.11 Liens. No Credit Party shall allow or permit any lien, encumbrance, assignment, security interest, preference or priority of any kind, including, without limitation, any agreement to give any of the foregoing, on its ownership interest in a Non-Guarantor Subsidiary.
- 8.12 Indenture. The Credit Parties and their Subsidiaries shall not allow or permit any amendment or modification to the Indenture.

## SECTION 9

### EVENTS OF DEFAULT

- 9.1 Events of Default. An Event of Default shall exist upon the occurrence of any of the following specified events (each an "Event of Default"):
- (a) Payment. Any Credit Party shall default in the payment within five days of when due of (i) any principal of any of the Loans or any reimbursement obligation arising from drawings under Letters of Credit or (ii) any interest on the Loans or (iii) any fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith.
- (b) Representations. Any representation, warranty or statement made or deemed to be made by any Credit Party herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made.
- (c) Covenants. Any Credit Party shall:
- (i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.3, 7.10 and Sections 8.1 through 8.12; or
- (ii) default in the due performance or observance by it of any term, covenant or agreement contained in Sections 7.1 or 7.2 and such default shall continue unremedied for a period of fifteen days after the earlier of an Authorized Officer becoming aware of such default or notice thereof given by an Agent; or
- (iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b) or (c)(i) or
- (ii) of this Section 9.1) contained in this Credit Agreement and such default shall

continue unremedied for a period of at least 30 days after the earlier of an Authorized Officer becoming aware of such default or notice thereof given by an Agent.

(d) Other Credit Documents. (i) Any Credit Party shall default in the due performance or observance of any term, covenant or agreement in any of the other Credit Documents and such default shall continue unremedied for a period of at least 30 days after the earlier of an officer of a Credit Party becoming aware of such default or notice thereof given by the Administrative Agent, or (ii) any Credit Document shall fail to be in full force and effect or any Credit Party shall so assert or any Credit Document shall fail to give the Agents and/or the Lenders the rights, powers and privileges purported to be created thereby.

(e) Guaranties. The guaranty given by the Guarantors hereunder or any provision thereof shall cease to be in full force and effect, or any Guarantor or any Person acting by or on behalf of a Guarantor shall deny or disaffirm such Guarantor's obligations under such guaranty.

(f) Bankruptcy, etc. The occurrence of any of the following with respect to (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of a Credit Party in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of a Credit Party or for any substantial part of its property or ordering the winding up or liquidation of its affairs; or

(ii) an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect is commenced against a Credit Party and such petition remains unstayed and in effect for a period of 60 consecutive days; or (iii) a Credit Party shall commence a voluntary case under any applicable 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 or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or any substantial part of its property or make any general assignment for the benefit of creditors; or (iv) a Credit Party shall admit in writing its inability to pay its debts generally as they become due or any action shall be taken by such Person in furtherance of any of the aforesaid purposes.

(g) Defaults under Other Agreements. With respect to any Indebtedness (other than Indebtedness outstanding under this Credit Agreement) of a Credit Party in an aggregate principal amount in excess of \$3,000,000 (i) a Credit Party shall (A) default in any payment (beyond the applicable grace period with respect thereto, if any) with respect to any such Indebtedness, or (B) default (after giving effect to any applicable grace period) in the observance or performance relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default or other event or condition is to cause, or permit, the holder or holders of such Indebtedness (or trustee or agent on behalf of such holders) to cause (determined without regard to whether any notice or lapse of time is required) any such Indebtedness to become due prior to its stated maturity; or (ii) any such Indebtedness shall be declared due and payable, or required to be prepaid other than by a

regularly scheduled required prepayment prior to the stated maturity thereof; or (iii) any such Indebtedness shall mature and remain unpaid.

(h) Judgments. One or more judgments, orders, or decrees shall be entered against any one or more of the Credit Parties involving a liability of \$1,000,000 or more, in the aggregate, (to the extent not paid or covered by insurance provided by a carrier who has acknowledged coverage) and such judgments, orders or decrees (i) are the subject of any enforcement proceeding commenced by any creditor or (ii) shall continue unsatisfied, undischarged and unstayed for a period ending on the first to occur of (A) the last day on which such judgment, order or decree becomes final and unappealable or (B) 60 days.

(i) ERISA. The occurrence of any of the following events or conditions: (A) any "accumulated funding deficiency," as such term is defined in Section 302 of ERISA and Section 412 of the Code, whether or not waived, shall exist with respect to any Plan, or any lien shall arise on the assets of the Borrower or any of its Subsidiaries or any ERISA Affiliate in favor of the PBGC or a Plan; (B) a Termination Event shall occur with respect to a Single Employer Plan, which is, in the reasonable opinion of the Administrative Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA; (C) a Termination Event shall occur with respect to a Multiemployer Plan or Multiple Employer Plan, which is, in the reasonable opinion of the Administrative Agent, likely to result in (i) the termination of such Plan for purposes of Title IV of ERISA, or (ii) the Borrower or any of its Subsidiaries or any ERISA Affiliate incurring any liability in connection with a withdrawal from, reorganization of (within the meaning of Section 4241 of ERISA), or insolvency (within the meaning of Section 4245 of ERISA) of such Plan; or (D) any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary responsibility shall occur which may subject the Borrower or any of its Subsidiaries or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which the Borrower or any of its Subsidiaries or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability.

(j) Highwoods Properties is no longer the sole general partner of the Borrower.

9.2 Acceleration; Remedies. Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived in writing by the Required Lenders (or the Lenders as may be required hereunder), the Administrative Agent shall, upon the request and direction of the Required Lenders, (or if in the reasonable judgment of the Administrative Agent there is not sufficient time to obtain the consent of the Required Lenders then on its own) by written notice to the Borrower, take any of the following actions without prejudice to the rights of the Agents or any Lender to enforce its claims against the Credit Parties, except as otherwise specifically provided for herein:

(a) Termination of Commitments. Declare the Commitments terminated whereupon the Commitments shall be immediately terminated.

(b) Acceleration of Loans. Declare the unpaid principal of and any accrued interest in respect of all Loans, any reimbursement obligations arising from drawings under Letters of Credit and any and all other indebtedness or obligations of any and every kind owing by a Credit Party to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Credit Parties.

(c) Cash Collateral. Direct the Borrower to pay (and the Borrower agrees that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 9.1(f), they will immediately pay) to the Administrative Agent additional cash, to be held by the Administrative Agent, for the benefit of the Lenders, in the Cash Collateral Account as additional security for the LOC Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding.

(d) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents, including, without limitation, all rights and remedies against the Guarantors and all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(f) shall occur, then the Commitments shall automatically terminate and all Loans, all reimbursement obligations under Letters of Credit, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Lenders hereunder shall immediately become due and payable without the giving of any notice or other action by the Agents or the Lenders, which notice or other action is expressly waived by the Credit Parties.

Notwithstanding the fact that enforcement powers reside primarily with the Administrative Agent, each Lender has, to the extent permitted by law, a separate right of payment and shall be considered a separate "creditor" holding a separate "claim" within the meaning of Section 101(5) of the Bankruptcy Code or any other insolvency statute.

9.3 Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Credit Agreement, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by an Agent or any Lender on account of amounts outstanding under any of the Credit Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Agents in connection with enforcing the rights of the Lenders under the Credit Documents;

SECOND, to payment of any fees owed to an Agent or a Issuing Lender;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses, (including, without limitation, reasonable attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Credit Documents;

FOURTH, to the payment of all accrued fees and interest payable to the Lenders hereunder;

FIFTH, to the payment of the outstanding principal amount of the Loans and unreimbursed drawings under Letters of Credit, and to the payment or cash collateralization of the outstanding LOC Obligations, pro rata, as set forth below;

SIXTH, to any principal amounts outstanding under Hedging Agreements, pro rata, as set forth below;

SEVENTH, to all other obligations which shall have become due and payable under the Credit Documents and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

EIGHTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (b) each of the Lenders shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Loans, LOC Obligations and obligations under Hedging Agreements held by such Lender bears to the aggregate then outstanding Loans, LOC Obligations and obligations under Hedging Agreements) of amounts available to be applied pursuant to clauses "THIRD", "FOURTH," "FIFTH," "SIXTH" and "SEVENTH" above; and (c) to the extent that any amounts available for distribution pursuant to clause "FIFTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Administrative Agent in the Cash Collateral Account and applied (x) first, to reimburse the Issuing Lender from time to time for any drawings under such Letters of Credit and (y) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "FIFTH," "SIXTH" and "SEVENTH" above in the manner provided in this Section 9.3.

## SECTION 10

### AGENCY PROVISIONS

10.1 Appointment. Each Lender hereby designates and appoints NationsBank, N.A. as Administrative Agent and First Union National Bank of North Carolina as Documentation Agent of such Lender to act as specified herein and the other Credit Documents, and each such Lender hereby authorizes the Agents, as the agents for such Lender, to take such action on its behalf under the provisions of this Credit Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated by the terms hereof and of the other Credit Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere herein and in the other Credit Documents, the Agents shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties,

obligations or liabilities shall be read into this Credit Agreement or any of the other Credit Documents, or shall otherwise exist against the Agents. The provisions of this Section are solely for the benefit of the Agents and the Lenders and none of the Credit Parties shall have any rights as a third party beneficiary of the provisions hereof. In performing its functions and duties under this Credit Agreement and the other Credit Documents, each Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for any Credit Party.

10.2 Delegation of Duties. An Agent may execute any of its duties hereunder or under the other Credit Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. An Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

10.3 Exculpatory Provisions. Neither the Agents nor any of their officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection herewith or in connection with any of the other Credit Documents (except for its or such Person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any of the Credit Parties contained herein or in any of the other Credit Documents or in any certificate, report, document, financial statement or other written or oral statement referred to or provided for in, or received by an Agent under or in connection herewith or in connection with the other Credit Documents, or enforceability or sufficiency thereof of any of the other Credit Documents, or for any failure of the Borrower to perform its obligations hereunder or thereunder. The Agents shall not be responsible to any Lender for the effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Credit Agreement, or any of the other Credit Documents or for any representations, warranties, recitals or statements made herein or therein or made by the Borrower or any Credit Party in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by an Agent to the Lenders or by or on behalf of the Credit Parties to the Agents or any Lender or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or the use of the Letters of Credit or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of the Credit Parties. The Agents are not trustees for the Lenders and owe no fiduciary duty to the Lenders. The Administrative Agent shall administer the facility evidenced by the Credit Documents similar to other credits in which the Administrative Agent holds 100% of the credit exposure.

10.4 Reliance on Communications. The Agents shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order 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, without limitation, counsel to any of the Credit Parties, independent accountants and other experts selected by the Agents with reasonable care). The Agents may deem and treat the Lenders as the owner of its interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent in accordance with Section 11.3(b). The

Agents shall be fully justified in failing or refusing to take any action under this Credit Agreement or under any of the other Credit Documents unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Credit Documents in accordance with a request of the Required Lenders (or to the extent specifically provided in Section 11.6, all the Lenders) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders (including their successors and assigns).

10.5 Notice of Default. An Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder (other than Section 9.1(a)) unless such Agent has received notice from a Lender or a Credit Party referring to the Credit Document, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders.

10.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents, NationsBanc Capital Markets, Inc. ("NCMI") nor any of their officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by the Agents, NCMI or any affiliate thereof hereinafter taken, including any review of the affairs of any Credit Party, shall be deemed to constitute any representation or warranty by the Agents or NCMI to any Lender. Each Lender represents to the Agents and NCMI that it has, independently and without reliance upon the Agents or NCMI or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and made its own decision to make its Loans hereunder and enter into this Credit Agreement. Each Lender also represents that it will, independently and without reliance upon the Agents, NCMI or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties. The Administrative Agent shall promptly provide to the Lenders (a) copies of all notices of Defaults or Events of Default or other notices received in accordance with Section 11.1, (b) copies of all financial statements, certificates and other information sent to it by the Borrower pursuant to Section 7.1, (c) any written information it receives regarding the unsecured debt rating of Highwoods Properties and (d) such other documents or notices received by the Administrative Agent pursuant to this Agreement and requested in writing by a Lender. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Agents and NCMI shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Credit Parties which may come into the possession of the Agents, NCMI or any of their officers, directors, employees, agents, attorneys-in-fact or affiliates.

10.7 Indemnification. The Lenders agree to indemnify each Agent in its capacity as such but not in its capacity as a Lender (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Commitments (or if the Commitments have expired or been terminated, in accordance with the respective principal amounts of outstanding Loans and Participation Interest of the Lenders), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including without limitation at any time following payment in full of the Credit Party Obligations) be imposed on, incurred by or asserted against an Agent in its capacity as such in any way relating to or arising out of this Credit Agreement or the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by an Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (i) resulting from the gross negligence or willful misconduct of an Agent, (ii) arising solely from an internal or regulatory matter relating only to the Agent (i.e. a legal lending limit violation by the Agent) or (iii) resulting from and related solely to a dispute between the Agent and one or more Lenders in which it is reasonably determined that the Agent did not prevail. If any indemnity furnished to an Agent for any purpose shall, in the reasonable judgment of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section shall survive the payment of the Credit Party Obligations and all other amounts payable hereunder and under the other Credit Documents.

10.8 Agents in Their Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower or any other Credit Party as though such Agent were not an Agent hereunder. With respect to the Loans made and Letters of Credit issued and all obligations owing to it, an Agent shall have the same rights and powers under this Credit Agreement as any Lender and may exercise the same as though they were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

10.9 Successor Agent. Any Agent may, at any time, (and either Agent shall if such Agent's Revolving Loan Commitment Percentage becomes less than 8.9%) resign upon 20 days written notice to the Lenders. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Agent; provided that if no successor Agent shall have been appointed by the Required Lenders, and shall have accepted such appointment, within 45 days after the notice of resignation, then the retiring Agent shall select a successor Agent. In either case, whether selected by the Required Lenders or the retiring Agent, the successor Agent must be either an existing Lender hereunder or a commercial bank organized under the laws of the United States of America or of any State thereof and have total assets of at least \$25 billion and a long term unsecured debt rating of at least BBB+ with S&P or its equivalent. Upon the acceptance of any appointment as an Agent hereunder by a successor, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as an Agent, as appropriate, under this Credit Agreement and the other Credit Documents and the provisions of this Section 10.9 shall inure to its benefit as

to any actions taken or omitted to be taken by it while it was an Agent under this Credit Agreement.

## SECTION 11

### MISCELLANEOUS

11.1 Notices. Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (a) when delivered by hand, (b) when transmitted via telecopy (or other facsimile device) to the number set out below, (c) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the address or telecopy numbers set forth on Schedule 11.1, or at such other address as such party may specify by written notice to the other parties hereto.

11.2 Right of Set-Off. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default and the commencement of remedies described in Section 9.2, each Lender is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of which rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by such Lender (including, without limitation, branches, agencies or Affiliates of such Lender wherever located) to or for the credit or the account of any Credit Party against obligations and liabilities of such Credit Party to the Lenders hereunder, under the Notes, the other Credit Documents or otherwise, irrespective of whether the Administrative Agent or the Lenders shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of such Lender subsequent thereto. The Credit Parties hereby agree that any Person purchasing a participation in the Loans and Commitments hereunder pursuant to Section 11.3(c) or 3.8 may exercise all rights of set-off with respect to its participation interest as fully as if such Person were a Lender hereunder.

#### 11.3 Benefit of Agreement.

(a) Generally. This Credit Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that none of the Credit Parties may assign and transfer any of its interests without the prior written consent of the Lenders; and provided further that the rights of each Lender to transfer, assign or grant participation in its rights and/or obligations hereunder shall be limited as set forth below in subsections (b) and (c) of this Section 11.3. Notwithstanding the above (including anything set forth in subsections (b) and (c) of this Section 11.3), nothing herein shall restrict, prevent or prohibit any Lender from (A) pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank, or (B) granting assignments or participation in such Lender's Loans and/or

Commitments hereunder to its parent company and/or to any Affiliate of such Lender or to any existing Lender or Affiliate thereof. No action permitted by this Section 11.3(a) shall require a fee to be paid to the Administrative Agent.

(b) Assignments. In addition to the assignments permitted in

Section 11.3(a), each Lender may, with the prior written consent of the Administrative Agent which shall not be unreasonably withheld, assign all or a portion of its rights and obligations hereunder pursuant to an assignment agreement substantially in the form of Exhibit 11.3 to one or more Eligible Assignees; provided that (i) any such assignment shall be in a minimum aggregate amount of \$10,000,000 of the Commitments and in integral multiples of \$1,000,000 above such amount (or the remaining amount of Commitments held by such Lender) and (ii) each such assignment shall be of a constant, not varying, percentage of all of the assigning Lender's rights and obligations under the Commitment being assigned. Any assignment hereunder shall be effective upon satisfaction of the conditions set forth above and delivery to the Administrative Agent (other than assignments by an Agent) of a duly executed assignment agreement together with a transfer fee of \$3,500 payable to the Administrative Agent for its own account, provided that such transfer fee shall not apply to assignments occurring during the initial syndication of the Commitments, as determined by the Agents. Upon the effectiveness of any such assignment, the assignee shall become a "Lender" for all purposes of this Credit Agreement and the other Credit Documents and, to the extent of such assignment, the assigning Lender shall be relieved of its obligations hereunder to the extent of the Loans and Commitment components being assigned. Along such lines the Borrower agrees that upon notice of any such assignment and surrender of the appropriate Note or Notes, it will promptly provide to the assigning Lender and to the assignee separate promissory notes in the amount of their respective interests substantially in the form of the original Note or Notes (but with notation thereon that it is given in substitution for and replacement of the original Note or Notes or any replacement notes thereof).

By executing and delivering an assignment agreement in accordance with this Section 11.3(b), the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the assignee warrants that it is an Eligible Assignee; (ii) except as set forth in clause (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Credit Agreement, any of the other Credit Documents or any other instrument or document furnished pursuant hereto or thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Credit Agreement, any of the other Credit Documents or any other instrument or document furnished pursuant hereto or thereto or the financial condition of any Credit Party or the performance or observance by any Credit Party of any of its obligations under this Credit Agreement, any of the other Credit Documents or any other instrument or document furnished pursuant hereto or thereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such assignment agreement; (iv) such assignee confirms that it has received a copy of this Credit Agreement, the other Credit Documents and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such

assignment agreement; (v) such assignee will independently and without reliance upon the Agents, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Credit Agreement and the other Credit Documents; (vi) such assignee appoints and authorizes the Agents to take such action on its behalf and to exercise such powers under this Credit Agreement or any other Credit Document as are delegated to the Agents by the terms hereof or thereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Credit Agreement and the other Credit Documents are required to be performed by it as a Lender.

11.4 No Waiver; Remedies Cumulative. No failure or delay on the part of an Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower or any Credit Party and the Agents or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Agents or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Agents or the Lenders to any other or further action in any circumstances without notice or demand.

11.5 Payment of Expenses; Indemnification. The Credit Parties agree to:

(a) pay all reasonable out-of-pocket costs and expenses of (i) the Agents, the Lenders involved in the initial syndication of the Commitments as determined by the Agents, and NationsBanc Capital Markets, Inc. ("NCMI") in connection with (A) the negotiation, preparation, execution and delivery and administration of this Credit Agreement and the other Credit Documents and the documents and instruments referred to therein (including, without limitation, the reasonable fees and expenses of Moore & Van Allen, special counsel to the Agents); provided that reimbursement to any Lender (other than the Agents) for fees and expenses shall be limited to \$7,500 per Lender and (B) any amendment, waiver or consent relating hereto and thereto including, but not limited to, any such amendments, waivers or consents resulting from or related to any work-out, renegotiation or restructure relating to the performance by the Credit Parties under this Credit Agreement and (ii) the Agents and the Lenders in connection with (A) enforcement of the Credit Documents and the documents and instruments referred to therein, including, without limitation, in connection with any such enforcement, the reasonable fees (at standard hourly rates) and disbursements of counsel for the Agents and each of the Lenders, and (B) any bankruptcy or insolvency proceeding of a Credit Party; provided that the Credit Parties shall not be responsible for the legal fees of the Agents and the Lenders in connection with any proceeding in which a Credit Party is the prevailing party as determined by a court of competent jurisdiction and (b) indemnify each Agent, NCMI and each Lender, its officers, directors, employees, representatives and agents from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not any Agent, NCMI or Lender is a party thereto) related to (i) the entering into and/or performance of any Credit Document or the use of proceeds of any Loans

(including other extensions of credit) hereunder or the consummation of any other transactions contemplated in any Credit Document, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding (but excluding any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of gross negligence or willful misconduct on the part of the Person to be indemnified), (ii) any Environmental Claim and (iii) any claims for Non-Excluded Taxes.

11.6 Amendments, Waivers and Consents. Neither this Credit Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing and signed by the Required Lenders and the Credit Parties; provided that no such amendment, change, waiver, discharge or termination shall without the consent of each Lender affected thereby:

- (a) extend the final maturity of any Loan or any portion thereof or postpone any other date fixed for any payment of principal;
- (b) reduce the rate or extend the time of payment of interest (other than as a result of waiving the applicability of any post-default increase in interest rates) thereon or fees hereunder;
- (c) reduce or waive the principal amount of any Loan;
- (d) increase the Commitment of a Lender over the amount thereof in effect (it being understood and agreed that a waiver of any Default or Event of Default or a waiver of any mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender);
- (e) release the Borrower or any Guarantor from its obligations under the Credit Documents;
- (f) amend, modify or waive any provision of this Section 11.6 or Section 3.4(a), 3.4(b)(i), 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 9.1, 9.2, 11.2, 11.3, 11.5 or 11.10;
- (g) reduce any percentage specified in, or otherwise modify, the definition of Required Lenders;
- (h) consent to the assignment or transfer by the Borrower or a Guarantor of any of its rights and obligations under (or in respect of) the Credit Documents; or

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (x) each Lender is entitled to vote as such Lender sees fit on any reorganization plan that affects the Loans or the Letters of Credit, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (y) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

11.7 Counterparts. This Credit Agreement may be executed in any number of counterparts, each of which where so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Credit Agreement to produce or account for more than one such counterpart.

11.8 Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

11.9 Defaulting Lender. Each Lender understands and agrees that if such Lender is a Defaulting Lender then notwithstanding the provisions of Section 11.6 it shall not be entitled to vote on any matter requiring the consent of the Required Lenders or to object to any matter requiring the consent of all the Lenders; provided, however, that all other benefits and obligations under the Credit Documents shall apply to such Defaulting Lender.

11.10 Survival of Indemnification and Representations and Warranties. All indemnities set forth herein and all representations and warranties made herein shall survive the execution and delivery of this Credit Agreement, the making of the Loans, the issuance of the Letters of Credit and the repayment of the Loans, LOC Obligations and other obligations and the termination of the Commitments hereunder.

11.11 Governing Law.

THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA.

11.12 Arbitration. Any controversy or claim between or among the parties hereto including, but not limited to, those arising out of or relating to this Agreement or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Judicial Arbitration and Mediation Services, Inc. (J.A.M.S.), and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Agreement applies in any court having jurisdiction over such action.

(a) Special Rules. The arbitration shall be conducted in the city of the Borrower's domicile at time of this Agreement's execution and administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall

only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) Reservations of Rights. Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Agreement; or (ii) be a waiver by the Lenders of the protection afforded to it by 12 U.S.C. Section 91 or any substantially equivalent state law; or (iii) limit the right of the Lenders (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. The Lenders may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement. At the Lenders' option, foreclosure under the Credit Documents may be accomplished by the exercise of a power of sale or a judicial sale under the Credit Documents or by judicial foreclosure. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

11.13 Time. All references to time herein shall be references to Eastern Standard Time or Eastern Daylight time, as the case may be, unless specified otherwise.

11.14 Severability. If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

11.15 Entirety. This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

[remainder of page intentionally left blank]

Each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

**BORROWER:**

**HIGHWOODS/FORSYTH LIMITED PARTNERSHIP,**  
a North Carolina limited partnership

**ATTEST:**

By: Highwoods Properties, Inc.,

<i>By:/s/ Edward J. Fritsch</i> <i>Title: Secretary</i>  <i>[CORPORATE SEAL]</i>	<i>a Maryland corporation, its sole general partner</i> <i>By:/s/ Ronald P.Gibson</i> <i>Name: Ronald P. Gibson</i> <i>Title: President</i>
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<i>GUARANTORS:</i>	<i>HIGHWOODS PROPERTIES, INC.,</i> <i>a Maryland corporation</i>
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<i>ATTEST:</i>  <i>By:/s/ Edward J. Fritsch</i> <i>Title: Secretary</i>  <i>[CORPORATE SEAL]</i>	<i>By:/s/ Ronald P. Gibson</i> <i>Name: Ronald P. Gibson</i> <i>Title: President</i>
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<i>ATTEST:</i>	<i>FORSYTH PROPERTIES SERVICES, INC.,</i> <i>a North Carolina corporation</i>
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<i>By:/s/ Edward J. Fritsch</i> <i>Title: Assistant Secretary</i>  <i>[CORPORATE SEAL]</i>	<i>By:/s/ Carman J. Liuzzo</i> <i>Name: Carman J. Liuzzo</i> <i>Title: Vice President</i>
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<i>ATTEST:</i>	<i>HIGHWOODS SERVICES, INC.,</i> <i>a North Carolina corporation</i>
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<i>By:/s/ Edward J. Fritsch</i> <i>Title: Secretary</i>  <i>[CORPORATE SEAL]</i>	<i>By:/s/ Ronald P. Gibson</i> <i>Name: Ronald P. Gibson</i> <i>Title: President</i>
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SOUTHEAST REALTY OPTIONS CORP.,  
a Delaware corporation

ATTEST:

By:/s/ Edward J. Fritsch  
Title: Secretary

By:/s/ Ronald P. Gibson  
Name: Ronald P. Gibson  
Title: President

[CORPORATE SEAL]

HIGHWOODS/FLORIDA GP CORP.,  
a Delaware corporation

ATTEST:

By:/s/ Edward J. Fritsch  
Title: Secretary

By:/s/ Ronald P. Gibson  
Name: Ronald P. Gibson  
Title: President

[CORPORATE SEAL]

HIGHWOODS/FLORIDA HOLDINGS GP, L.P.,  
a Delaware corporation

By: Highwoods/Florida GP Corp., a Delaware  
corporation, its sole general partner

ATTEST:

By:/s/ Edward J. Fritsch  
Title: Secretary

By:/s/ Ronald P. Gibson  
Name: Ronald P. Gibson  
Title: President

[CORPORATE SEAL]

HIGHWOODS/FLORIDA HOLDINGS L.P.,  
a Delaware corporation

By: Highwoods/Florida Holdings GP, L.P.,  
a Delaware limited partnership, its  
sole general partner

By: Highwoods/Florida GP Corp., a Delaware  
corporation, its sole general partner

ATTEST:

By:/s/ Edward J. Fritsch  
Title: Secretary

By:/s/ Ronald P. Gibson  
Name: Ronald P. Gibson  
Title: President

[CORPORATE SEAL]

HIGHWOODS/TENNESSEE PROPERTIES,  
a Tennessee corporation

ATTEST:

By:/s/ Edward J. Fritsch  
Title: Secretary

By:/s/ Ronald P. Gibson  
Name: Ronald P. Gibson  
Title: President

[CORPORATE SEAL]

HIGHWOODS/TENNESSEE HOLDINGS GP, L.P.,  
a Tennessee limited partnership

By: Highwoods/Tennessee Properties, Inc.,  
a Tennessee corporation, its sole  
general partner

ATTEST:

By:/s/ Edward J. Fritsch  
Title: Secretary

By:/s/ Ronald P. Gibson  
Name: Ronald P. Gibson  
Title: President

[CORPORATE SEAL]

**HIGHWOODS/TENNESSEE HOLDINGS L.P.,**  
a Tennessee limited partnership

By: Highwoods/Tennessee Holdings GP, L.P.,  
a Tennessee limited partnership, its  
sole general partner

By: Highwoods/Tennessee Properties, Inc.,  
a Delaware corporation, its sole  
general partner

**ATTEST:**

*By: /s/ Edward J. Fritsch*  
*Title: Secretary*

*[CORPORATE SEAL]*

*By: /s/ Ronald P. Gibson*  
*Name: Ronald P. Gibson*  
*Title: President*

**LENDERS:**

**NATIONSBANK, N.A.,**  
individually in its capacity as a  
Lender and in its capacity as  
Administrative Agent

*By: /s/ Dave Klinge*

*Name: Dave Klinge*

*Title: Senior Vice President*

**FIRST UNION NATIONAL BANK OF NORTH  
CAROLINA,**

individually in its capacity as a Lender  
and in its capacity as Documentation Agent

*By: /s/ Neal R. Drews*  
*Name: Neal R. Drews*  
*Title: Vice President*

**WACHOVIA BANK OF NORTH CAROLINA, N.A.**

*By: /s/ James G. Caravello*

*Name: James G. Caravello*

*Title: Vice President*

**BANK OF AMERICA ILLINOIS**

*By: /s/ Mark W. Lariviere*

*Name: Mark W. Lariviere*

*Title: Vice President*

## **FLEET NATIONAL BANK**

*By: /s/ Mark E. Dalton*

*Name: Mark E. Dalton*

*Title: Vice President*

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

*By: /s/ Robert W. Belson*

*Name: Robert W. Belson*

*Title: Vice President*

**DRESDNER BANK AG, NEW YORK BRANCH and  
GRAND CAYMAN BRANCH**

*By:/s/ Johannes Boeckmann  
Name: Johannes Boeckmann  
Title: Vice President*

*By:/s/ Jody Harrison  
Name: Jody Harrison  
Title: Assistant Treasurer*

**AMSOUTH BANK OF ALABAMA**

*By: /s/ Arthur J. Sharbel, III*

*Name: Arthur J. Sharbel, III*

*Title: Vice President*

**COMMERZBANK AKTIENGESELLSCHAFT,  
ATLANTA AGENCY**

*By:/s/ Harry Yergey  
Name: Harry Yergey  
Title: Vice President*

*By:/s/ Bayard Hollingsworth  
Name: Bayard Hollingsworth  
Title: Assistant Vice President*

**CORESTATES BANK, N.A.**

*By: /s/ William J. Lloyd, Jr.*

*Name: William J. Lloyd, Jr.*

*Title: Vice President*

**DG BANK DEUTSCHE GENOSSENSCHAFTSBANK**

*By:/s/ Linda J. O'Connell  
Name: Linda J. O'Connell  
Title: Vice President*

*By:/s/ Karen A. Brinkman  
Name: Karen A. Brinkman  
Title: Vice President*

**MELLON BANK, N.A.**

*By: /s/ Michael J. DiSanto*

*Name: Michael J. DiSanto*

*Title: Vice President*

## CRESTAR BANK

*By: /s/ Richard D. Dickinson  
Name: Richard D. Dickinson  
Title: Senior Vice President*

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