

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

**FORM 10-Q**

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

**For the quarterly period ended September 30, 2017**



**HIGHWOODS PROPERTIES, INC.**

(Exact name of registrant as specified in its charter)

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

**001-13100**  
(Commission  
File Number)

**56-1871668**  
(I.R.S. Employer  
Identification Number)

**HIGHWOODS REALTY LIMITED PARTNERSHIP**

(Exact name of registrant as specified in its charter)

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

**000-21731**  
(Commission  
File Number)

**56-1869557**  
(I.R.S. Employer  
Identification Number)

**3100 Smoketree Court, Suite 600**  
**Raleigh, NC 27604**  
(Address of principal executive offices) (Zip Code)  
**919-872-4924**  
(Registrants' telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

**Highwoods Properties, Inc.** Yes ☒ No ☐ **Highwoods Realty Limited Partnership** Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

**Highwoods Properties, Inc.** Yes ☒ No ☐ **Highwoods Realty Limited Partnership** Yes ☒ No ☐

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

**Highwoods Properties, Inc.**  
Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company)  
Smaller reporting company ☐ Emerging growth company ☐

**Highwoods Realty Limited Partnership**  
Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ (Do not check if a smaller reporting company)  
Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Highwoods Properties, Inc.** ☐ **Highwoods Realty Limited Partnership** ☐

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

**Highwoods Properties, Inc.** Yes ☐ No ☒ **Highwoods Realty Limited Partnership** Yes ☐ No ☒

The Company had 103,248,940 shares of Common Stock outstanding as of October 18, 2017.

## EXPLANATORY NOTE

We refer to Highwoods Properties, Inc. as the “Company,” Highwoods Realty Limited Partnership as the “Operating Partnership,” the Company’s common stock as “Common Stock” or “Common Shares,” the Company’s preferred stock as “Preferred Stock” or “Preferred Shares,” the Operating Partnership’s common partnership interests as “Common Units” and the Operating Partnership’s preferred partnership interests as “Preferred Units.” References to “we” and “our” mean the Company and the Operating Partnership, collectively, unless the context indicates otherwise.

The Company conducts its activities through the Operating Partnership and is its sole general partner. The partnership agreement provides that the Operating Partnership will assume and pay when due, or reimburse the Company for payment of, all costs and expenses relating to the ownership and operations of, or for the benefit of, the Operating Partnership. The partnership agreement further provides that all expenses of the Company are deemed to be incurred for the benefit of the Operating Partnership.

Certain information contained herein is presented as of October 18, 2017, the latest practicable date for financial information prior to the filing of this Quarterly Report.

This report combines the Quarterly Reports on Form 10-Q for the period ended September 30, 2017 of the Company and the Operating Partnership. We believe combining the quarterly reports into this single report results in the following benefits:

- combined reports better reflect how management and investors view the business as a single operating unit;
- combined reports enhance investors' understanding of the Company and the Operating Partnership by enabling them to view the business as a whole and in the same manner as management;
- combined reports are more efficient for the Company and the Operating Partnership and result in savings in time, effort and expense; and
- combined reports are more efficient for investors by reducing duplicative disclosure and providing a single document for their review.

To help investors understand the significant differences between the Company and the Operating Partnership, this report presents the following separate sections for each of the Company and the Operating Partnership:

- Consolidated Financial Statements;
  - Note 12 to Consolidated Financial Statements - Earnings Per Share and Per Unit;
  - Item 4 - Controls and Procedures; and
  - Item 6 - Certifications of CEO and CFO Pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act.
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**HIGHWOODS PROPERTIES, INC.  
HIGHWOODS REALTY LIMITED PARTNERSHIP**

**QUARTERLY REPORT FOR THE PERIOD ENDED SEPTEMBER 30, 2017**

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# PART I - FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

### HIGHWOODS PROPERTIES, INC.

#### Consolidated Balance Sheets

(Unaudited and in thousands, except share and per share data)

	September 30, 2017	December 31, 2016
<b>Assets:</b>		
Real estate assets, at cost:		
Land	\$ 488,013	\$ 474,375
Buildings and tenant improvements	4,605,061	4,313,373
Development in-process	58,578	279,602
Land held for development	76,969	77,355
	<u>5,228,621</u>	<u>5,144,705</u>
Less-accumulated depreciation	(1,196,642)	(1,134,103)
Net real estate assets	<u>4,031,979</u>	<u>4,010,602</u>
Cash and cash equivalents	4,864	49,490
Restricted cash	47,761	29,141
Accounts receivable, net of allowance of \$504 and \$624, respectively	18,027	17,372
Mortgages and notes receivable, net of allowance of \$80 and \$105, respectively	6,789	8,833
Accrued straight-line rents receivable, net of allowance of \$324 and \$692, respectively	194,639	172,829
Investments in and advances to unconsolidated affiliates	23,523	18,846
Deferred leasing costs, net of accumulated amortization of \$145,814 and \$140,081, respectively	202,814	213,500
Prepaid expenses and other assets, net of accumulated amortization of \$22,341 and \$19,904, respectively	30,070	40,437
Total Assets	<u>\$ 4,560,466</u>	<u>\$ 4,561,050</u>
<b>Liabilities, Noncontrolling Interests in the Operating Partnership and Equity:</b>		
Mortgages and notes payable, net	\$ 1,966,398	\$ 1,948,047
Accounts payable, accrued expenses and other liabilities	227,575	313,885
Total Liabilities	<u>2,193,973</u>	<u>2,261,932</u>
Commitments and contingencies		
Noncontrolling interests in the Operating Partnership	147,451	144,802
<b>Equity:</b>		
Preferred Stock, \$.01 par value, 50,000,000 authorized shares;		
8.625% Series A Cumulative Redeemable Preferred Shares (liquidation preference \$1,000 per share), 28,892 and 28,920 shares issued and outstanding, respectively	28,892	28,920
Common Stock, \$.01 par value, 200,000,000 authorized shares;		
103,248,940 and 101,665,554 shares issued and outstanding, respectively	1,032	1,017
Additional paid-in capital	2,924,048	2,850,881
Distributions in excess of net income available for common stockholders	(758,484)	(749,412)
Accumulated other comprehensive income	5,910	4,949
Total Stockholders' Equity	<u>2,201,398</u>	<u>2,136,355</u>
Noncontrolling interests in consolidated affiliates	17,644	17,961
Total Equity	<u>2,219,042</u>	<u>2,154,316</u>
Total Liabilities, Noncontrolling Interests in the Operating Partnership and Equity	<u>\$ 4,560,466</u>	<u>\$ 4,561,050</u>

See accompanying notes to consolidated financial statements.

**HIGHWOODS PROPERTIES, INC.**  
**Consolidated Statements of Income**  
(Unaudited and in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Rental and other revenues</b>	\$ 180,185	\$ 166,269	\$ 526,876	\$ 497,988
<b>Operating expenses:</b>				
Rental property and other expenses	61,234	58,620	177,484	173,715
Depreciation and amortization	56,973	52,923	168,934	161,734
Impairments of real estate assets	1,445	—	1,445	—
General and administrative	9,247	9,863	29,787	29,327
Total operating expenses	128,899	121,406	377,650	364,776
<b>Interest expense:</b>				
Contractual	16,395	17,722	48,763	56,111
Amortization of debt issuance costs	796	844	2,445	2,645
	17,191	18,566	51,208	58,756
<b>Other income:</b>				
Interest and other income	558	833	1,806	1,884
Gains on debt extinguishment	—	—	826	—
	558	833	2,632	1,884
<b>Income from continuing operations before disposition of investment properties and activity in unconsolidated affiliates</b>	34,653	27,130	100,650	76,340
Gains on disposition of property	19,849	3,902	25,181	14,160
Equity in earnings of unconsolidated affiliates	5,047	2,808	6,757	5,010
<b>Income from continuing operations</b>	59,549	33,840	132,588	95,510
<b>Discontinued operations:</b>				
Income from discontinued operations	—	—	—	4,097
Net gains on disposition of discontinued operations	—	—	—	414,496
	—	—	—	418,593
<b>Net income</b>	59,549	33,840	132,588	514,103
Net (income) attributable to noncontrolling interests in the Operating Partnership	(1,571)	(926)	(3,502)	(14,876)
Net (income) attributable to noncontrolling interests in consolidated affiliates	(315)	(319)	(914)	(941)
Dividends on Preferred Stock	(623)	(624)	(1,869)	(1,877)
<b>Net income available for common stockholders</b>	\$ 57,040	\$ 31,971	\$ 126,303	\$ 496,409
<b>Earnings per Common Share – basic:</b>				
Income from continuing operations available for common stockholders	\$ 0.55	\$ 0.32	\$ 1.23	\$ 0.92
Income from discontinued operations available for common stockholders	—	—	—	4.16
Net income available for common stockholders	\$ 0.55	\$ 0.32	\$ 1.23	\$ 5.08
Weighted average Common Shares outstanding – basic	103,237	98,973	102,489	97,669
<b>Earnings per Common Share – diluted:</b>				
Income from continuing operations available for common stockholders	\$ 0.55	\$ 0.32	\$ 1.23	\$ 0.92
Income from discontinued operations available for common stockholders	—	—	—	4.16
Net income available for common stockholders	\$ 0.55	\$ 0.32	\$ 1.23	\$ 5.08
Weighted average Common Shares outstanding – diluted	106,145	101,939	105,402	100,645
<b>Dividends declared per Common Share</b>	\$ 0.440	\$ 0.425	\$ 1.320	\$ 1.275
<b>Net income available for common stockholders:</b>				
Income from continuing operations available for common stockholders	\$ 57,040	\$ 31,971	\$ 126,303	\$ 90,081
Income from discontinued operations available for common stockholders	—	—	—	406,328
Net income available for common stockholders	\$ 57,040	\$ 31,971	\$ 126,303	\$ 496,409

See accompanying notes to consolidated financial statements.

**HIGHWOODS PROPERTIES, INC.**  
**Consolidated Statements of Comprehensive Income**  
(Unaudited and in thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Comprehensive income:</b>				
Net income	\$ 59,549	\$ 33,840	\$ 132,588	\$ 514,103
Other comprehensive income/(loss):				
Unrealized gains/(losses) on cash flow hedges	(347)	1,610	(31)	(7,785)
Amortization of cash flow hedges	211	758	992	2,336
Total other comprehensive income/(loss)	(136)	2,368	961	(5,449)
Total comprehensive income	59,413	36,208	133,549	508,654
Less-comprehensive (income) attributable to noncontrolling interests	(1,886)	(1,245)	(4,416)	(15,817)
Comprehensive income attributable to common stockholders	\$ 57,527	\$ 34,963	\$ 129,133	\$ 492,837

See accompanying notes to consolidated financial statements.

**HIGHWOODS PROPERTIES, INC.**  
**Consolidated Statements of Equity**  
(Unaudited and in thousands, except share amounts)

	Number of Common Shares	Common Stock	Series A Cumulative Redeemable Preferred Shares	Additional Paid- In Capital	Accumulated Other Compre- hensive Income	Non-controlling Interests in Consolidated Affiliates	Distributions in Excess of Net Income Available for Common Stockholders	Total
<b>Balance at December 31, 2016</b>	101,665,554	\$ 1,017	\$ 28,920	\$ 2,850,881	\$ 4,949	\$ 17,961	\$ (749,412)	\$ 2,154,316
Issuances of Common Stock, net of issuance costs and tax withholdings	1,464,638	15	—	70,292	—	—	—	70,307
Conversions of Common Units to Common Stock	8,000	—	—	408	—	—	—	408
Dividends on Common Stock		—	—	—	—	—	(135,375)	(135,375)
Dividends on Preferred Stock		—	—	—	—	—	(1,869)	(1,869)
Adjustment of noncontrolling interests in the Operating Partnership to fair value		—	—	(3,297)	—	—	—	(3,297)
Distributions to noncontrolling interests in consolidated affiliates		—	—	—	—	(1,231)	—	(1,231)
Issuances of restricted stock	110,748	—	—	—	—	—	—	—
Redemptions/repurchases of Preferred Stock		—	(28)	—	—	—	—	(28)
Share-based compensation expense, net of forfeitures	—	—	—	5,764	—	—	—	5,764
Net (income) attributable to noncontrolling interests in the Operating Partnership		—	—	—	—	—	(3,502)	(3,502)
Net (income) attributable to noncontrolling interests in consolidated affiliates		—	—	—	—	914	(914)	—
Comprehensive income:								
Net income		—	—	—	—	—	132,588	132,588
Other comprehensive income		—	—	—	961	—	—	961
Total comprehensive income								133,549
<b>Balance at September 30, 2017</b>	103,248,940	\$ 1,032	\$ 28,892	\$ 2,924,048	\$ 5,910	\$ 17,644	\$ (758,484)	\$ 2,219,042

	Number of Common Shares	Common Stock	Series A Cumulative Redeemable Preferred Shares	Additional Paid- In Capital	Accumulated Other Compre- hensive Loss	Non-controlling Interests in Consolidated Affiliates	Distributions in Excess of Net Income Available for Common Stockholders	Total
<b>Balance at December 31, 2015</b>	96,091,932	\$ 961	\$ 29,050	\$ 2,598,242	\$ (3,811)	\$ 17,975	\$ (1,023,135)	\$ 1,619,282
Issuances of Common Stock, net of issuance costs and tax withholdings	3,930,262	39	—	187,175	—	—	—	187,214
Conversions of Common Units to Common Stock	60,048	—	—	3,006	—	—	—	3,006
Dividends on Common Stock		—	—	—	—	—	(124,228)	(124,228)
Dividends on Preferred Stock		—	—	—	—	—	(1,877)	(1,877)
Adjustment of noncontrolling interests in the Operating Partnership to fair value		—	—	(13,390)	—	—	—	(13,390)
Distributions to noncontrolling interests in consolidated affiliates		—	—	—	—	(966)	—	(966)
Issuances of restricted stock	130,752	—	—	—	—	—	—	—
Redemptions/repurchases of Preferred Stock		—	(130)	—	—	—	—	(130)
Share-based compensation expense, net of forfeitures	(8,888)	2	—	5,410	—	—	—	5,412
Net (income) attributable to noncontrolling interests in the Operating Partnership		—	—	—	—	—	(14,876)	(14,876)
Net (income) attributable to noncontrolling interests in consolidated affiliates		—	—	—	—	941	(941)	—
Comprehensive income:								
Net income		—	—	—	—	—	514,103	514,103
Other comprehensive loss		—	—	—	(5,449)	—	—	(5,449)
Total comprehensive income								508,654
<b>Balance at September 30, 2016</b>	100,204,106	\$ 1,002	\$ 28,920	\$ 2,780,443	\$ (9,260)	\$ 17,950	\$ (650,954)	\$ 2,168,101

See accompanying notes to consolidated financial statements.

**HIGHWOODS PROPERTIES, INC.**  
**Consolidated Statements of Cash Flows**  
(Unaudited and in thousands)

	Nine Months Ended September 30,	
	2017	2016
<b>Operating activities:</b>		
Net income	\$ 132,588	\$ 514,103
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	168,934	161,734
Amortization of lease incentives and acquisition-related intangible assets and liabilities	(666)	(1,599)
Share-based compensation expense	5,764	5,412
Allowance for losses on accounts and accrued straight-line rents receivable	435	1,846
Accrued interest on mortgages and notes receivable	(391)	(364)
Amortization of debt issuance costs	2,445	2,645
Amortization of cash flow hedges	992	2,336
Amortization of mortgages and notes payable fair value adjustments	422	(175)
Impairments of real estate assets	1,445	—
Gains on debt extinguishment	(826)	—
Net gains on disposition of property	(25,181)	(428,656)
Equity in earnings of unconsolidated affiliates	(6,757)	(5,010)
Distributions of earnings from unconsolidated affiliates	4,815	3,936
Settlement of cash flow hedges	7,322	—
Changes in operating assets and liabilities:		
Accounts receivable	916	4,798
Prepaid expenses and other assets	2,735	(2,243)
Accrued straight-line rents receivable	(24,473)	(18,931)
Accounts payable, accrued expenses and other liabilities	(308)	(7,447)
Net cash provided by operating activities	270,211	232,385
<b>Investing activities:</b>		
Investments in acquired real estate and related intangible assets, net of cash acquired	—	(110,249)
Investments in development in-process	(121,367)	(122,839)
Investments in tenant improvements and deferred leasing costs	(78,691)	(63,715)
Investments in building improvements	(41,862)	(51,714)
Net proceeds from disposition of real estate assets	85,538	680,994
Distributions of capital from unconsolidated affiliates	11,670	2,639
Investments in mortgages and notes receivable	—	(7,934)
Repayments of mortgages and notes receivable	2,435	869
Investments in and advances to unconsolidated affiliates	(10,063)	(105)
Repayments from unconsolidated affiliates	—	448
Changes in restricted cash and other investing activities	(24,225)	(23,310)
Net cash provided by/(used in) investing activities	(176,565)	305,084
<b>Financing activities:</b>		
Dividends on Common Stock	(135,375)	(124,228)
Special dividend on Common Stock	(81,205)	—
Redemptions/repurchases of Preferred Stock	(28)	(130)
Dividends on Preferred Stock	(1,869)	(1,877)
Distributions to noncontrolling interests in the Operating Partnership	(3,742)	(3,684)
Special distribution to noncontrolling interests in the Operating Partnership	(2,271)	—
Distributions to noncontrolling interests in consolidated affiliates	(1,231)	(966)
Proceeds from the issuance of Common Stock	75,517	194,518
Costs paid for the issuance of Common Stock	(1,244)	(2,888)
Repurchase of shares related to tax withholdings	(3,966)	(4,416)
Borrowings on revolving credit facility	492,300	257,800
Repayments of revolving credit facility	(420,300)	(528,800)



Borrowings on mortgages and notes payable	456,001	75,000
Repayments of mortgages and notes payable	(507,114)	(395,455)
Payments of debt extinguishment costs	(57)	—
Changes in debt issuance costs and other financing activities	(3,688)	(992)
Net cash used in financing activities	(138,272)	(536,118)
Net increase/(decrease) in cash and cash equivalents	<u>\$ (44,626)</u>	<u>\$ 1,351</u>

See accompanying notes to consolidated financial statements.

**HIGHWOODS PROPERTIES, INC.**  
**Consolidated Statements of Cash Flows – Continued**  
(Unaudited and in thousands)

	<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Net increase/(decrease) in cash and cash equivalents	\$ (44,626)	\$ 1,351
Cash and cash equivalents at beginning of the period	49,490	5,036
Cash and cash equivalents at end of the period	<u>\$ 4,864</u>	<u>\$ 6,387</u>

**Supplemental disclosure of cash flow information:**

	<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Cash paid for interest, net of amounts capitalized	<u>\$ 50,025</u>	<u>\$ 58,138</u>

**Supplemental disclosure of non-cash investing and financing activities:**

	<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Unrealized losses on cash flow hedges	\$ (31)	\$ (7,785)
Conversions of Common Units to Common Stock	408	3,006
Changes in accrued capital expenditures	(6,327)	25,037
Write-off of fully depreciated real estate assets	41,860	28,783
Write-off of fully amortized leasing costs	28,343	16,075
Write-off of fully amortized debt issuance costs	4,324	916
Adjustment of noncontrolling interests in the Operating Partnership to fair value	3,297	13,390

See accompanying notes to consolidated financial statements.

**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**Consolidated Balance Sheets**

(Unaudited and in thousands, except unit and per unit data)

	September 30, 2017	December 31, 2016
<b>Assets:</b>		
Real estate assets, at cost:		
Land	\$ 488,013	\$ 474,375
Buildings and tenant improvements	4,605,061	4,313,373
Development in-process	58,578	279,602
Land held for development	76,969	77,355
	5,228,621	5,144,705
Less-accumulated depreciation	(1,196,642)	(1,134,103)
Net real estate assets	4,031,979	4,010,602
Cash and cash equivalents	4,864	49,490
Restricted cash	47,761	29,141
Accounts receivable, net of allowance of \$504 and \$624, respectively	18,027	17,372
Mortgages and notes receivable, net of allowance of \$80 and \$105, respectively	6,789	8,833
Accrued straight-line rents receivable, net of allowance of \$324 and \$692, respectively	194,639	172,829
Investments in and advances to unconsolidated affiliates	23,523	18,846
Deferred leasing costs, net of accumulated amortization of \$145,814 and \$140,081, respectively	202,814	213,500
Prepaid expenses and other assets, net of accumulated amortization of \$22,341 and \$19,904, respectively	30,070	40,437
Total Assets	\$ 4,560,466	\$ 4,561,050
<b>Liabilities, Redeemable Operating Partnership Units and Capital:</b>		
Mortgages and notes payable, net	\$ 1,966,398	\$ 1,948,047
Accounts payable, accrued expenses and other liabilities	227,575	313,885
Total Liabilities	2,193,973	2,261,932
Commitments and contingencies		
Redeemable Operating Partnership Units:		
Common Units, 2,830,704 and 2,838,704 outstanding, respectively	147,451	144,802
Series A Preferred Units (liquidation preference \$1,000 per unit), 28,892 and 28,920 units issued and outstanding, respectively	28,892	28,920
Total Redeemable Operating Partnership Units	176,343	173,722
Capital:		
Common Units:		
General partner Common Units, 1,056,708 and 1,040,954 outstanding, respectively	21,665	21,023
Limited partner Common Units, 101,783,423 and 100,215,791 outstanding, respectively	2,144,931	2,081,463
Accumulated other comprehensive income	5,910	4,949
Noncontrolling interests in consolidated affiliates	17,644	17,961
Total Capital	2,190,150	2,125,396
Total Liabilities, Redeemable Operating Partnership Units and Capital	\$ 4,560,466	\$ 4,561,050

See accompanying notes to consolidated financial statements.

**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**Consolidated Statements of Income**  
(Unaudited and in thousands, except per unit amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Rental and other revenues</b>	\$ 180,185	\$ 166,269	\$ 526,876	\$ 497,988
<b>Operating expenses:</b>				
Rental property and other expenses	61,234	58,620	177,484	173,715
Depreciation and amortization	56,973	52,923	168,934	161,734
Impairments of real estate assets	1,445	—	1,445	—
General and administrative	9,247	9,863	29,787	29,327
Total operating expenses	128,899	121,406	377,650	364,776
<b>Interest expense:</b>				
Contractual	16,395	17,722	48,763	56,111
Amortization of debt issuance costs	796	844	2,445	2,645
	17,191	18,566	51,208	58,756
<b>Other income:</b>				
Interest and other income	558	833	1,806	1,884
Gains on debt extinguishment	—	—	826	—
	558	833	2,632	1,884
<b>Income from continuing operations before disposition of investment properties and activity in unconsolidated affiliates</b>	34,653	27,130	100,650	76,340
Gains on disposition of property	19,849	3,902	25,181	14,160
Equity in earnings of unconsolidated affiliates	5,047	2,808	6,757	5,010
<b>Income from continuing operations</b>	59,549	33,840	132,588	95,510
<b>Discontinued operations:</b>				
Income from discontinued operations	—	—	—	4,097
Net gains on disposition of discontinued operations	—	—	—	414,496
	—	—	—	418,593
<b>Net income</b>	59,549	33,840	132,588	514,103
Net (income) attributable to noncontrolling interests in consolidated affiliates	(315)	(319)	(914)	(941)
Distributions on Preferred Units	(623)	(624)	(1,869)	(1,877)
<b>Net income available for common unitholders</b>	\$ 58,611	\$ 32,897	\$ 129,805	\$ 511,285
<b>Earnings per Common Unit – basic:</b>				
Income from continuing operations available for common unitholders	\$ 0.55	\$ 0.32	\$ 1.24	\$ 0.93
Income from discontinued operations available for common unitholders	—	—	—	4.18
Net income available for common unitholders	\$ 0.55	\$ 0.32	\$ 1.24	\$ 5.11
Weighted average Common Units outstanding – basic	105,660	101,422	104,914	100,142
<b>Earnings per Common Unit – diluted:</b>				
Income from continuing operations available for common unitholders	\$ 0.55	\$ 0.32	\$ 1.24	\$ 0.92
Income from discontinued operations available for common unitholders	—	—	—	4.18
Net income available for common unitholders	\$ 0.55	\$ 0.32	\$ 1.24	\$ 5.10
Weighted average Common Units outstanding – diluted	105,736	101,530	104,993	100,236
<b>Distributions declared per Common Unit</b>	\$ 0.440	\$ 0.425	\$ 1.320	\$ 1.275
<b>Net income available for common unitholders:</b>				
Income from continuing operations available for common unitholders	\$ 58,611	\$ 32,897	\$ 129,805	\$ 92,692
Income from discontinued operations available for common unitholders	—	—	—	418,593
Net income available for common unitholders	\$ 58,611	\$ 32,897	\$ 129,805	\$ 511,285

See accompanying notes to consolidated financial statements.

**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**Consolidated Statements of Comprehensive Income**  
(Unaudited and in thousands)

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>
<b>Comprehensive income:</b>				
Net income	\$ 59,549	\$ 33,840	\$ 132,588	\$ 514,103
Other comprehensive income/(loss):				
Unrealized gains/(losses) on cash flow hedges	(347)	1,610	(31)	(7,785)
Amortization of cash flow hedges	211	758	992	2,336
Total other comprehensive income/(loss)	(136)	2,368	961	(5,449)
Total comprehensive income	59,413	36,208	133,549	508,654
Less-comprehensive (income) attributable to noncontrolling interests	(315)	(319)	(914)	(941)
Comprehensive income attributable to common unitholders	\$ 59,098	\$ 35,889	\$ 132,635	\$ 507,713

See accompanying notes to consolidated financial statements.

**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**Consolidated Statements of Capital**  
(Unaudited and in thousands)

	Common Units		Accumulated Other Comprehensive Income	Noncontrolling Interests in Consolidated Affiliates	Total
	General Partners' Capital	Limited Partners' Capital			
<b>Balance at December 31, 2016</b>	\$ 21,023	\$ 2,081,463	\$ 4,949	\$ 17,961	\$ 2,125,396
Issuances of Common Units, net of issuance costs and tax withholdings	703	69,604	—	—	70,307
Distributions on Common Units	(1,386)	(137,191)	—	—	(138,577)
Distributions on Preferred Units	(19)	(1,850)	—	—	(1,869)
Share-based compensation expense, net of forfeitures	58	5,706	—	—	5,764
Distributions to noncontrolling interests in consolidated affiliates	—	—	—	(1,231)	(1,231)
Adjustment of Redeemable Common Units to fair value and contributions/distributions from/to the General Partner	(31)	(3,158)	—	—	(3,189)
Net (income) attributable to noncontrolling interests in consolidated affiliates	(9)	(905)	—	914	—
Comprehensive income:					
Net income	1,326	131,262	—	—	132,588
Other comprehensive income	—	—	961	—	961
Total comprehensive income					133,549
<b>Balance at September 30, 2017</b>	<u>\$ 21,665</u>	<u>\$ 2,144,931</u>	<u>\$ 5,910</u>	<u>\$ 17,644</u>	<u>\$ 2,190,150</u>

	Common Units		Accumulated Other Comprehensive Loss	Noncontrolling Interests in Consolidated Affiliates	Total
	General Partners' Capital	Limited Partners' Capital			
<b>Balance at December 31, 2015</b>	\$ 15,759	\$ 1,560,309	\$ (3,811)	\$ 17,975	\$ 1,590,232
Issuances of Common Units, net of issuance costs and tax withholdings	1,872	185,342	—	—	187,214
Distributions on Common Units	(1,274)	(126,117)	—	—	(127,391)
Distributions on Preferred Units	(19)	(1,858)	—	—	(1,877)
Share-based compensation expense, net of forfeitures	54	5,358	—	—	5,412
Distributions to noncontrolling interests in consolidated affiliates	—	—	—	(966)	(966)
Adjustment of Redeemable Common Units to fair value and contributions/distributions from/to the General Partner	(221)	(21,876)	—	—	(22,097)
Net (income) attributable to noncontrolling interests in consolidated affiliates	(9)	(932)	—	941	—
Comprehensive income:					
Net income	5,141	508,962	—	—	514,103
Other comprehensive loss	—	—	(5,449)	—	(5,449)
Total comprehensive income					508,654
<b>Balance at September 30, 2016</b>	<u>\$ 21,303</u>	<u>\$ 2,109,188</u>	<u>\$ (9,260)</u>	<u>\$ 17,950</u>	<u>\$ 2,139,181</u>

See accompanying notes to consolidated financial statements.

**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**Consolidated Statements of Cash Flows**  
(Unaudited and in thousands)

	Nine Months Ended September 30,	
	2017	2016
<b>Operating activities:</b>		
Net income	\$ 132,588	\$ 514,103
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	168,934	161,734
Amortization of lease incentives and acquisition-related intangible assets and liabilities	(666)	(1,599)
Share-based compensation expense	5,764	5,412
Allowance for losses on accounts and accrued straight-line rents receivable	435	1,846
Accrued interest on mortgages and notes receivable	(391)	(364)
Amortization of debt issuance costs	2,445	2,645
Amortization of cash flow hedges	992	2,336
Amortization of mortgages and notes payable fair value adjustments	422	(175)
Impairments of real estate assets	1,445	—
Gains on debt extinguishment	(826)	—
Net gains on disposition of property	(25,181)	(428,656)
Equity in earnings of unconsolidated affiliates	(6,757)	(5,010)
Distributions of earnings from unconsolidated affiliates	4,815	3,523
Settlement of cash flow hedges	7,322	—
Changes in operating assets and liabilities:		
Accounts receivable	916	4,798
Prepaid expenses and other assets	2,735	(2,243)
Accrued straight-line rents receivable	(24,473)	(18,931)
Accounts payable, accrued expenses and other liabilities	(308)	(7,447)
Net cash provided by operating activities	270,211	231,972
<b>Investing activities:</b>		
Investments in acquired real estate and related intangible assets, net of cash acquired	—	(110,249)
Investments in development in-process	(121,367)	(122,839)
Investments in tenant improvements and deferred leasing costs	(78,691)	(63,715)
Investments in building improvements	(41,862)	(51,714)
Net proceeds from disposition of real estate assets	85,538	680,994
Distributions of capital from unconsolidated affiliates	11,670	3,052
Investments in mortgages and notes receivable	—	(7,934)
Repayments of mortgages and notes receivable	2,435	869
Investments in and advances to unconsolidated affiliates	(10,063)	(105)
Repayments from unconsolidated affiliates	—	448
Changes in restricted cash and other investing activities	(24,225)	(23,310)
Net cash provided by/(used in) investing activities	(176,565)	305,497
<b>Financing activities:</b>		
Distributions on Common Units	(138,577)	(127,391)
Special distribution on Common Units	(83,149)	—
Redemptions/repurchases of Preferred Units	(28)	(130)
Distributions on Preferred Units	(1,869)	(1,877)
Distributions to noncontrolling interests in consolidated affiliates	(1,231)	(966)
Proceeds from the issuance of Common Units	75,517	194,518
Costs paid for the issuance of Common Units	(1,244)	(2,888)
Repurchase of units related to tax withholdings	(3,966)	(4,416)
Borrowings on revolving credit facility	492,300	257,800
Repayments of revolving credit facility	(420,300)	(528,800)
Borrowings on mortgages and notes payable	456,001	75,000
Repayments of mortgages and notes payable	(507,114)	(395,455)

Payments of debt extinguishment costs	(57)	—
Changes in debt issuance costs and other financing activities	(4,555)	(1,513)
Net cash used in financing activities	(138,272)	(536,118)
Net increase/(decrease) in cash and cash equivalents	<u>\$ (44,626)</u>	<u>\$ 1,351</u>

See accompanying notes to consolidated financial statements.



**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**Consolidated Statements of Cash Flows - Continued**  
(Unaudited and in thousands)

	<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Net increase/(decrease) in cash and cash equivalents	\$ (44,626)	\$ 1,351
Cash and cash equivalents at beginning of the period	49,490	5,036
Cash and cash equivalents at end of the period	<u>\$ 4,864</u>	<u>\$ 6,387</u>

**Supplemental disclosure of cash flow information:**

	<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Cash paid for interest, net of amounts capitalized	<u>\$ 50,025</u>	<u>\$ 58,138</u>

**Supplemental disclosure of non-cash investing and financing activities:**

	<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>
Unrealized losses on cash flow hedges	\$ (31)	\$ (7,785)
Changes in accrued capital expenditures	(6,327)	25,037
Write-off of fully depreciated real estate assets	41,860	28,783
Write-off of fully amortized leasing costs	28,343	16,075
Write-off of fully amortized debt issuance costs	4,324	916
Adjustment of Redeemable Common Units to fair value	2,649	21,576

See accompanying notes to consolidated financial statements.

**HIGHWOODS PROPERTIES, INC.**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**September 30, 2017**  
**(tabular dollar amounts in thousands, except per share and per unit data)**  
(Unaudited)

**1. Description of Business and Significant Accounting Policies**

**Description of Business**

Highwoods Properties, Inc. (the “Company”) is a fully integrated real estate investment trust (“REIT”) that provides leasing, management, development, construction and other customer-related services for its properties and for third parties. The Company conducts its activities through Highwoods Realty Limited Partnership (the “Operating Partnership”). At September 30, 2017, we owned or had an interest in 30.9 million rentable square feet of in-service properties, 0.6 million rentable square feet of properties under development and approximately 400 acres of development land.

The Company is the sole general partner of the Operating Partnership. At September 30, 2017, the Company owned all of the Preferred Units and 102.8 million, or 97.3%, of the Common Units in the Operating Partnership. Limited partners owned the remaining 2.8 million Common Units. During the nine months ended September 30, 2017, the Company redeemed 8,000 Common Units for a like number of shares of Common Stock.

**Common Stock Offerings**

During the first quarter of 2017, we entered into separate equity distribution agreements in which the Company may offer and sell up to \$300.0 million in aggregate gross sales price of shares of Common Stock. During the nine months ended September 30, 2017, the Company issued 1,363,919 shares of Common Stock under its equity distribution agreements at an average gross sales price of \$50.85 per share and received net proceeds, after sales commissions, of \$68.3 million.

**Basis of Presentation**

Our Consolidated Financial Statements are prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”).

The Company's Consolidated Financial Statements include the Operating Partnership, wholly owned subsidiaries and those entities in which the Company has the controlling interest. The Operating Partnership's Consolidated Financial Statements include wholly owned subsidiaries and those entities in which the Operating Partnership has the controlling interest. All intercompany transactions and accounts have been eliminated.

The unaudited interim consolidated financial statements and accompanying unaudited consolidated financial information, in the opinion of management, contain all adjustments (including normal recurring accruals) necessary for a fair presentation of our financial position, results of operations and cash flows. We have condensed or omitted certain notes and other information from the interim Consolidated Financial Statements presented in this Quarterly Report as permitted by SEC rules and regulations. These Consolidated Financial Statements should be read in conjunction with our 2016 Annual Report on Form 10-K.

**Use of Estimates**

The preparation of consolidated financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the amounts reported in our Consolidated Financial Statements and accompanying notes. Actual results could differ from those estimates.

**HIGHWOODS PROPERTIES, INC.**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(tabular dollar amounts in thousands, except per share and per unit data)**

**1. Description of Business and Significant Accounting Policies – Continued**

**Recently Issued Accounting Standards**

The Financial Accounting Standards Board ("FASB") issued an accounting standards update ("ASU") that requires the use of a new five-step model to recognize revenue from customer contracts. The five-step model requires that we identify the contract with the customer, identify the performance obligations in the contract, determine the transaction price, allocate the transaction price to the performance obligations in the contract and recognize revenue when we satisfy the performance obligations. We will also be required to disclose information regarding the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. Upon adoption of the ASU in 2018, we expect to utilize the modified retrospective approach. We are currently conducting our analysis of the impact of the guidance on our Consolidated Financial Statements, including our internal control processes, and have an active project team working on the evaluation and implementation of the guidance. Our analysis of our non-lease related revenue contracts, which include primarily real estate sales, management, development and construction fee income and transient parking income, indicates that the adoption of this ASU will impact the financial statement disclosure of these contracts with no material impact on the timing of revenue recognition; however, we continue to evaluate the impacts of adoption of this ASU. We expect additional impact of this ASU upon adoption of the ASU related to accounting for leases discussed below for certain lease revenue streams that will be required to be evaluated as non-lease components using the five-step revenue recognition model.

The FASB issued an ASU that adds to and clarifies guidance on the classification of certain cash receipts and payments in the statement of cash flows. The ASU is required to be adopted in 2018 with retrospective application required. We do not expect such adoption to have a material effect on our Consolidated Statements of Cash Flows.

The FASB issued an ASU that clarifies and narrows the definition of a business used in determining whether to account for a transaction as an asset acquisition or business combination. The guidance requires evaluation of the fair value of the assets acquired to determine if it is concentrated in a single identifiable asset or a group of similar identifiable assets. If so, the transferred assets would not be a business. The guidance also requires a business to include at least one substantive process and narrows the definition of outputs. The ASU is required to be adopted in 2018 and applied prospectively. Upon adoption of this ASU, we expect that the majority of our future acquisitions would not meet the definition of a business; therefore, the related acquisition costs would be capitalized as part of the purchase price.

The FASB issued an ASU that clarifies when changes to the terms or conditions of a share-based payment award must be accounted for as modifications. The guidance requires modification accounting if the value, vesting conditions or classification of the award changes. The ASU is required to be adopted in 2018 and applied prospectively. We do not expect such adoption to have a material effect on our Consolidated Financial Statements.

The FASB issued an ASU which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both lessees and lessors. We are currently conducting our initial analysis of the impact of the guidance on our Consolidated Financial Statements and have an active project team working on the evaluation and implementation of the guidance. We currently believe that the adoption of the ASU will not significantly change the accounting for operating leases on our Consolidated Balance Sheets where we are the lessor, and that such leases will be accounted for in a similar method to existing standards with the underlying leased asset being reported and recognized as a real estate asset. In addition, the guidance requires lessors to capitalize and amortize only incremental direct leasing costs. As a result, we expect that upon the adoption of the ASU, we will no longer be able to capitalize and amortize certain leasing related costs and instead will expense these costs as incurred. We are in the process of evaluating the impact to our results of operations of expensing such costs. The ASU is required to be adopted in 2019 using a modified retrospective approach. Our initial analysis of our leases also indicates that upon adoption of the ASU, certain lease revenue streams that are currently accounted for using the lease accounting standard will be accounted for as non-lease components using the five-step revenue recognition model discussed above. We continue to evaluate other impacts of adoption of this ASU.

The FASB issued an ASU that eliminates the requirement to separately measure and report hedge ineffectiveness and generally requires the entire change in the fair value of a hedging instrument to be presented in the same income statement line as the hedged item when the hedged item affects earnings. The ASU is required to be adopted in 2019 using a modified retrospective approach. We do not expect such adoption to have a material effect on our Consolidated Financial Statements.

**HIGHWOODS PROPERTIES, INC.**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(tabular dollar amounts in thousands, except per share and per unit data)**

**1. Description of Business and Significant Accounting Policies – Continued**

The FASB issued an ASU that requires, among other things, the use of a new current expected credit loss ("CECL") model in determining our allowances for doubtful accounts with respect to accounts receivable, accrued straight-line rents receivable and mortgages and notes receivable. The CECL model requires that we estimate our lifetime expected credit loss with respect to these receivables and record allowances that, when deducted from the balance of the receivables, represent the net amounts expected to be collected. We will also be required to disclose information about how we developed the allowances, including changes in the factors (e.g., portfolio mix, credit trends, unemployment, gross domestic product, etc.) that influenced our estimate of expected credit losses and the reasons for those changes. We will apply the ASU's provisions as a cumulative-effect adjustment to retained earnings upon adoption in 2020. We are in the process of evaluating this ASU.

**2. Real Estate Assets**

**Dispositions**

During the third quarter of 2017, we sold a total of 12 buildings for an aggregate sale price of \$78.0 million (before closing credits to buyer of \$2.5 million ) and recorded aggregate gains on disposition of property of \$19.8 million .

During the first quarter of 2017, we sold a building for a sale price of \$13.0 million (before closing credits to buyer of \$1.2 million ) and recorded a gain on disposition of property of \$5.3 million .

**Impairments**

During the third quarter of 2017, we recorded aggregate impairments of real estate assets of \$1.4 million , which resulted from a change in market-based inputs and our assumptions about the use of the assets.

**3. Mortgages and Notes Receivable**

Mortgages and notes receivable were \$6.8 million and \$8.8 million at September 30, 2017 and December 31, 2016 , respectively. We evaluate the ability to collect our mortgages and notes receivable by monitoring the leasing statistics and/or market fundamentals of these assets. As of September 30, 2017 , our mortgages and notes receivable were not in default and there were no other indicators of impairment.

**HIGHWOODS PROPERTIES, INC.**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(tabular dollar amounts in thousands, except per share and per unit data)**

**4. Intangible Assets and Below Market Lease Liabilities**

The following table sets forth total intangible assets and acquisition-related below market lease liabilities, net of accumulated amortization:

	September 30, 2017	December 31, 2016
<b>Assets:</b>		
Deferred leasing costs (including lease incentives and above market lease and in-place lease acquisition-related intangible assets)	\$ 348,628	\$ 353,581
Less accumulated amortization	(145,814)	(140,081)
	<u>\$ 202,814</u>	<u>\$ 213,500</u>
<b>Liabilities (in accounts payable, accrued expenses and other liabilities):</b>		
Acquisition-related below market lease liabilities	\$ 60,304	\$ 61,221
Less accumulated amortization	(26,905)	(23,074)
	<u>\$ 33,399</u>	<u>\$ 38,147</u>

The following table sets forth amortization of intangible assets and below market lease liabilities:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Amortization of deferred leasing costs and acquisition-related intangible assets (in depreciation and amortization)	\$ 10,130	\$ 10,111	\$ 30,882	\$ 33,177
Amortization of lease incentives (in rental and other revenues)	\$ 444	\$ 273	\$ 1,284	\$ 1,374
Amortization of acquisition-related intangible assets (in rental and other revenues)	\$ 671	\$ 901	\$ 2,382	\$ 2,904
Amortization of acquisition-related intangible assets (in rental property and other expenses)	\$ 140	\$ 140	\$ 416	\$ 417
Amortization of acquisition-related below market lease liabilities (in rental and other revenues)	\$ (1,576)	\$ (1,734)	\$ (4,748)	\$ (6,294)

The following table sets forth scheduled future amortization of intangible assets and below market lease liabilities:

	Amortization of Deferred Leasing Costs and Acquisition- Related Intangible Assets (in Depreciation and Amortization)	Amortization of Lease Incentives (in Rental and Other Revenues)	Amortization of Acquisition-Related Intangible Assets (in Rental and Other Revenues)	Amortization of Acquisition-Related Intangible Assets (in Rental Property and Other Expenses)	Amortization of Acquisition- Related Below Market Lease Liabilities (in Rental and Other Revenues)
October 1 through December 31, 2017	\$ 10,019	\$ 427	\$ 469	\$ 134	\$ (1,497)
2018	35,970	1,599	1,680	553	(5,962)
2019	30,311	1,377	1,286	553	(5,492)
2020	25,589	1,101	967	525	(5,180)
2021	21,254	886	647	—	(4,409)
Thereafter	61,333	4,249	1,885	—	(10,859)
	<u>\$ 184,476</u>	<u>\$ 9,639</u>	<u>\$ 6,934</u>	<u>\$ 1,765</u>	<u>\$ (33,399)</u>
Weighted average remaining amortization periods as of September 30, 2017 (in years)	<u>7.6</u>	<u>9.5</u>	<u>6.5</u>	<u>3.2</u>	<u>6.8</u>

**HIGHWOODS PROPERTIES, INC.**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(tabular dollar amounts in thousands, except per share and per unit data)**

## 5. Mortgages and Notes Payable

The following table sets forth our mortgages and notes payable:

	September 30, 2017	December 31, 2016
Secured indebtedness	\$ 99,421	\$ 128,204
Unsecured indebtedness	1,875,239	1,826,145
Less-unamortized debt issuance costs	(8,262)	(6,302)
<b>Total mortgages and notes payable, net</b>	<b>\$ 1,966,398</b>	<b>\$ 1,948,047</b>

At September 30, 2017, our secured mortgage loans were collateralized by real estate assets with an aggregate undepreciated book value of \$ 147.7 million.

At September 30, 2017, we had a \$ 475.0 million unsecured revolving credit facility that was scheduled to mature in January 2018. The interest rate was LIBOR plus 110 basis points and the annual facility fee was 20 basis points. There was \$ 72.0 million outstanding under our revolving credit facility at September 30, 2017 and \$ 0.6 million of outstanding letters of credit, which reduced the availability on the credit facility. As a result, the unused capacity of our revolving credit facility at September 30, 2017 was \$ 402.4 million.

During the second quarter of 2017, we prepaid without penalty a secured mortgage loan with a fair market value of \$108.2 million with an effective interest rate of 4.22% that was originally scheduled to mature in November 2017. We recorded \$0.4 million of gain on debt extinguishment related to this prepayment.

During 2015, we acquired our joint venture partner's 77.2% interest in a building in Orlando. Simultaneously with this acquisition, the joint venture's previously existing mortgage note was restructured into a new \$18.0 million first mortgage note and a \$10.2 million subordinated note, both of which were scheduled to mature in July 2017. The first mortgage and subordinated notes had effective interest rates of 5.36% and 8.6%, respectively. The subordinated note and accrued interest thereon can be satisfied, in certain circumstances, upon payment of a "waterfall payment" equal to a cash payment of 50.0% of the amount by which the net sale proceeds or appraised value at the time of refinancing exceeded (1) the outstanding principal of the first mortgage note, (2) funds deposited by us into escrow to fund tenant improvements, leasing commissions and building improvements and (3) a 10.0% return on such funds deposited by us into escrow. As of the date of such restructuring, the subordinated note was recorded at a projected waterfall payment of \$1.0 million. During the second quarter of 2017, both notes were retired upon payment of the \$18.0 million principal balance on the first mortgage note and a \$0.5 million waterfall payment relating to the subordinated note, which resulted in \$0.4 million of gain on debt extinguishment.

During the second quarter of 2017, we obtained a \$100.0 million secured mortgage loan from a third party lender with an effective interest rate of 4.0%. This loan is scheduled to mature in May 2029. We incurred \$0.8 million of debt issuance costs in connection with this loan, which will be amortized over the term of the loan.

During the first quarter of 2017, the Operating Partnership issued \$300.0 million aggregate principal amount of 3.875% notes due 2027, less original issue discount of \$4.0 million. These notes were priced to yield 4.038%. Underwriting fees and other expenses were incurred that aggregated \$2.5 million; these costs were deferred and will be amortized over the term of the notes.

During the first quarter of 2017, we paid off at maturity \$379.7 million principal amount of 5.85% unsecured notes.

During the first quarter of 2017, we amended our \$150.0 million unsecured bank term loan that is scheduled to mature in January 2022 by increasing the borrowed amount to \$200.0 million. The interest rate on this term loan at our current credit ratings is LIBOR plus 110 basis points. The underlying LIBOR rate with respect to \$50.0 million of the unsecured bank term loan has been effectively fixed for the term through floating-to-fixed interest rate swaps as discussed in Note 6. We incurred \$0.3 million of debt issuance costs in connection with this amendment, which will be amortized along with existing unamortized debt issuance costs over the remaining term.

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**5. Mortgages and Notes Payable - Continued**

We are currently in compliance with financial covenants and other requirements with respect to our consolidated debt.

We have considered our short-term liquidity needs within one year from October 24, 2017 (the date of issuance of the quarterly financial statements) and the adequacy of our estimated cash flows from operating activities and other expected financing sources to meet these needs. In particular, we have considered our scheduled debt maturities during such one -year period, including the \$200.0 million principal amount of unsecured notes due April 15, 2018 . We have concluded it is probable we will meet these short-term liquidity requirements through a combination of the following:

- available cash and cash equivalents;
- cash flows from operating activities;
- issuance of debt securities by the Operating Partnership (some of which debt securities may be hedged to a fixed interest rate pursuant to the forward-starting swaps referred to in Note 6);
- issuance of secured debt;
- bank term loans;
- borrowings under our revolving credit facility;
- issuance of equity securities by the Company or the Operating Partnership; and
- the disposition of non-core assets.

**6. Derivative Financial Instruments**

During the second quarter of 2017, we entered into \$150.0 million notional amount of forward-starting swaps that effectively lock the underlying 10 -year treasury rate at 2.44% with respect to a planned issuance of debt securities by the Operating Partnership expected to occur prior to May 15, 2018.

During the second quarter of 2017, we entered into floating-to-fixed interest rate swaps through January 2022 with respect to an aggregate of \$50.0 million LIBOR-based borrowings. These swaps effectively fix the underlying one -month LIBOR rate at a weighted average rate of 1.693% .

During 2016, we entered into \$150.0 million notional amount of forward-starting swaps that effectively locked the underlying 10 -year treasury rate at 1.90% with respect to a planned issuance of debt securities by the Operating Partnership. Upon issuance of the \$300.0 million aggregate principal amount of 3.875% notes due 2027 during the first quarter of 2017, we terminated the forward-starting swaps resulting in an unrealized gain of \$7.3 million in accumulated other comprehensive income.

The counterparties under these swaps are major financial institutions. The swap agreements contain a provision whereby if we default on certain of our indebtedness and which default results in repayment of such indebtedness being, or becoming capable of being, accelerated by the lender, then we could also be declared in default on our swaps.

Our interest rate swaps have been designated as and are being accounted for as cash flow hedges with changes in fair value recorded in other comprehensive income/(loss) each reporting period. No gain or loss was recognized related to hedge ineffectiveness or to amounts excluded from effectiveness testing on our cash flow hedges during the nine months ended September 30, 2017 and 2016 . We have no collateral requirements related to our interest rate swaps.

Amounts reported in accumulated other comprehensive income/(loss) related to derivatives will be reclassified to interest expense as interest payments are made on our variable-rate debt. During the period from October 1, 2017 through September 30, 2018 , we estimate that less than \$0.1 million will be reclassified as a net increase to interest expense.

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**6. Derivative Financial Instruments - Continued**

The following table sets forth the gross fair value of our derivatives:

	September 30, 2017	December 31, 2016
<b>Derivatives:</b>		
<b>Derivatives designated as cash flow hedges in prepaid expenses and other assets:</b>		
Interest rate swaps	\$ 306	\$ 7,619
<b>Derivatives designated as cash flow hedges in accounts payable, accrued expenses and other liabilities:</b>		
Interest rate swaps	\$ 1,059	\$ 1,870

The following table sets forth the effect of our cash flow hedges on accumulated other comprehensive income/(loss) and interest expense:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Derivatives Designated as Cash Flow Hedges:</b>				
<b>Amount of unrealized gains/(losses) recognized in accumulated other comprehensive income/(loss) on derivatives (effective portion):</b>				
Interest rate swaps	\$ (347)	\$ 1,610	\$ (31)	\$ (7,785)
<b>Amount of net losses reclassified out of accumulated other comprehensive income/(loss) into contractual interest expense (effective portion):</b>				
Interest rate swaps	\$ 211	\$ 758	\$ 992	\$ 2,336

**7. Noncontrolling Interests**

**Noncontrolling Interests in Consolidated Affiliates**

At September 30, 2017, our noncontrolling interests in consolidated affiliates relate to our joint venture partner's 50.0% interest in office properties in Richmond. Our joint venture partner is an unrelated third party.

**Noncontrolling Interests in the Operating Partnership**

The following table sets forth the Company's noncontrolling interests in the Operating Partnership:

	Nine Months Ended September 30,	
	2017	2016
Beginning noncontrolling interests in the Operating Partnership	\$ 144,802	\$ 126,429
Adjustment of noncontrolling interests in the Operating Partnership to fair value	3,297	13,390
Conversions of Common Units to Common Stock	(408)	(3,006)
Net income attributable to noncontrolling interests in the Operating Partnership	3,502	14,876
Distributions to noncontrolling interests in the Operating Partnership	(3,742)	(3,684)
Total noncontrolling interests in the Operating Partnership	\$ 147,451	\$ 148,005



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**7. Noncontrolling Interests - Continued**

The following table sets forth net income available for common stockholders and transfers from the Company's noncontrolling interests in the Operating Partnership:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Net income available for common stockholders	\$ 57,040	\$ 31,971	\$ 126,303	\$ 496,409
Increase in additional paid in capital from conversions of Common Units to Common Stock	103	1,448	408	3,006
Change from net income available for common stockholders and transfers from noncontrolling interests	<u>\$ 57,143</u>	<u>\$ 33,419</u>	<u>\$ 126,711</u>	<u>\$ 499,415</u>

**8. Disclosure About Fair Value of Financial Instruments**

The following summarizes the three levels of inputs that we use to measure fair value.

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

Our Level 1 asset is our investment in marketable securities that we use to pay benefits under our non-qualified deferred compensation plan. Our Level 1 liability is our non-qualified deferred compensation obligation. The Company's Level 1 noncontrolling interests in the Operating Partnership relate to the ownership of Common Units by various individuals and entities other than the Company.

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

Our Level 2 assets include the fair value of our mortgages and notes receivable and certain interest rate swaps. Our Level 2 liabilities include the fair value of our mortgages and notes payable and remaining interest rate swaps.

The fair value of mortgages and notes receivable and mortgages and notes payable is estimated by the income approach utilizing contractual cash flows and market-based interest rates to approximate the price that would be paid in an orderly transaction between market participants. The fair value of interest rate swaps is determined using the market standard methodology of netting the discounted future fixed cash receipts and the discounted expected variable cash payments. The variable cash payments of interest rate swaps are based on the expectation of future interest rates (forward curves) derived from observed market interest rate curves. In addition, credit valuation adjustments are considered in the fair values to account for potential nonperformance risk, but were concluded to not be significant inputs to the calculation for the periods presented.

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

Our Level 3 assets included (1) any real estate assets recorded at fair value on a non-recurring basis as a result of our quarterly impairment analysis, which were valued using the terms of definitive sales contracts or the sales comparison approach, and (2) our tax increment financing bond, which was not routinely traded but whose fair value was determined by the income approach utilizing contractual cash flows and market-based interest rates to estimate the projected redemption value based on quoted bid/ask prices for similar unrated municipal bonds. Our tax increment financing bond was assigned in conjunction with a sale during the first quarter of 2016. The estimated fair value at the date of sale of \$ 11.2 million was equal to the outstanding principal amount due on the bond.

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**8. Disclosure About Fair Value of Financial Instruments - Continued**

The following table sets forth our assets and liabilities and the Company's noncontrolling interests in the Operating Partnership that are measured or disclosed at fair value within the fair value hierarchy.

		Level 1	Level 2	Level 3
	Total	Quoted Prices in Active Markets for Identical Assets or Liabilities	Significant Observable Inputs	Significant Unobservable Inputs
<b>Fair Value at September 30, 2017:</b>				
<b>Assets:</b>				
Mortgages and notes receivable, at fair value (1)	\$ 6,789	\$ —	\$ 6,789	\$ —
Interest rate swaps (in prepaid expenses and other assets)	306	—	306	—
Marketable securities of non-qualified deferred compensation plan (in prepaid expenses and other assets)	2,269	2,269	—	—
Impaired real estate assets	5,888	—	—	5,888
<b>Total Assets</b>	<b>\$ 15,252</b>	<b>\$ 2,269</b>	<b>\$ 7,095</b>	<b>\$ 5,888</b>
<b>Noncontrolling Interests in the Operating Partnership</b>	<b>\$ 147,451</b>	<b>\$ 147,451</b>	<b>\$ —</b>	<b>\$ —</b>
<b>Liabilities:</b>				
Mortgages and notes payable, net, at fair value (1)	\$ 1,983,723	\$ —	\$ 1,983,723	\$ —
Interest rate swaps (in accounts payable, accrued expenses and other liabilities)	1,059	—	1,059	—
Non-qualified deferred compensation obligation (in accounts payable, accrued expenses and other liabilities)	2,269	2,269	—	—
<b>Total Liabilities</b>	<b>\$ 1,987,051</b>	<b>\$ 2,269</b>	<b>\$ 1,984,782</b>	<b>\$ —</b>
<b>Fair Value at December 31, 2016:</b>				
<b>Assets:</b>				
Mortgages and notes receivable, at fair value (1)	\$ 8,833	\$ —	\$ 8,833	\$ —
Interest rate swaps (in prepaid expenses and other assets)	7,619	—	7,619	—
Marketable securities of non-qualified deferred compensation plan (in prepaid expenses and other assets)	2,451	2,451	—	—
<b>Total Assets</b>	<b>\$ 18,903</b>	<b>\$ 2,451</b>	<b>\$ 16,452</b>	<b>\$ —</b>
<b>Noncontrolling Interests in the Operating Partnership</b>	<b>\$ 144,802</b>	<b>\$ 144,802</b>	<b>\$ —</b>	<b>\$ —</b>
<b>Liabilities:</b>				
Mortgages and notes payable, net, at fair value (1)	\$ 1,965,611	\$ —	\$ 1,965,611	\$ —
Interest rate swaps (in accounts payable, accrued expenses and other liabilities)	1,870	—	1,870	—
Non-qualified deferred compensation obligation (in accounts payable, accrued expenses and other liabilities)	2,451	2,451	—	—
<b>Total Liabilities</b>	<b>\$ 1,969,932</b>	<b>\$ 2,451</b>	<b>\$ 1,967,481</b>	<b>\$ —</b>

(1) Amounts recorded at historical cost on our Consolidated Balance Sheets at September 30, 2017 and December 31, 2016 .

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**8. Disclosure About Fair Value of Financial Instruments - Continued**

The impaired real estate assets that were measured in the third quarter of 2017 at fair value and deemed to be Level 3 assets were valued based primarily on market-based inputs and our assumptions about the use of the assets, as observable inputs were not available. In the absence of observable inputs, we estimate the fair value of real estate using unobservable local and national industry market data such as comparable sales, sales contracts and appraisals to assist us in our estimation of fair value. Significant increases or decreases in any valuation inputs in isolation would result in a significantly lower or higher fair value measurement.

**9. Share-Based Payments**

During the nine months ended September 30, 2017, the Company granted 168,748 stock options with an exercise price equal to the last reported stock price of our Common Stock on the New York Stock Exchange on the last trading day prior to the date of grant. The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model, which resulted in a weighted average grant date fair value per share of \$ 6.72. During the nine months ended September 30, 2017, the Company also granted 61,404 shares of time-based restricted stock and 49,344 shares of total return-based restricted stock with weighted average grant date fair values per share of \$ 52.49 and \$ 49.59, respectively. We recorded share-based compensation expense of \$0.9 million during each of the three months ended September 30, 2017 and 2016 and \$ 5.8 million and \$ 5.4 million during the nine months ended September 30, 2017 and 2016, respectively. At September 30, 2017, there was \$6.1 million of total unrecognized share-based compensation costs, which will be recognized over a weighted average remaining contractual term of 2.3 years.

**10. Accumulated Other Comprehensive Income/(Loss)**

The following table sets forth the components of accumulated other comprehensive income/(loss):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Cash flow hedges:</b>				
Beginning balance	\$ 6,046	\$ (11,628)	\$ 4,949	\$ (3,811)
Unrealized gains/(losses) on cash flow hedges	(347)	1,610	(31)	(7,785)
Amortization of cash flow hedges (1)	211	758	992	2,336
<b>Total accumulated other comprehensive income/(loss)</b>	<b>\$ 5,910</b>	<b>\$ (9,260)</b>	<b>\$ 5,910</b>	<b>\$ (9,260)</b>

(1) Amounts reclassified out of accumulated other comprehensive income/(loss) into contractual interest expense.

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**11. Discontinued Operations**

The following tables set forth the results of operations for the three and nine months ended September 30, 2017 and 2016 and cash flows for the nine months ended September 30, 2017 and 2016 related to discontinued operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Rental and other revenues</b>	\$ —	\$ —	\$ —	\$ 8,484
<b>Operating expenses:</b>				
Rental property and other expenses	—	—	—	3,334
General and administrative	—	—	—	1,388
Total operating expenses	—	—	—	4,722
<b>Interest expense</b>	—	—	—	85
<b>Other income</b>	—	—	—	420
<b>Income from discontinued operations</b>	—	—	—	4,097
Net gains on disposition of discontinued operations	—	—	—	414,496
<b>Total income from discontinued operations</b>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 418,593</u>
			Nine Months Ended September 30,	
			2017	2016
Cash flows from operating activities			\$ —	\$ 2,040
Cash flows from investing activities			\$ —	\$ 417,097

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## 12. Earnings Per Share and Per Unit

The following table sets forth the computation of basic and diluted earnings per share of the Company:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>
<b>Earnings per Common Share - basic:</b>				
<b>Numerator:</b>				
Income from continuing operations	\$ 59,549	\$ 33,840	\$ 132,588	\$ 95,510
Net (income) attributable to noncontrolling interests in the Operating Partnership from continuing operations	(1,571)	(926)	(3,502)	(2,611)
Net (income) attributable to noncontrolling interests in consolidated affiliates from continuing operations	(315)	(319)	(914)	(941)
Dividends on Preferred Stock	(623)	(624)	(1,869)	(1,877)
Income from continuing operations available for common stockholders	57,040	31,971	126,303	90,081
Income from discontinued operations	—	—	—	418,593
Net (income) attributable to noncontrolling interests in the Operating Partnership from discontinued operations	—	—	—	(12,265)
Income from discontinued operations available for common stockholders	—	—	—	406,328
Net income available for common stockholders	<u>\$ 57,040</u>	<u>\$ 31,971</u>	<u>\$ 126,303</u>	<u>\$ 496,409</u>
<b>Denominator:</b>				
Denominator for basic earnings per Common Share – weighted average shares	<u>103,237</u>	<u>98,973</u>	<u>102,489</u>	<u>97,669</u>
Earnings per Common Share - basic:				
Income from continuing operations available for common stockholders	\$ 0.55	\$ 0.32	\$ 1.23	\$ 0.92
Income from discontinued operations available for common stockholders	—	—	—	4.16
Net income available for common stockholders	<u>\$ 0.55</u>	<u>\$ 0.32</u>	<u>\$ 1.23</u>	<u>\$ 5.08</u>
<b>Earnings per Common Share - diluted:</b>				
<b>Numerator:</b>				
Income from continuing operations	\$ 59,549	\$ 33,840	\$ 132,588	\$ 95,510
Net (income) attributable to noncontrolling interests in consolidated affiliates from continuing operations	(315)	(319)	(914)	(941)
Dividends on Preferred Stock	(623)	(624)	(1,869)	(1,877)
Income from continuing operations available for common stockholders before net (income) attributable to noncontrolling interests in the Operating Partnership	58,611	32,897	129,805	92,692
Income from discontinued operations available for common stockholders	—	—	—	418,593
Net income available for common stockholders before net (income) attributable to noncontrolling interests in the Operating Partnership	<u>\$ 58,611</u>	<u>\$ 32,897</u>	<u>\$ 129,805</u>	<u>\$ 511,285</u>
<b>Denominator:</b>				
Denominator for basic earnings per Common Share – weighted average shares	103,237	98,973	102,489	97,669
Add:				
Stock options using the treasury method	76	108	79	94
Noncontrolling interests Common Units	2,832	2,858	2,834	2,882
Denominator for diluted earnings per Common Share – adjusted weighted average shares and assumed conversions (1)	<u>106,145</u>	<u>101,939</u>	<u>105,402</u>	<u>100,645</u>
Earnings per Common Share - diluted:				
Income from continuing operations available for common stockholders	\$ 0.55	\$ 0.32	\$ 1.23	\$ 0.92
Income from discontinued operations available for common stockholders	—	—	—	4.16
Net income available for common stockholders	<u>\$ 0.55</u>	<u>\$ 0.32</u>	<u>\$ 1.23</u>	<u>\$ 5.08</u>

(1) Includes all unvested restricted stock where dividends on such restricted stock are non-forfeitable.

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**12. Earnings Per Share and Per Unit - Continued**

The following table sets forth the computation of basic and diluted earnings per unit of the Operating Partnership:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>
<b>Earnings per Common Unit - basic:</b>				
<b>Numerator:</b>				
Income from continuing operations	\$ 59,549	\$ 33,840	\$ 132,588	\$ 95,510
Net (income) attributable to noncontrolling interests in consolidated affiliates from continuing operations	(315)	(319)	(914)	(941)
Distributions on Preferred Units	(623)	(624)	(1,869)	(1,877)
Income from continuing operations available for common unitholders	58,611	32,897	129,805	92,692
Income from discontinued operations available for common unitholders	—	—	—	418,593
Net income available for common unitholders	<u>\$ 58,611</u>	<u>\$ 32,897</u>	<u>\$ 129,805</u>	<u>\$ 511,285</u>
<b>Denominator:</b>				
Denominator for basic earnings per Common Unit – weighted average units	105,660	101,422	104,914	100,142
<b>Earnings per Common Unit - basic:</b>				
Income from continuing operations available for common unitholders	\$ 0.55	\$ 0.32	\$ 1.24	\$ 0.93
Income from discontinued operations available for common unitholders	—	—	—	4.18
Net income available for common unitholders	<u>\$ 0.55</u>	<u>\$ 0.32</u>	<u>\$ 1.24</u>	<u>\$ 5.11</u>
<b>Earnings per Common Unit - diluted:</b>				
<b>Numerator:</b>				
Income from continuing operations	\$ 59,549	\$ 33,840	\$ 132,588	\$ 95,510
Net (income) attributable to noncontrolling interests in consolidated affiliates from continuing operations	(315)	(319)	(914)	(941)
Distributions on Preferred Units	(623)	(624)	(1,869)	(1,877)
Income from continuing operations available for common unitholders	58,611	32,897	129,805	92,692
Income from discontinued operations available for common unitholders	—	—	—	418,593
Net income available for common unitholders	<u>\$ 58,611</u>	<u>\$ 32,897</u>	<u>\$ 129,805</u>	<u>\$ 511,285</u>
<b>Denominator:</b>				
Denominator for basic earnings per Common Unit – weighted average units	105,660	101,422	104,914	100,142
<b>Add:</b>				
Stock options using the treasury method	76	108	79	94
Denominator for diluted earnings per Common Unit – adjusted weighted average units and assumed conversions (1)	<u>105,736</u>	<u>101,530</u>	<u>104,993</u>	<u>100,236</u>
<b>Earnings per Common Unit - diluted:</b>				
Income from continuing operations available for common unitholders	\$ 0.55	\$ 0.32	\$ 1.24	\$ 0.92
Income from discontinued operations available for common unitholders	—	—	—	4.18
Net income available for common unitholders	<u>\$ 0.55</u>	<u>\$ 0.32</u>	<u>\$ 1.24</u>	<u>\$ 5.10</u>

(1) Includes all unvested restricted stock where distributions on such restricted stock are non-forfeitable.

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**13. Segment Information**

The following tables summarize the rental and other revenues and net operating income, the primary industry property-level performance metric used by our chief operating decision maker and which is defined as rental and other revenues less rental property and other expenses, for each of our reportable segments.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Rental and Other Revenues:</b>				
Office:				
Atlanta	\$ 36,471	\$ 33,340	\$ 106,027	\$ 101,188
Greensboro	5,370	5,167	15,956	15,351
Memphis	11,459	12,330	35,077	36,275
Nashville	28,945	23,979	81,471	71,760
Orlando	13,309	11,678	38,183	34,360
Pittsburgh	14,719	14,386	44,420	43,721
Raleigh	30,524	27,767	90,167	84,013
Richmond	11,152	11,414	33,200	33,420
Tampa	25,072	22,836	72,578	67,088
Total Office Segment	177,021	162,897	517,079	487,176
Other	3,164	3,372	9,797	10,812
Total Rental and Other Revenues	<u>\$ 180,185</u>	<u>\$ 166,269</u>	<u>\$ 526,876</u>	<u>\$ 497,988</u>

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**13. Segment Information - Continued**

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>
<b>Net Operating Income:</b>				
Office:				
Atlanta	\$ 23,600	\$ 20,718	\$ 68,150	\$ 63,681
Greensboro	3,367	3,187	10,116	9,544
Memphis	6,930	7,753	21,474	22,566
Nashville	21,000	17,042	59,250	51,470
Orlando	7,999	6,633	23,007	19,638
Pittsburgh	8,822	8,482	26,396	25,193
Raleigh	21,960	19,525	65,345	59,935
Richmond	6,987	7,602	22,453	22,718
Tampa	15,972	14,349	46,297	42,037
Total Office Segment	116,637	105,291	342,488	316,782
Other	2,314	2,358	6,904	7,491
Total Net Operating Income	118,951	107,649	349,392	324,273
<b>Reconciliation to income from continuing operations before disposition of investment properties and activity in unconsolidated affiliates:</b>				
Depreciation and amortization	(56,973)	(52,923)	(168,934)	(161,734)
Impairments of real estate assets	(1,445)	—	(1,445)	—
General and administrative expenses	(9,247)	(9,863)	(29,787)	(29,327)
Interest expense	(17,191)	(18,566)	(51,208)	(58,756)
Other income	558	833	2,632	1,884
<b>Income from continuing operations before disposition of investment properties and activity in unconsolidated affiliates</b>	<b>\$ 34,653</b>	<b>\$ 27,130</b>	<b>\$ 100,650</b>	<b>\$ 76,340</b>



**HIGHWOODS PROPERTIES, INC.**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(tabular dollar amounts in thousands, except per share and per unit data)**

**14. Subsequent Events**

On October 18, 2017, we entered into a new \$600.0 million unsecured revolving credit facility, which replaced our previously existing \$475.0 million revolving credit facility, and includes an accordion feature that allows for an additional \$400.0 million of borrowing capacity subject to additional lender commitments. Our new revolving credit facility is scheduled to mature in January 2022. Assuming no defaults have occurred, we have an option to extend the maturity for two additional six-month periods. The interest rate on the new facility at our current credit ratings is LIBOR plus 100 basis points and the annual facility fee is 20 basis points. The interest rate and facility fee are based on the higher of the publicly announced ratings from Moody's Investors Service or Standard & Poor's Ratings Services. The financial and other covenants under the new facility are similar to our previous credit facility. We expect to incur approximately \$3.5 million of debt issuance costs, which will be amortized along with certain existing unamortized debt issuance costs over the remaining term of our new revolving credit facility. We expect to record \$0.1 million of loss on debt extinguishment. At October 18, 2017, we had \$200.0 million outstanding under our new revolving credit facility and \$0.6 million of outstanding letters of credit, which reduces the availability on the credit facility. As a result, the unused capacity of our new revolving credit facility at October 18, 2017 was \$399.4 million.

We simultaneously modified our \$200.0 million, five-year unsecured bank term loan, which was originally scheduled to mature in January 2019. The modified term loan is now scheduled to mature in November 2022 and the interest rate, based on current credit ratings, was reduced from LIBOR plus 120 basis points to LIBOR plus 110 basis points. We expect to incur approximately \$1.1 million of debt issuance costs, which will be amortized along with certain existing unamortized debt issuance costs over the remaining term of the modified loan. We expect to record \$0.4 million of loss on debt extinguishment.

We also simultaneously prepaid without penalty \$125.0 million on a \$350.0 million unsecured bank term loan which is scheduled to mature in June 2020. We expect to record \$0.4 million of loss on debt extinguishment related to this prepayment.

On October 19, 2017, the Company declared a cash dividend of \$0.44 per share of Common Stock, which is payable on December 5, 2017 to stockholders of record as of November 14, 2017.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The Company is a fully integrated office real estate investment trust ("REIT") that owns, develops, acquires, leases and manages properties primarily in the best business districts (BBDs) of Atlanta, Greensboro, Memphis, Nashville, Orlando, Pittsburgh, Raleigh, Richmond and Tampa. The Company conducts its activities through the Operating Partnership. The Operating Partnership is managed by the Company, its sole general partner. Additional information about us can be found on our website at [www.highwoods.com](http://www.highwoods.com). Information on our website is not part of this Quarterly Report.

You should read the following discussion and analysis in conjunction with the accompanying Consolidated Financial Statements and related notes contained elsewhere in this Quarterly Report.

### Disclosure Regarding Forward-Looking Statements

Some of the information in this Quarterly Report may contain forward-looking statements. Such statements include, in particular, statements about our plans, strategies and prospects under this section. You can identify forward-looking statements by our use of forward-looking terminology such as "may," "will," "expect," "anticipate," "estimate," "continue" or other similar words. Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that our plans, intentions or expectations will be achieved. When considering such forward-looking statements, you should keep in mind the following important factors that could cause our actual results to differ materially from those contained in any forward-looking statement:

- the financial condition of our customers could deteriorate;
- we may not be able to lease or re-lease second generation space, defined as previously occupied space that becomes available for lease, quickly or on as favorable terms as old leases;
- we may not be able to lease our newly constructed buildings as quickly or on as favorable terms as originally anticipated;
- we may not be able to complete development, acquisition, reinvestment, disposition or joint venture projects as quickly or on as favorable terms as anticipated;
- development activity by our competitors in our existing markets could result in an excessive supply relative to customer demand;
- our markets may suffer declines in economic and/or office employment growth;
- unanticipated increases in interest rates could increase our debt service costs;
- unanticipated increases in operating expenses could negatively impact our operating results;
- we may not be able to meet our liquidity requirements or obtain capital on favorable terms to fund our working capital needs and growth initiatives or repay or refinance outstanding debt upon maturity; and
- the Company could lose key executive officers.

This list of risks and uncertainties, however, is not intended to be exhaustive. You should also review the other cautionary statements we make in "Business – Risk Factors" set forth in our 2016 Annual Report on Form 10-K. Given these uncertainties, you should not place undue reliance on forward-looking statements. We undertake no obligation to publicly release the results of any revisions to these forward-looking statements to reflect any future events or circumstances or to reflect the occurrence of unanticipated events.

## Executive Summary

Our Strategic Plan focuses on:

- owning high-quality, differentiated office buildings in the BBDs of our core markets;
- improving the operating results of our properties through concentrated leasing, asset management, cost control and customer service efforts;
- developing and acquiring office buildings in BBDs that improve the overall quality of our portfolio and generate attractive returns over the long term for our stockholders;
- disposing of properties no longer considered to be core assets primarily due to location, age, quality and/or overall strategic fit; and
- maintaining a balance sheet with ample liquidity to meet our funding needs and growth prospects.

## Revenues

Our operating results depend heavily on successfully leasing and operating the office space in our portfolio. Economic growth and office employment levels in our core markets are important factors, among others, in predicting our future operating results.

The key components affecting our rental and other revenues are average occupancy, rental rates, cost recovery income, new developments placed in service, acquisitions and dispositions. Average occupancy generally increases during times of improving economic growth, as our ability to lease space outpaces vacancies that occur upon the expirations of existing leases. Average occupancy generally declines during times of slower economic growth, when new vacancies tend to outpace our ability to lease space. Asset acquisitions, dispositions and new developments placed in service directly impact our rental revenues and could impact our average occupancy, depending upon the occupancy rate of the properties that are acquired, sold or placed in service. A further indicator of the predictability of future revenues is the expected lease expirations of our portfolio. As a result, in addition to seeking to increase our average occupancy by leasing current vacant space, we also concentrate our leasing efforts on renewing existing leases prior to expiration. For more information regarding our lease expirations, see "Properties - Lease Expirations" in our 2016 Annual Report on Form 10-K. Occupancy in our office portfolio decreased from 92.9% at December 31, 2016 to 92.2% at September 30, 2017 primarily due to scheduled expirations in Nashville and Atlanta.

Whether or not our rental revenue tracks average occupancy proportionally depends upon whether GAAP rents under signed new and renewal leases are higher or lower than the GAAP rents under expiring leases. Annualized rental revenues from second generation leases expiring during any particular year are typically less than 15% of our total annual rental revenues. The following table sets forth information regarding second generation office leases signed during the third quarter of 2017 (we define second generation office leases as leases with new customers and renewals of existing customers in office space that has been previously occupied under our ownership and leases with respect to vacant space in acquired buildings):

	New	Renewal	All Office
Leased space (in rentable square feet)	193,911	910,118	1,104,029
Average term (in years - rentable square foot weighted)	7.8	4.1	4.8
Base rents (per rentable square foot) (1)	\$ 28.23	\$ 25.71	\$ 26.15
Rent concessions (per rentable square foot) (1)	(0.69)	(0.26)	(0.34)
GAAP rents (per rentable square foot) (1)	\$ 27.54	\$ 25.45	\$ 25.81
Tenant improvements (per rentable square foot) (1)	\$ 3.99	\$ 2.32	\$ 2.61
Leasing commissions (per rentable square foot) (1)	\$ 1.04	\$ 0.78	\$ 0.83

(1) Weighted average per rentable square foot on an annual basis over the lease term.

Annual combined GAAP rents for new and renewal leases signed in the third quarter were \$25.81 per rentable square foot, or 11.3% , higher compared to previous leases in the same office spaces.

We strive to maintain a diverse, stable and creditworthy customer base. We have an internal guideline whereby customers that account for more than 3% of our revenues are periodically reviewed with the Company's Board of Directors. As of September 30, 2017, no customer accounted for more than 3% of our cash revenues other than the Federal Government, which accounted for less than 6% of our cash revenues on an annualized basis.

## **Expenses**

Our expenses primarily consist of rental property expenses, depreciation and amortization, general and administrative expenses and interest expense. From time to time, expenses also include impairments of real estate assets. Rental property expenses are expenses associated with our ownership and operation of rental properties and include expenses that vary somewhat proportionately to occupancy levels, such as janitorial services and utilities, and expenses that do not vary based on occupancy, such as property taxes and insurance. Depreciation and amortization is a non-cash expense associated with the ownership of real property and generally remains relatively consistent each year, unless we buy, place in service or sell assets, since our properties and related building and tenant improvement assets are depreciated on a straight-line basis over fixed lives. General and administrative expenses consist primarily of management and employee salaries and benefits, corporate overhead and short and long-term incentive compensation.

## **Net Operating Income**

Whether or not we record increasing same property net operating income ("NOI") depends upon our ability to garner higher rental revenues, whether from higher average occupancy, higher GAAP rents per rentable square foot or higher cost recovery income, that exceed any corresponding growth in operating expenses. Same property NOI from continuing operations was \$3.3 million, or 3.2%, higher in the third quarter of 2017 as compared to 2016 due to an increase in same property revenues of \$4.2 million offset by an increase of \$0.9 million in same property expenses.

In addition to the effect of same property NOI, whether or not NOI from continuing operations increases depends upon whether the NOI from our acquired properties and development properties placed in service exceeds the NOI from sold properties. NOI from continuing operations was \$11.3 million, or 10.5%, higher in the third quarter of 2017 as compared to 2016 due to the impact of development properties placed in service and acquisitions, offset by NOI lost from sold properties not classified as discontinued operations.

## **Cash Flows**

In calculating net cash related to operating activities, depreciation and amortization, which are non-cash expenses, are added back to net income. We have historically generated a positive amount of cash from operating activities. From period to period, cash flow from operations depends primarily upon changes in our net income, as discussed more fully below under "Results of Operations," changes in receivables and payables and net additions or decreases in our overall portfolio.

Net cash related to investing activities generally relates to capitalized costs incurred for leasing and major building improvements and our acquisition, development, disposition and joint venture activity. During periods of significant net acquisition and/or development activity, our cash used in such investing activities will generally exceed cash provided by investing activities, which typically consists of cash received upon the sale of properties and distributions from our joint ventures.

Net cash related to financing activities generally relates to distributions, incurrence and repayment of debt, and issuances, repurchases or redemptions of Common Stock, Common Units and Preferred Stock. We use a significant amount of our cash to fund distributions. Whether or not we have increases in the outstanding balances of debt during a period depends generally upon the net effect of our acquisition, disposition, development and joint venture activity. We generally use our revolving credit facility for daily working capital purposes, which means that during any given period, in order to minimize interest expense, we may record significant repayments and borrowings under our revolving credit facility.

## **Liquidity and Capital Resources**

We intend to maintain a conservative and flexible balance sheet with access to multiple sources of debt and equity capital and sufficient availability under our revolving credit facility that allows us to capitalize on favorable development and acquisition opportunities as they arise.

Rental and other revenues are our principal source of funds to meet our short-term liquidity requirements. Other sources of funds for short-term liquidity needs include available working capital and borrowings under our new revolving credit facility, which had \$399.4 million of availability at October 18, 2017. Our short-term liquidity requirements primarily consist of operating

expenses, interest and principal amortization on our debt, distributions and capital expenditures, including building improvement costs, tenant improvement costs and lease commissions. Building improvements are capital costs to maintain or enhance existing buildings not typically related to a specific customer. Tenant improvements are the costs required to customize space for the specific needs of customers. We anticipate that our available cash and cash equivalents and cash provided by operating activities and planned financing activities, including borrowings under our revolving credit facility, will be adequate to meet our short-term liquidity requirements. We use our revolving credit facility for working capital purposes and for the short-term funding of our development and acquisition activity and, in certain instances, the repayment of other debt. The continued ability to borrow under the revolving credit facility allows us to quickly capitalize on strategic opportunities at short-term interest rates.

Our long-term liquidity uses generally consist of the retirement or refinancing of debt upon maturity, funding of building improvements, new building developments and land infrastructure projects and funding acquisitions of buildings and development land. Our expected future capital expenditures for started and/or committed new development projects were approximately \$226 million at September 30, 2017. Additionally, we may, from time to time, retire some or all of our remaining outstanding Preferred Stock and/or unsecured debt securities through redemptions, open market repurchases, privately negotiated acquisitions or otherwise.

We expect to meet our long-term liquidity needs through a combination of:

- cash flow from operating activities;
- bank term loans and borrowings under our revolving credit facility;
- the issuance of unsecured debt;
- the issuance of secured debt;
- the issuance of equity securities by the Company or the Operating Partnership; and
- the disposition of non-core assets.

We generally expect to grow our company on a leverage-neutral basis. At September 30, 2017, our leverage ratio, as measured by the ratio of our mortgages and notes payable and outstanding preferred stock to the undepreciated book value of our assets, was 34.7% and there were 106.2 million diluted shares of Common Stock outstanding.

### **Investment Activity**

As noted above, a key tenet of our strategic plan is to continuously upgrade the quality of our office portfolio through acquisitions, dispositions and development. We generally seek to acquire and develop office buildings that improve the average quality of our overall portfolio and deliver consistent and sustainable value for our stockholders over the long-term. Whether or not an asset acquisition or new development results in higher per share net income or funds from operations ("FFO") in any given period depends upon a number of factors, including whether the NOI for any such period exceeds the actual cost of capital used to finance the acquisition or development. Additionally, given the length of construction cycles, development projects are not placed in service until, in some cases, several years after commencement. Sales of non-core assets could result in lower per share net income or FFO in any given period in the event the resulting use of proceeds does not exceed the capitalization rate on the sold properties.

### **Results of Operations**

#### **Three Months Ended September 30, 2017 and 2016**

##### ***Rental and Other Revenues***

Rental and other revenues were \$13.9 million, or 8.4%, higher in the third quarter of 2017 as compared to 2016 primarily due to development properties placed in service, higher same property revenues and acquisitions, which increased rental and other revenues by \$7.9 million, \$4.2 million and \$1.5 million, respectively. Same property rental and other revenues were higher primarily due to higher average GAAP rents per rentable square foot, higher termination fees and higher cost recovery income. These increases were partly offset by lost revenue of \$0.6 million from property dispositions.

### ***Operating Expenses***

Rental property and other expenses were \$2.6 million , or 4.5% , higher in the third quarter of 2017 as compared to 2016 primarily due to development properties placed in service, higher same property operating expenses and acquisitions, which increased operating expenses by \$1.5 million, \$0.9 million and \$0.4 million, respectively. Same property operating expenses were higher primarily due to higher property taxes, contract services and property insurance, partly offset by lower utilities. These increases were partly offset by a \$0.3 million decrease in operating expenses from property dispositions.

Depreciation and amortization was \$4.1 million , or 7.7% , higher in the third quarter of 2017 as compared to 2016 primarily due to development properties placed in service and acquisitions, partly offset by property dispositions.

We recorded aggregate impairments of real estate assets of \$1.4 million in the third quarter of 2017 , which resulted from a change in market-based inputs and our assumptions about the use of the assets.

General and administrative expenses were \$0.6 million , or 6.2% , lower in the third quarter of 2017 as compared to 2016 primarily due to lower acquisition costs, partly offset by higher company-wide base salaries and benefits.

### ***Interest Expense***

Interest expense was \$1.4 million , or 7.4% , lower in the third quarter of 2017 as compared to 2016 primarily due to lower average debt balances and lower average interest rates, partly offset by lower capitalized interest.

### ***Other Income***

Other income was \$0.3 million , or 33.0% , lower in the third quarter of 2017 as compared to 2016 primarily due to the repayments of mortgages receivable in 2016.

### ***Gains on Disposition of Property***

Gains on disposition of property were \$15.9 million higher in the third quarter of 2017 as compared to 2016 due to the net effect of the disposition activity in such periods.

### ***Equity in Earnings of Unconsolidated Affiliates***

Equity in earnings of unconsolidated affiliates was \$2.2 million higher in the third quarter of 2017 as compared to 2016 primarily due to our share of the net effect of the disposition activity by certain unconsolidated affiliates in such periods, partly offset by lower occupancy in 2017.

### ***Earnings Per Common Share - Diluted***

Diluted earnings per common share was \$0.23 higher in the third quarter of 2017 as compared to 2016 due to an increase in net income for the reasons discussed above, partly offset by an increase in the weighted average Common Shares outstanding.

## **Nine Months Ended September 30, 2017 and 2016**

### ***Rental and Other Revenues***

Rental and other revenues were \$28.9 million , or 5.8% , higher in the nine months ended September 30, 2017 as compared to 2016 primarily due to development properties placed in service, higher same property revenues and acquisitions, which increased rental and other revenues by \$17.7 million, \$8.0 million and \$4.4 million, respectively. Same property rental and other revenues were higher primarily due to higher average GAAP rents per rentable square foot and higher parking income, partly offset by lower termination fees. These increases were partly offset by lost revenue of \$1.5 million from property dispositions.

### ***Operating Expenses***

Rental property and other expenses were \$3.8 million , or 2.2% , higher in the nine months ended September 30, 2017 as compared to 2016 primarily due to development properties placed in service and acquisitions, which increased operating expenses by \$3.3 million and \$1.1 million, respectively. These increases were partly offset by a \$0.8 million decrease in operating expenses

from property dispositions. Same property operating expenses were relatively unchanged in the nine months ended September 30, 2017 as compared to 2016.

Depreciation and amortization was \$7.2 million , or 4.5% , higher in the nine months ended September 30, 2017 as compared to 2016 primarily due to development properties placed in service, acquisitions and accelerated depreciation related to properties that are expected to be demolished, partly offset by property dispositions.

We recorded aggregate impairments of real estate assets of \$1.4 million in the nine months ended September 30, 2017 , which resulted from a change in market-based inputs and our assumptions about the use of the assets.

General and administrative expenses were \$0.5 million , or 1.6% , higher in the nine months ended September 30, 2017 as compared to 2016 primarily due to higher company-wide base salaries, benefits and incentive compensation, partly offset by lower acquisition costs.

#### ***Interest Expense***

Interest expense was \$7.5 million , or 12.8% , lower in the nine months ended September 30, 2017 as compared to 2016 primarily due to lower average debt balances, lower average interest rates and higher capitalized interest.

#### ***Other Income***

Other income was \$0.7 million , or 39.7% , higher in the nine months ended September 30, 2017 as compared to 2016 primarily due to gains on debt extinguishment in 2017.

#### ***Gains on Disposition of Property and Net Gains on Disposition of Discontinued Operations***

Total gains were \$403.5 million lower in the nine months ended September 30, 2017 as compared to 2016 due to the sales of substantially all of our wholly-owned Country Club Plaza assets in Kansas City (which we refer to as the “Plaza assets”) in 2016.

#### ***Equity in Earnings of Unconsolidated Affiliates***

Equity in earnings of unconsolidated affiliates was \$1.7 million , or 34.9% , higher in the nine months ended September 30, 2017 as compared to 2016 primarily due to our share of the net effect of the disposition activity by certain unconsolidated affiliates in such periods, partly offset by lower occupancy in 2017.

#### ***Income From Discontinued Operations***

Income from discontinued operations was \$4.1 million lower in the nine months ended September 30, 2017 as compared to 2016 due to the sales of the Plaza assets in 2016.

#### ***Earnings Per Common Share - Diluted***

Diluted earnings per common share was \$3.85 lower in the nine months ended September 30, 2017 as compared to 2016 due to gains from the sales of the Plaza assets in 2016 and an increase in the weighted average Common Shares outstanding, partly offset by increases in income from continuing operations for the reasons discussed above.

## Liquidity and Capital Resources

### Statements of Cash Flows

We report and analyze our cash flows based on operating activities, investing activities and financing activities. The following table sets forth the changes in the Company's cash flows (\$ in thousands):

	<b>Nine Months Ended September 30,</b>		<b>Change</b>
	<b>2017</b>	<b>2016</b>	
Net Cash Provided By Operating Activities	\$ 270,211	\$ 232,385	\$ 37,826
Net Cash Provided By/(Used In) Investing Activities	(176,565)	305,084	(481,649)
Net Cash Used In Financing Activities	(138,272)	(536,118)	397,846
<b>Total Cash Flows</b>	<b>\$ (44,626)</b>	<b>\$ 1,351</b>	<b>\$ (45,977)</b>

The increase in net cash provided by operating activities in the nine months ended September 30, 2017 as compared to 2016 was primarily due to higher net cash from the operations of development properties placed in service, same properties and acquisitions, the timing of cash paid for operating expenses and the settlement of cash flow hedges.

The change in net cash provided by/(used in) investing activities in the nine months ended September 30, 2017 as compared to 2016 was primarily due to the net proceeds from the sales of the Plaza assets in 2016, partly offset by higher acquisition activity in 2016.

The decrease in net cash used in financing activities in the nine months ended September 30, 2017 as compared to 2016 was primarily due to higher net debt borrowings in 2017, partly offset by the payment of a special dividend declared in the fourth quarter of 2016 and lower proceeds from the issuance of Common Stock in 2017.

### Capitalization

The following table sets forth the Company's capitalization (in thousands, except per share amounts):

	<b>September 30, 2017</b>	<b>December 31, 2016</b>
Mortgages and notes payable, net, at recorded book value	\$ 1,966,398	\$ 1,948,047
Preferred Stock, at liquidation value	28,892	28,920
Common Stock outstanding	103,249	101,666
Common Units outstanding (not owned by the Company)	2,831	2,839
Per share stock price at period end	\$ 52.09	\$ 51.01
Market value of Common Stock and Common Units	\$ 5,525,707	\$ 5,330,800
Total capitalization	\$ 7,520,997	\$ 7,307,767

At September 30, 2017, our mortgages and notes payable and outstanding preferred stock represented 26.5% of our total capitalization and 34.7% of the undepreciated book value of our assets. See also "Executive Summary - Liquidity and Capital Resources."

Our mortgages and notes payable as of September 30, 2017 consisted of \$99.4 million of secured indebtedness with a weighted average interest rate of 4.0% and \$1,875.2 million of unsecured indebtedness with a weighted average interest rate of 3.54%. The secured indebtedness was collateralized by real estate assets with an aggregate undepreciated book value of \$147.7 million. As of September 30, 2017, \$557.0 million of our debt does not bear interest at fixed rates or is not protected by interest rate hedge contracts.

### Investment Activity

In the normal course of business, we regularly evaluate potential acquisitions. As a result, from time to time, we may have one or more potential acquisitions under consideration that are in varying stages of evaluation, negotiation or due diligence, including potential acquisitions that are subject to non-binding letters of intent or enforceable contracts. Consummation of any



transaction is subject to a number of contingencies, including the satisfaction of customary closing conditions. No assurances can be provided that we will acquire any properties in the future. See "Item 1A. Risk Factors - Recent and future acquisitions and development properties may fail to perform in accordance with our expectations and may require renovation and development costs exceeding our estimates" in our 2016 Annual Report on Form 10-K.

During the third quarter of 2017, we sold a total of 12 buildings for an aggregate sale price of \$78.0 million (before closing credits to buyer of \$2.5 million ) and recorded aggregate gains on disposition of property of \$19.8 million .

During the third quarter of 2017, we recorded aggregate impairments of real estate assets of \$1.4 million , which resulted from a change in market-based inputs and our assumptions about the use of the assets.

As of September 30, 2017 , we were developing 0.7 million rentable square feet of office properties. The following table summarizes these announced and in-process developments:

Property	Market	Rentable Square Feet	Anticipated Total Investment (1)	Investment As Of September 30, 2017 (1)	Pre-Leased	Estimated Completion	Estimated Stabilization
(\$ in thousands)							
Virginia Urology	Richmond	87,000	\$ 29,140	\$ 11,036	100.0%	3Q18	3Q18
751 Corporate Center	Raleigh	89,700	21,850	5,352	35.3	4Q18	4Q20
MetLife III	Raleigh	219,000	64,500	8,911	100.0	2Q19	2Q21
Virginia Springs I (2)	Nashville	109,000	34,300	5,120	33.8	2Q19	3Q20
Mars Petcare - Ovation	Nashville	223,700	96,200	12,234	100.0	3Q19	3Q19
		<b>728,400</b>	<b>\$ 245,990</b>	<b>\$ 42,653</b>	<b>82.1%</b>		

(1) Includes deferred lease commissions which are classified in deferred leasing costs on our Consolidated Balance Sheets.

(2) Recorded on our Consolidated Balance Sheets in land held for development, not development-in-process.

## Financing Activity

During the first quarter of 2017, we entered into separate equity distribution agreements with each of Wells Fargo Securities, LLC, Robert W. Baird & Co. Incorporated, BB&T Capital Markets, a division of BB&T Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BTIG, LLC, Capital One Securities, Inc., Comerica Securities, Inc., Fifth Third Securities, Inc., Jefferies LLC, Morgan Stanley & Co. LLC, MUFG Securities Americas Inc. and RBC Capital Markets, LLC. Under the terms of the equity distribution agreements, the Company may offer and sell up to \$300.0 million in aggregate gross sales price of shares of Common Stock from time to time through such firms, acting as agents of the Company or as principals. Sales of the shares, if any, may be made by means of ordinary brokers' transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices or as otherwise agreed with any of such firms.

On October 18, 2017 , we entered into a new \$600.0 million unsecured revolving credit facility, which replaced our previously existing \$475.0 million revolving credit facility, and includes an accordion feature that allows for an additional \$400.0 million of borrowing capacity subject to additional lender commitments. Our new revolving credit facility is scheduled to mature in January 2022 . Assuming no defaults have occurred, we have an option to extend the maturity for two additional six -month periods. The interest rate on the new facility at our current credit ratings is LIBOR plus 100 basis points and the annual facility fee is 20 basis points. The interest rate and facility fee are based on the higher of the publicly announced ratings from Moody's Investors Service or Standard & Poor's Ratings Services. The financial and other covenants under the new facility are similar to our previous credit facility. We expect to incur approximately \$3.5 million of debt issuance costs, which will be amortized along with certain existing unamortized debt issuance costs over the remaining term of our new revolving credit facility. We expect to record \$0.1 million of loss on debt extinguishment. At October 18, 2017 , we had \$200.0 million outstanding under our new revolving credit facility and \$0.6 million of outstanding letters of credit, which reduces the availability on the credit facility. As a result, the unused capacity of our new revolving credit facility at October 18, 2017 was \$399.4 million .

We simultaneously modified our \$200.0 million , five -year unsecured bank term loan, which was originally scheduled to mature in January 2019 . The modified term loan is now scheduled to mature in November 2022 and the interest rate, based on current credit ratings, was reduced from LIBOR plus 120 basis points to LIBOR plus 110 basis points . We expect to incur

approximately \$1.1 million of debt issuance costs, which will be amortized along with certain existing unamortized debt issuance costs over the remaining term of the modified loan. We expect to record \$0.4 million of loss on debt extinguishment.

We also simultaneously prepaid without penalty \$125.0 million on a \$350.0 million unsecured bank term loan which is scheduled to mature in June 2020 . We expect to record \$0.4 million of loss on debt extinguishment related to this prepayment.

We are currently in compliance with financial covenants and other requirements with respect to our consolidated debt. Although we expect to remain in compliance with these covenants and ratios for at least the next year, depending upon our future operating performance, property and financing transactions and general economic conditions, we cannot assure you that we will continue to be in compliance.

Our revolving credit facility and bank term loans require us to comply with customary operating covenants and various financial requirements. Upon an event of default on the revolving credit facility, the lenders having at least 51.0% of the total commitments under the revolving credit facility can accelerate all borrowings then outstanding, and we could be prohibited from borrowing any further amounts under our revolving credit facility, which would adversely affect our ability to fund our operations. In addition, certain of our unsecured debt agreements contain cross-default provisions giving the unsecured lenders the right to declare a default if we are in default under more than \$30.0 million with respect to other loans in some circumstances.

The indenture that governs the Operating Partnership's outstanding unsecured notes requires us to comply with customary operating covenants and various financial ratios. The trustee or the holders of at least 25.0% in principal amount of any series of notes can accelerate the principal amount of such series upon written notice of a default that remains uncured after 60 days.

We may not be able to repay, refinance or extend any or all of our debt at maturity or upon any acceleration. If any refinancing is done at higher interest rates, the increased interest expense could adversely affect our cash flow and ability to pay distributions. Any such refinancing could also impose tighter financial ratios and other covenants that restrict our ability to take actions that could otherwise be in our best interest, such as funding new development activity, making opportunistic acquisitions, repurchasing our securities or paying distributions.

### **Dividends and Distributions**

To maintain its qualification as a REIT, the Company must pay dividends to stockholders that are at least 90.0% of its annual REIT taxable income, excluding net capital gains. The partnership agreement requires the Operating Partnership to distribute at least enough cash for the Company to be able to pay such dividends. The Company's REIT taxable income, as determined by the federal tax laws, does not equal its net income under accounting principles generally accepted in the United States of America ("GAAP"). In addition, although capital gains are not required to be distributed to maintain REIT status, capital gains, if any, are subject to federal and state income tax unless such gains are distributed to stockholders.

Cash dividends and distributions reduce the amount of cash that would otherwise be available for other business purposes, including funding debt maturities, reducing debt or future growth initiatives. The amount of future distributions that will be made is at the discretion of the Company's Board of Directors. For a discussion of the factors that will affect such cash flows and, accordingly, influence the decisions of the Company's Board of Directors regarding dividends and distributions, see "Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities" in our 2016 Annual Report on Form 10-K.

During the third quarter of 2017 , the Company declared and paid a cash dividend of \$0.44 per share of Common Stock.

On October 19, 2017, the Company declared a cash dividend of \$0.44 per share of Common Stock, which is payable on December 5, 2017 to stockholders of record as of November 14, 2017.

### **Current and Future Cash Needs**

We anticipate that our available cash and cash equivalents, cash flows from operating activities and other expected financing sources, including the issuance of debt securities by the Operating Partnership, the issuance of secured debt, bank term loans, borrowings under our revolving credit facility, the issuance of equity securities by the Company or the Operating Partnership and the disposition of non-core assets, will be adequate to meet our short-term liquidity requirements, including the \$200.0 million principal amount of unsecured notes due April 15, 2018 .

We had \$4.9 million of cash and cash equivalents as of September 30, 2017 . The unused capacity of our new revolving credit facility at October 18, 2017 was \$399.4 million , excluding an accordion feature that allows for an additional \$400.0 million of borrowing capacity subject to additional lender commitments.

We have a currently effective automatic shelf registration statement on Form S-3 with the SEC pursuant to which, at any time and from time to time, in one or more offerings on an as-needed basis, the Company may sell an indefinite amount of common stock, preferred stock and depositary shares and the Operating Partnership may sell an indefinite amount of debt securities, subject to our ability to effect offerings on satisfactory terms based on prevailing market conditions.

The Company from time to time enters into equity distribution agreements with a variety of firms pursuant to which the Company may offer and sell shares of common stock from time to time through such firms, acting as agents of the Company or as principals. Sales of the shares, if any, may be made by means of ordinary brokers' transactions on the NYSE or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices or as otherwise agreed with any of such firms (which may include block trades).

To date in 2017, we have sold \$105.7 million of properties (including our \$14.7 million share of properties sold by certain unconsolidated affiliates) no longer considered to be core assets due to location, age, quality and/or overall strategic fit and expect to sell an additional \$44 million of such properties during the remainder of 2017. We can make no assurance, however, that we will sell any non-core assets or, if we do, what the timing or terms of any such sale will be.

We generally intend to fund the growth of our company, including the \$197.6 million of contractual commitments through September 30, 2018 related to our development activity, on a leverage-neutral basis. At September 30, 2017 , our leverage ratio was 34.7% and there were 106.2 million diluted shares of Common Stock outstanding.

### **Critical Accounting Estimates**

There were no changes made by management to the critical accounting policies in the nine months ended September 30, 2017 . For a description of our critical accounting estimates, see "Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Estimates" in our 2016 Annual Report on Form 10-K.

### Non-GAAP Information

The Company believes that FFO, FFO available for common stockholders and FFO available for common stockholders per share are beneficial to management and investors and are important indicators of the performance of any equity REIT. Because these FFO calculations exclude such factors as depreciation, amortization and impairments of real estate assets and gains or losses from sales of operating real estate assets, which can vary among owners of identical assets in similar conditions based on historical cost accounting and useful life estimates, they facilitate comparisons of operating performance between periods and between other REITs. Management believes that historical cost accounting for real estate assets in accordance with GAAP implicitly assumes that the value of real estate assets diminishes predictably over time. Since real estate values have historically risen or fallen with market conditions, management believes the use of FFO, FFO available for common stockholders and FFO available for common stockholders per share, together with the required GAAP presentations, provides a more complete understanding of the Company's performance relative to its competitors and a more informed and appropriate basis on which to make decisions involving operating, financing and investing activities.

FFO, FFO available for common stockholders and FFO available for common stockholders per share are non-GAAP financial measures and therefore do not represent net income or net income per share as defined by GAAP. Net income and net income per share as defined by GAAP are the most relevant measures in determining the Company's operating performance because these FFO measures include adjustments that investors may deem subjective, such as adding back expenses such as depreciation, amortization and impairments. Furthermore, FFO available for common stockholders per share does not depict the amount that accrues directly to the stockholders' benefit. Accordingly, FFO, FFO available for common stockholders and FFO available for common stockholders per share should never be considered as alternatives to net income, net income available for common stockholders, or net income available for common stockholders per share as indicators of the Company's operating performance.

The Company's presentation of FFO is consistent with FFO as defined by the National Association of Real Estate Investment Trusts, which is calculated as follows:

- Net income/(loss) computed in accordance with GAAP;
- Less net income attributable to noncontrolling interests in consolidated affiliates;
- Plus depreciation and amortization of depreciable operating properties;
- Less gains, or plus losses, from sales of depreciable operating properties, plus impairments on depreciable operating properties and excluding items that are classified as extraordinary items under GAAP;
- Plus or minus our share of adjustments, including depreciation and amortization of depreciable operating properties, for unconsolidated joint venture investments (to reflect funds from operations on the same basis); and
- Plus or minus adjustments for depreciation and amortization and gains/(losses) on sales of depreciable operating properties, plus impairments on depreciable operating properties, and noncontrolling interests in consolidated affiliates related to discontinued operations.

In calculating FFO, the Company includes net income attributable to noncontrolling interests in the Operating Partnership, which the Company believes is consistent with standard industry practice for REITs that operate through an UPREIT structure. The Company believes that it is important to present FFO on an as-converted basis since all of the Common Units not owned by the Company are redeemable on a one-for-one basis for shares of its Common Stock.

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The following table sets forth the Company's FFO, FFO available for common stockholders and FFO available for common stockholders per share (\$ in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Funds from operations:</b>				
Net income	\$ 59,549	\$ 33,840	\$ 132,588	\$ 514,103
Net (income) attributable to noncontrolling interests in consolidated affiliates	(315)	(319)	(914)	(941)
Depreciation and amortization of real estate assets	56,271	52,303	166,862	159,780
(Gains) on disposition of depreciable properties	(19,849)	—	(25,181)	(8,915)
Unconsolidated affiliates:				
Depreciation and amortization of real estate assets	529	736	1,923	2,227
(Gains) on disposition of depreciable properties	(4,617)	(1,842)	(4,617)	(2,173)
Discontinued operations:				
(Gains) on disposition of depreciable properties	—	—	—	(414,496)
<b>Funds from operations</b>	<b>91,568</b>	<b>84,718</b>	<b>270,661</b>	<b>249,585</b>
Dividends on Preferred Stock	(623)	(624)	(1,869)	(1,877)
<b>Funds from operations available for common stockholders</b>	<b>\$ 90,945</b>	<b>\$ 84,094</b>	<b>\$ 268,792</b>	<b>\$ 247,708</b>
<b>Funds from operations available for common stockholders per share</b>	<b>\$ 0.86</b>	<b>\$ 0.82</b>	<b>\$ 2.55</b>	<b>\$ 2.46</b>
<b>Weighted average shares outstanding (1)</b>	<b>106,145</b>	<b>101,939</b>	<b>105,402</b>	<b>100,645</b>

(1) Includes assumed conversion of all potentially dilutive Common Stock equivalents.

In addition, the Company believes NOI from continuing operations and same property NOI are useful supplemental measures of the Company's property operating performance because such metrics provide a performance measure of the revenues and expenses directly involved in owning real estate assets and a perspective not immediately apparent from net income or FFO. The Company defines NOI as rental and other revenues from continuing operations, less rental property and other expenses from continuing operations. The Company defines cash NOI as NOI less lease termination fees, straight-line rent, amortization of lease incentives and amortization of acquired above and below market leases. Other REITs may use different methodologies to calculate NOI, same property NOI and cash NOI.

As of September 30, 2017, our same property portfolio consisted of 212 in-service properties encompassing 28.2 million rentable square feet that were wholly owned during the entirety of the periods presented (from January 1, 2016 to September 30, 2017). As of December 31, 2016, our same property portfolio consisted of 217 in-service properties encompassing 26.7 million rentable square feet that were wholly owned during the entirety of the periods presented (from January 1, 2015 to December 31, 2016). The change in our same property portfolio was due to the addition of four properties encompassing 1.6 million rentable square feet acquired during 2015 and four newly developed properties encompassing 0.8 million rentable square feet placed in service during 2015. These additions were offset by the removal of 13 properties encompassing 0.8 million rentable square feet that were sold during 2017.

Rental and other revenues related to properties not in our same property portfolio were \$17.5 million and \$7.8 million for the three months ended September 30, 2017 and 2016, respectively, and \$42.9 million and \$22.0 million for the nine months ended September 30, 2017 and 2016, respectively. Rental property and other expenses related to properties not in our same property portfolio were \$4.3 million and \$2.6 million for the three months ended September 30, 2017 and 2016, respectively, and \$11.0 million and \$7.3 million for the nine months ended September 30, 2017 and 2016, respectively.

The following table sets forth the Company's NOI and same property NOI:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Income from continuing operations before disposition of investment properties and activity in unconsolidated affiliates</b>	\$ 34,653	\$ 27,130	\$ 100,650	\$ 76,340
Other income	(558)	(833)	(2,632)	(1,884)
Interest expense	17,191	18,566	51,208	58,756
General and administrative expenses	9,247	9,863	29,787	29,327
Impairments of real estate assets	1,445	—	1,445	—
Depreciation and amortization	56,973	52,923	168,934	161,734
<b>Net operating income from continuing operations</b>	<b>118,951</b>	<b>107,649</b>	<b>349,392</b>	<b>324,273</b>
Less – non same property and other net operating income	(13,187)	(5,203)	(31,902)	(14,678)
<b>Same property net operating income from continuing operations</b>	<b>\$ 105,764</b>	<b>\$ 102,446</b>	<b>\$ 317,490</b>	<b>\$ 309,595</b>
Same property net operating income from continuing operations	\$ 105,764	\$ 102,446	\$ 317,490	\$ 309,595
Less – lease termination fees, straight-line rent and other non-cash adjustments	(3,373)	(3,454)	(10,924)	(16,502)
<b>Same property cash net operating income from continuing operations</b>	<b>\$ 102,391</b>	<b>\$ 98,992</b>	<b>\$ 306,566</b>	<b>\$ 293,093</b>

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

For information regarding our market risk as of June 30, 2017, see "Quantitative and Qualitative Disclosures About Market Risk" in our Quarterly Report on Form 10-Q for the second quarter of 2017.

### **ITEM 4. CONTROLS AND PROCEDURES**

SEC rules require us to maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our annual and periodic reports filed with the SEC is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management to allow for timely decisions regarding required disclosure. The Company's CEO and CFO have concluded that the disclosure controls and procedures of the Company and the Operating Partnership were each effective at the end of the period covered by this Quarterly Report.

SEC rules also require us to establish and maintain internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. There were no changes in internal control over financial reporting during the three months ended September 30, 2017 that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. There were also no changes in internal control over financial reporting during the three months ended September 30, 2017 that materially affected, or are reasonably likely to materially affect, the Operating Partnership's internal control over financial reporting.

## **PART II - OTHER INFORMATION**

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

During the third quarter of 2017, the Company issued an aggregate of 2,000 shares of Common Stock to holders of Common Units in the Operating Partnership upon the redemption of a like number of Common Units in private offerings exempt from the registration requirements pursuant to Section 4(2) of the Securities Act. Each of the holders of Common Units was an accredited investor under Rule 501 of the Securities Act. The resale of such shares was registered by the Company under the Securities Act.

### **ITEM 5. OTHER INFORMATION**

On October 18, 2017, we entered into a new \$600.0 million unsecured revolving credit facility, which replaced our previously existing \$475.0 million revolving credit facility, and includes an accordion feature that allows for an additional \$400.0 million of borrowing capacity subject to additional lender commitments. Our new revolving credit facility is scheduled to mature in January 2022. Assuming no defaults have occurred, we have an option to extend the maturity for two additional six-month periods. The interest rate on the new facility at our current credit ratings is LIBOR plus 100 basis points and the annual facility fee is 20 basis points. The interest rate and facility fee are based on the higher of the publicly announced ratings from Moody's Investors Service or Standard & Poor's Ratings Services. The financial and other covenants under the new facility are similar to our previous credit facility. At October 18, 2017, we had \$200.0 million outstanding under our new revolving credit facility and \$0.6 million of outstanding letters of credit, which reduces the availability on the credit facility. As a result, the unused capacity of our new revolving credit facility at October 18, 2017 was \$399.4 million.

We simultaneously modified our \$200.0 million, five-year unsecured bank term loan, which was originally scheduled to mature in January 2019. The modified term loan is now scheduled to mature in November 2022 and the interest rate, based on current credit ratings, was reduced from LIBOR plus 120 basis points to LIBOR plus 110 basis points.

We also simultaneously prepaid without penalty \$125.0 million on our seven-year unsecured bank term loan, which now has an outstanding principal amount of \$225.0 million and is scheduled to mature in June 2020, and amended such loan to conform certain provisions to our other credit facilities.



## ITEM 6. EXHIBITS

Exhibit Number	Description
10.1	<a href="#">Fifth Amended and Restated Credit Agreement, dated as of October 18, 2017, by and among the Company, the Operating Partnership, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, Wells Fargo Bank, National Association and PNC Bank, National Association, as Co-Syndication Agents, and the Other Lenders named therein</a>
10.2	<a href="#">Second Amendment to Amended and Restated Seven-Year Term Loan Agreement, dated as of October 18, 2017, by and among the Company, the Operating Partnership and Wells Fargo Bank, National Association, as Administrative Agent</a>
12.1	<a href="#">Statement re: Computation of Ratios of the Company</a>
12.2	<a href="#">Statement re: Computation of Ratios of the Operating Partnership</a>
31.1	<a href="#">Certification of CEO Pursuant to Section 302 of the Sarbanes-Oxley Act for the Company</a>
31.2	<a href="#">Certification of CFO Pursuant to Section 302 of the Sarbanes-Oxley Act for the Company</a>
31.3	<a href="#">Certification of CEO Pursuant to Section 302 of the Sarbanes-Oxley Act for the Operating Partnership</a>
31.4	<a href="#">Certification of CFO Pursuant to Section 302 of the Sarbanes-Oxley Act for the Operating Partnership</a>
32.1	<a href="#">Certification of CEO Pursuant to Section 906 of the Sarbanes-Oxley Act for the Company</a>
32.2	<a href="#">Certification of CFO Pursuant to Section 906 of the Sarbanes-Oxley Act for the Company</a>
32.3	<a href="#">Certification of CEO Pursuant to Section 906 of the Sarbanes-Oxley Act for the Operating Partnership</a>
32.4	<a href="#">Certification of CFO Pursuant to Section 906 of the Sarbanes-Oxley Act for the Operating Partnership</a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Extension Labels Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

## SIGNATURES

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

Highwoods Properties, Inc.

By: /s/ Mark F. Mulhern

**Mark F. Mulhern**

*Executive Vice President and Chief Financial Officer*

Highwoods Realty Limited Partnership

By: Highwoods Properties, Inc., its sole general partner

By: /s/ Mark F. Mulhern

**Mark F. Mulhern**

*Executive Vice President and Chief Financial Officer*

Date: October 24, 2017

Published CUSIP Numbers: 43128HAN9 (Deal)  
43128HAP4 (Revolving Credit Facility)  
43128HAQ2 (Term Facility)

**FIFTH AMENDED AND RESTATED CREDIT AGREEMENT**

Dated as of October 18, 2017

among

**HIGHWOODS PROPERTIES, INC.**  
and  
**HIGHWOODS REALTY LIMITED PARTNERSHIP,**  
as Borrowers,

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

and The Other Lenders Party Hereto

**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
and  
**PNC BANK, NATIONAL ASSOCIATION ,**  
as Co-Syndication Agents

**BRANCH BANKING AND TRUST COMPANY**  
and  
**U.S. BANK, NATIONAL ASSOCIATION ,**  
as Co-Documentation Agents

**CAPITAL ONE, NATIONAL ASSOCIATION ,**  
**REGIONS BANK,**  
and  
**J.P. MORGAN CHASE BANK, N.A.,**  
as Co-Managing Agents

and

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,**  
**WELLS FARGO SECURITIES, LLC**  
and  
**PNC CAPITAL MARKETS LLC ,**  
as Joint Lead Arrangers

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**  
and  
**WELLS FARGO SECURITIES, LLC,**  
as Joint Bookrunners

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## FIFTH AMENDED AND RESTATED CREDIT AGREEMENT

This FIFTH AMENDED AND RESTATED CREDIT AGREEMENT (“Agreement”) is entered into as of October 18, 2017, among HIGHWOODS REALTY LIMITED PARTNERSHIP, a North Carolina limited partnership (“Highwoods Realty”) and HIGHWOODS PROPERTIES, INC., a Maryland corporation (“Highwoods Properties”) (Highwoods Realty and Highwoods Properties are hereinafter referred to individually as a “Borrower” and collectively as the “Borrowers”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), WELLS FARGO BANK, NATIONAL ASSOCIATION and PNC BANK, NATIONAL ASSOCIATION, as Co-Syndication Agents, and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

**WHEREAS**, the Borrowers are parties to the Existing Credit Agreements (as defined herein);

**WHEREAS**, the Borrowers have requested that the Lenders amend and restate the Existing Credit Agreements; and

**WHEREAS**, the Lenders are willing to do so on the terms and conditions set forth herein.

**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:

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

#### 1.01 **Defined Terms; Accounting Treatment; Borrowers’ Agent and Liabilities.**

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

“Acquired Properties” means, at any time, all Properties acquired by the Subject Parties within the previous twelve (12) calendar months from any third party entity through an arms-length transaction; provided that all Properties acquired (either through the acquisition of all of the Equity Interests of any Unconsolidated Affiliate or of any Property owned by any Unconsolidated Affiliate) from any previously Unconsolidated Affiliate that owned such Properties for twelve (12) months or more shall be excluded from the definition of “Acquired Properties.”

“Adjusted EBITDA” means, for any period, the sum of (a) EBITDA for such period, less (b) aggregate Capital Expenditure Reserves for all Properties with respect to such period; provided, that such sum shall be exclusive of (i) any amount for such period attributable to the Straight-Lining of Rents and (ii) the amount (if any) of amortization of capitalized lease incentive costs which is recorded as a reduction of revenues under GAAP for any specified period.

“Adjusted NOI” means, with respect to any applicable time period for any Property, an amount, not less than zero (0), equal to (a) Net Operating Income for such period with respect to such Property less (b) the sum of (i) the Capital Expenditure Reserve amount for such Property during such period, plus (ii) a management fee in the amount of three percent (3%) of total revenues derived from the Property during such period; provided, that such amount shall be exclusive of any amount for such period attributable to the Straight-Lining of Rents and the amount (if any) of amortization of capitalized lease incentive costs which is recorded as a reduction of revenues under GAAP for any specified period; provided, further, that, in each case, (x) all amounts included in the above calculations with respect to Properties owned by Unconsolidated Affiliates (and not otherwise adjusted for interests in Unconsolidated Affiliates) shall be adjusted to include only that portion of such amounts attributable to Unconsolidated Affiliate Interests, and (y) solely for purposes of calculating the financial covenant set forth in Section 7.11(e), all amounts included in the above calculations with respect to Properties that are not Wholly-Owned by a Wholly Owned Subsidiary shall be adjusted to include only the pro rata interest (based on the percentage ownership of the Equity Interests in the applicable Subsidiary owned by the Consolidated Parties) in such Properties.

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

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

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

“ Affiliate ” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. In no event shall the Administrative Agent, the L/C Issuer or any Lender be deemed to be an Affiliate of any of the Borrowers.

“ Aggregate Revolving Credit Commitments ” means the Revolving Credit Commitments of all the Lenders, as adjusted from time to time in accordance with the terms of this Agreement. The Aggregate Revolving Credit Commitments as of the Closing Date shall be \$600,000,000.

“ Agreement ” means this Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

“ Annualized Adjusted NOI ” means (a) for each Property owned for twenty-four (24) months or more, Adjusted NOI for such Property for the immediately preceding twelve (12) month period; and (b) for each Property owned for a period of less than twenty-four (24) months and for each Property formerly qualifying as a Non-Income Producing Property that has been an Income-Producing Property for less than twelve (12) months, Adjusted NOI for such Property calculated by annualizing Adjusted NOI for such Property from the date such Property became an Income Producing Property to date and adjusting (through appropriate pro-rating, removal or other correction) for all annual or one-time lump sum payments or expenses with respect to the Property or for any extraordinary income or expense items with respect to such Property; provided, that all amounts included in the above calculations with respect to Properties owned by Unconsolidated Affiliates (and not otherwise adjusted for interests in Unconsolidated Affiliates) shall be adjusted to include only that portion of such amounts attributable to Unconsolidated Affiliate Interests.

“ Applicable Percentage ” means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) at any time during the Availability Period in respect of such Facility, such Term Lender’s Term Commitment at such time and (ii) thereafter, the principal amount of such Term Lender’s Term Loans at such time, and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time, as any such Applicable Percentage for the respective Facility may be adjusted as provided in Section 2.17. If the Revolving Credit Commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Revolving Credit Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“ Applicable Rate ” means, for any day, subject to adjustment as provided below in this definition, the rate per annum set forth below opposite the applicable Credit Rating then in effect, it being understood that the Applicable Rate for (i) Eurodollar Rate Loans shall be the rate set forth under the column “Revolving Credit Facility Applicable Rate for Eurodollar Loans and Letters of Credit” or “Term Facility Applicable Rate for Eurodollar Rate Loans”, as applicable, (ii) Base Rate Loans shall be the percentage set forth under the column “Revolving Credit Facility Applicable Rate for Base Rate Loans” or “Term Facility Applicable Rate for Base Rate Loans”, as applicable, (iii) Facility Fees shall be the percentage set forth under the column “Revolving Credit Facility Applicable Rate for Facility Fees” and (iv) Letter

of Credit Fee shall be the percentage set forth under the column “ Revolving Credit Facility Applicable Rate for Eurodollar Rate Loans and Letters of Credit ”.

Pricing Level	Credit Rating	Revolving Credit Facility Applicable Rate for Eurodollar Rate Loans and Letters of Credit	Revolving Credit Facility Applicable Rate for Base Rate Loans	Revolving Credit Facility Applicable Rate for Facility Fees	Term Facility Applicable Rate for Eurodollar Rate Loans	Term Facility Applicable Rate for Base Rate Loans
I	A/A2 or higher	0.7750%	0.000%	0.100%	0.850%	0.000%
II	A-/A3	0.825%	0.000%	0.125%	0.900%	0.000%
III	BBB+/ Baa1	0.8750%	0.000%	0.150%	0.950%	0.000%
IV	BBB/ Baa2	1.000%	0.000%	0.200%	1.100%	0.100%
V	BBB-/ Baa3	1.200%	0.200%	0.250%	1.350%	0.350%
VI	Lower than BBB-/Baa3 or not rated	1.550%	0.550%	0.300%	1.750%	0.750%

As of the Closing Date, the Applicable Rate is determined based on Pricing Level IV. The Applicable Rate shall be adjusted effective on the next Business Day following any change in the Credit Rating. The Principal Borrower shall notify the Administrative Agent in writing promptly after becoming aware of any change in the Credit Rating.

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

“ Appropriate Lender ” means, at any time, (a) with respect to any of the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, and (b) with respect to the Letter of Credit Sublimit, (i) L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders.

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

“ Arrangers ” means, collectively, (a) Merrill Lynch, Pierce, Fenner & Smith Incorporated or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the Closing Date (“ MLPFS ”), Wells Fargo Securities, LLC (“ Wells Fargo Securities ”) and PNC Capital Markets LLC, each in its capacity as a joint lead arranger, and (b) MLPFS and Wells Fargo Securities, each in its capacity as a joint bookrunner.

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

“ Assignment and Assumption ” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b) ), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

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

the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

“ Audited Financial Statements ” means the audited consolidated balance sheet of Highwoods Properties and its Subsidiaries for the fiscal year ended December 31, 2016, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Highwoods Properties and its Subsidiaries, including the notes thereto.

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

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

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

“ Bank of America ” means Bank of America, N.A. and its successors.

“ Base Rate ” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the Prime Rate and (c) the Eurodollar Rate (assuming a one-month Interest Period); provided that, if the Base Rate shall be less than zero (0), such rate shall be deemed zero (0) for purposes of this Agreement. “ Prime Rate ” means the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate”. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

“ Base Rate Loan ” means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

“ Benefit Plan ” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“ Borrower ” and “ Borrowers ” have the meanings specified in the introductory paragraph hereto.

“ Borrower Materials ” has the meaning specified in Section 6.02.

“ Borrowing ” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term Borrowing, as the context may require.

“ Business Day ” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“ Capital Expenditures ” means all expenditures required for the leasing of space within Properties owned and previously leased by the Consolidated 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 6.02.

“Capital Expenditure Reserve” means, with respect to (a) any office, industrial, retail or other non-multi-family Property that is an Income-Producing Property or a Non-Income Producing Property for which a certificate of occupancy has been issued, a normalized annual reserve for replacement reserves, capital expenditures, tenant improvements, and leasing commissions in the amount of \$0.50 per year per square foot of net leaseable area contained in such Property (pro rated for the portion of such year that the applicable Property qualifies under this clause (a)), (b) any multi-family Property that is an Income-Producing Property or a Non-Income Producing Property for which a certificate of occupancy has been issued, a normalized annual reserve for replacement reserves, capital expenditures, tenant improvements, and leasing commissions in the amount of \$250 per year per unit and (c) any other Non-Income Producing Property, zero (0); provided, that all amounts included in the above calculations with respect to Properties owned by Unconsolidated Affiliates (and not otherwise adjusted for interests in Unconsolidated Affiliates) shall be adjusted to include only that portion of such amounts attributable to Unconsolidated Affiliate Interests. When the Capital Expenditure Reserve is used in computing an amount with respect to a period which is shorter than a year, said amount shall be appropriately pro rated.

“Capitalization Rate” means seven and one-quarter of one percent (7.25%).

“Cash Collateralize” has the meaning specified in Section 2.03(g).

“Cash Equivalents” means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve (12) months from the date of acquisition, (b) U.S. dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof (any such bank being an “Approved Bank”), in each case with maturities of not more than two hundred seventy (270) days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody’s and maturing within six (6) months of the date of acquisition, (d) repurchase agreements with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States of America in which any Loan Party shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d).

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

“ Change of Control ” means the occurrence of any of the following events:

(a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of, control over, Voting Stock of the Principal Borrower (or other securities convertible into such Voting Stock) representing thirty-five percent (35.0%) or more of the combined voting power of all Voting Stock of the Principal Borrower, or

(b) during any consecutive period of twelve (12) consecutive months, commencing after the Closing Date, individuals who at the beginning of such twelve (12) month period were directors of the Principal Borrower (together with any new director whose election by the Principal Borrower’s Board of Directors or whose nomination for election by the Principal Borrower’s shareholders was approved by a vote of a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of the Principal Borrower then in office, or

(c) the Principal Borrower or any Wholly Owned Subsidiary which is a Loan Party shall fail to be the sole general partner of Highwoods Realty. As used in this definition, “beneficial ownership” shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

“ Closing Date ” means the date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01 .

“ Code ” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, as interpreted by the rules and regulations issued thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed also to refer to any successor sections.

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

“ Committed Loan Notice ” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of a Loan from one Type to the other, or (d) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a) , which, if in writing, shall be substantially in the form of Exhibit A or such other form as may be approved by Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent), appropriately completed and signed by a Responsible Officer of Borrower.

“ Commodity Exchange Act ” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“ Connection Income Taxes ” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“ Consolidated Parties ” means a collective reference to the Principal Borrower and its consolidated Subsidiaries; and “ Consolidated Party ” means any one of them.

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

“ Control ” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “ Controlling ” and “ Controlled ” have meanings correlative thereto.

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

“Credit Rating” means the higher of the publicly announced rating from Moody’s or S&P or one of their respective successors or assigns for the unsecured long term debt rating of Highwoods Realty (or if Moody’s or S&P does not publicly announce ratings for Highwoods Realty, then of the Principal Borrower).

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

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

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, a rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus two percent (2.0%) per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus two percent (2.0%) per annum.

“Defaulting Lender” means any Lender that: (a) has failed to fund any Loan, any participation in L/C Obligations or any participation in a Swing Line Loan within two (2) Business Days of the date required to be funded by it, unless such failure has been cured or unless such failure is the result of such Lender’s good faith determination that a condition precedent to funding has not been satisfied; (b) has notified any Borrower, the Administrative Agent, the L/C Issuer or any Lender in writing that it does not intend to comply with any of its funding obligations hereunder, unless such notice has been withdrawn and the effect of such notice has been cured; (c) has failed, within three (3) Business Days after written request by the Administrative Agent based on a reasonable belief that such Lender may be unwilling or unable to comply, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, participations in L/C Obligations or participations in Swing Line Loan Loans, unless such failure has been cured; (d) has otherwise failed to pay to the Administrative Agent, the L/C Issuer or any other Lender any other amount (other than a de minimus amount) required to be paid by it hereunder within three (3) Business Days of the date when due, unless the subject of a good faith dispute or such failure has been cured; (e) has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment; or (f) has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

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

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

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

“Domestic Subsidiary” means, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any State of the United States or the District of Columbia.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial

institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“EBITDA” means, for any period, the sum of (a) aggregate Net Income during such period, plus (b) an amount which, in the determination of Net Income for such period, has been deducted for (i) Interest Expense, (ii) total federal, state, local and foreign income, franchise, value added and similar taxes and (iii) depreciation and amortization expense, with each of (i), (ii) and (iii) above determined in accordance with GAAP; provided, that, to the extent the above calculations include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

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

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

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

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

“Equity Issuance” means any issuance by the Principal Borrower to any person or entity which is not a Loan Party of (a) shares of its Equity Interests, (b) any shares of its Equity Interests pursuant to the exercise of options or warrants or (c) any shares of its Equity Interests pursuant to the conversion of any debt securities to equity.

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

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



“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is “insolvent” within the meaning of Section 4245 of ERISA; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Base Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by Administrative Agent (in consultation with the Borrowers), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

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

(c) if the Eurodollar Base Rate shall be less than zero (0), such rate shall be deemed zero (0) for purposes of this Agreement.

provided that to the extent a comparable or successor rate is approved by Administrative Agent in connection herewith, the approved rate shall be consistent with the rates generally provided to similarly situated borrowers (but not necessarily all such borrowers) and without any obligation to disclose information regarding any other customers, and applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by Administrative Agent.

“Eurodollar Rate” means, for any Interest Period with respect to a Eurodollar Rate Loan, a rate per annum determined by the Administrative Agent pursuant to the following formula:

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

“Eurodollar Rate Loan” means a Revolving Credit Loan or a Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Base Rate.”

“Eurodollar Reserve Percentage” means, for any day, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency,

supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

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

“Excluded Swap Obligations” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 6.16 hereof and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all Guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e), and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing BAC Revolving Credit Agreement” means that certain Fourth Amended and Restated Credit Agreement dated as of November 12, 2013 by and among the Borrowers, the lenders referenced therein, Bank of America, N.A., as administrative agent and the other parties thereto, as the same may have been further amended, restated, supplemented or otherwise modified from time to time prior to the date hereof and as in effect immediately prior to the effectiveness hereof.

“Existing Credit Agreements” means, collectively, (a) the Existing BAC Revolving Credit Agreement, and (b) the Existing WF Term Loan Agreement, and each, individually, an “Existing Credit Agreement.”

“Existing Letters of Credit” means those letters of credit set forth on Schedule 2.03 (regardless of whether such letters of credit were issued under the Existing Credit Agreements).

“Existing WF Term Loan Agreement” means that certain Amended and Restated Five-Year Term Loan Agreement dated as of November 12, 2013, by and among the Borrowers, the lenders referenced therein, Wells Fargo Bank, National Association, as administrative agent and the other parties thereto, as the same may have been further amended, restated, supplemented or otherwise modified from time to time prior to the date hereof and as in effect immediately prior to the effectiveness hereof.

“Facility” means the Term Facility or the Revolving Credit Facility, as the context may require.

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

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

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System 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 as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“FFO” means, as of any date of determination, Net Income plus depreciation and amortization of real and personal property assets to the extent deducted in the determination of Net Income, less any amount added pursuant to clause (b) of the definition of Net Income except to the extent such amount relates to operating partnership units and is attributable to Highwoods Realty by virtue of the line item “non-controlling interests,” as shown on the consolidated income statements of the Consolidated Parties.

“Fixed Charges” means, for any period, the sum of (a) Interest Expense for the applicable period, plus (b) preferred dividends of the Subject Parties actually paid during the applicable period, plus (c) Scheduled Funded Debt Payments for the applicable period; provided, that, to the extent the above calculations include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

“Foreign Lender” means (a) if each Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if each Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which each Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

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

“Fully Satisfied” means, with respect to the Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Obligations shall have been irrevocably paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Obligations shall have been irrevocably paid in cash, and (c) the Commitments shall have expired or been terminated in full.

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

“Funded Indebtedness” means, with respect to any Person, without duplication, (a) all Indebtedness of such Person other than Indebtedness of the types referred to in clauses (c), (h) and (i) of the definition of “Indebtedness” set

forth in this Section 1.01, (b) all Indebtedness of another Person of the type referred to in clause (a) above secured by (or for which the holder of such Funded 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, (c) all Guarantees of such Person with respect to Indebtedness of the type referred to in clause (a) above of another Person and (d) Indebtedness of the type referred to in clause (a) above of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

“Granting Lender” has the meaning specified in Section 10.06(h).

“Guarantee” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) to guaranty to any Person rental income levels (or shortfalls) or re tenanting costs (including tenant improvements, moving expenses, lease commissions and any other costs associated with procuring new tenants); provided, that such obligations shall be determined to be equal to the maximum potential amount of the payments due from the Person guaranteeing the applicable rental income levels over the term of the applicable lease or (v) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; provided, that, to the extent any Guarantee is limited by its terms, then the amount of such Guarantee shall be deemed to be the stated or determinable amount of such Guarantee. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, as of any date of determination, (a) each Person that has been required, pursuant to the terms of this Agreement and the Guaranty, to execute a counterpart of the Guaranty, in each case to the extent such Person has not been released from its obligations under the Guaranty pursuant to the terms of the Guaranty and this Agreement, and (b) with respect to the payment and performance by each Specified Loan Party of its obligations under the Guaranty with respect to all Swap Obligations, the Borrowers.

“Guaranty” means the Fifth Amended and Restated Guaranty dated as of the date hereof, made by each of the Guarantors in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit F, as the same may be amended, restated, supplemented or otherwise modified from time to time and as joined from time to time.

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

“ Highwoods Properties ” has the meaning assigned to such term in the introductory paragraph hereof.

“ Highwoods Realty ” has the meaning assigned to such term in the introductory paragraph hereof.

“ Highwoods Services ” means Highwoods Services, Inc., a North Carolina corporation.

“ Income Producing Properties ” means, as of any date of determination, all Properties (other than Acquired Properties or Pre-Leased Development Properties): (a) which are partially or fully income producing for financial reporting purposes on the applicable calculation date and have been continuously partially or fully income producing for financial reporting purposes for the calendar quarter ending immediately preceding the calculation date, (b) for which an unconditional base building certificate of occupancy (or its equivalent) has been issued by the applicable Governmental Authority, (c) as to such assets which, in the immediately preceding reporting period, were classified as Non-Income Producing Properties (other than Pre-Leased Development Properties), which either (i) are leased to tenants in occupancy and the leases for such tenants in occupancy (excluding tenants under free rent periods) represent seventy-five percent (75%) or more of the rentable square footage of the applicable real property asset; or (ii) have, if not for this clause (c)(ii), qualified as a Non-Income Producing Property for a period equal to or in excess of eighteen (18) months following the issuance of an unconditional base building certificate of occupancy and (d) as to such assets which, in the immediately preceding reporting period, were classified as Pre-Leased Development Properties, which have, if not for this clause (d), qualified as a Non-Income Producing Property for a period equal to or in excess of six (6) months following the issuance of an unconditional base building certificate of occupancy or substantial completion of the applicable improvements (provided, that different phases of real property developments shall be treated as different assets for purposes of this determination); provided, however, that “Income Producing Properties” shall not include the revenue resulting from intra or inter-entity leases between any Borrower and any of the Subject Parties.

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

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

(c) net obligations of such Person under any Swap Contract (as calculated below);

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business to the extent not past due for more than one hundred twenty (120) days after the date on which such trade account payable was created, unless such trade account payable is being contested in good faith);

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

(f) the principal portion of capital leases, Synthetic Lease Obligations and all other Off-Balance Sheet Liabilities (as calculated below);

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable

preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; provided, however, that such obligations shall not be considered Indebtedness hereunder to the extent such redemption may be completed through the issuance by such Person of its capital stock in exchange for the Equity Interests being redeemed and such Person has elected or may still elect to issue such capital stock rather than pay other consideration in connection with such redemption;

- (h) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements; and
- (i) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

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

“Information” has the meaning specified in Section 10.07.

“Intangible Assets” means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

“Interest Expense” means, for any period, (a) all interest expense (including, without limitation, the interest component under capital leases and with respect to Off-Balance Sheet Liabilities) of the Consolidated Parties for such period, as determined in accordance with GAAP, plus (b) all interest expense (including the interest component under capital leases and with respect to Off-Balance Sheet Liabilities), as determined in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity; provided, that the Facility Fees paid by the Borrowers during any such period shall constitute a portion of the “Interest Expense” for purposes of this definition; provided, further, that any amount of capitalized or accrued interest on the Indebtedness of any Consolidated Party shall be included in the calculation of “Interest Expense,” whether or not such amounts constitute interest expense as determined in accordance with GAAP, but except to the extent such expenses are addressed in a related construction budget or the Borrowers maintain, as of a given calculation date, availability under this Agreement equal to or in excess of twenty-five percent (25%) of the Aggregate Revolving Credit Commitments.

“Interest Payment Date” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first (1<sup>st</sup>) Business Day of each calendar month and the Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3), or six (6) months, or, if available from all Lenders, nine (9) or twelve (12) months thereafter, or such other period of time as the Lenders may agree, as selected by the Principal Borrower in its Committed Loan Notice; provided that:

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

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

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

(iv) a period of twelve (12) months shall be deemed, as used in connection with the term “Interest Period”, to be equal to 364 days.

“IP Rights” has the meaning specified in Section 5.17.

“IRS” means the United States Internal Revenue Service.

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

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

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

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

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

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

“L/C Issuer” means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

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

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrowers and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any standby letter of credit issued hereunder and shall include the Existing Letters of Credit.

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

“Letter of Credit Expiration Date” means, subject to the Borrowers’ rights under Section 2.03(g) to extend such date through Cash Collateralization of the applicable Letters of Credit, the day that is thirty (30) days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

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

“Letter of Credit Sublimit” means an amount equal to \$20,000,000.00. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“LIBOR” has the meaning specified in the definition of Eurodollar Base Rate.

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

“Loan” means an extension of credit by a Lender to the Borrowers under Article II in the form of a Revolving Credit Loan, a Swing Line Loan or a Term Loan.

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Guaranty, and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.03 of this Agreement.

“Loan Parties” means, collectively, each of the Borrowers and each Guarantor.

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

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities or financial condition of the Consolidated Parties, taken as a whole; (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Subsidiary” means any Subsidiary to which more than ten percent (10%) of Total Asset Value or Net Income is attributable on an individual basis.

“Maturity Date” means: (a) with respect to the Revolving Credit Facility, (i) January 31, 2022, or (ii) to the extent an extension is granted pursuant to Section 2.15, July 31, 2022 or January 31, 2023, as applicable; or (b) with respect to the Term Facility, November 30, 2022; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.



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

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

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

“Net Cash Proceeds” means the aggregate cash proceeds received by the Consolidated Parties in respect of any Equity Issuance, net of (a) direct costs (including, without limitation, legal, accounting and investment banking fees and sales commissions) and (b) taxes paid or payable as a result thereof; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received by the Consolidated Parties in any Equity Issuance.

“Net Income” means, for any period, the sum of (a) net income (excluding extraordinary and non-recurring gains and losses, impairments, non-cash equity-based compensation charges, prepayment penalties, gains or losses on the sale of property and related tax effects thereto) after taxes for such period of the Consolidated Parties on a consolidated basis, as determined in accordance with GAAP, plus (b) without duplication, an amount equal to the line item “non-controlling interests,” as shown on the consolidated income statements of the Consolidated Parties, plus (c) without duplication, an amount equal to the aggregate of net income (excluding extraordinary and non-recurring gains and losses, impairments, non-cash equity-based compensation charges, prepayment penalties, gains or losses on the sale of property and related tax effects thereof) after taxes for such period, as determined in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest of each such entity.

“Net Operating Income” means, for any given period and with respect to any given Property or Properties, the amount equal to: (a) the sum of (i) gross revenues attributable to such Property or Properties for such period, less (ii) to the extent otherwise included in gross revenues, interest income; less (b) an amount equal to (i) operating expenses allocable to such Property or Properties (excluding any management fees accrued with respect to such Property or Properties), less (ii) to the extent included in the calculation of operating expenses, (A) total federal, state, local and foreign income, franchise, value added and similar taxes, (B) depreciation and amortization, and (C) Interest Expense.

“Non-Consenting Lender” has the meaning specified in Section 10.13.

“Non-Guarantor Subsidiaries” means, as of any date of determination, a collective reference to:

- (a) those entities specified as “Non-Guarantor Subsidiaries” in the schedules to the Loan Documents;
- (b) Highwoods Services and each of its Subsidiaries;

(c) any Subsidiary of any Loan Party (i) formed for or converted to (in accordance with the terms and conditions set forth herein) the specific purpose of holding title to assets which are collateral for Indebtedness owing by such Subsidiary and (ii) which is (or, immediately following its release as a Loan Party hereunder, shall be) expressly prohibited in writing from guaranteeing Indebtedness of any other Person pursuant to (A) a provision in any document, instrument or agreement evidencing such Indebtedness of such Subsidiary or (B) a provision of such Subsidiary’s Organization Documents, in each case, which provision was included in such Organization Document or such other document, instrument or agreement as an express condition to the extension of such Indebtedness required by the third party creditor providing the subject financing; provided, that a Subsidiary meeting the above requirements shall only remain a “Non-Guarantor

Subsidiary” for so long as (1) each of the above requirements are satisfied, (2) such Subsidiary does not guarantee any other Indebtedness and (3) the Indebtedness with respect to which the restrictions noted in clause (ii) are imposed remains outstanding;

(d) any Subsidiary of any Loan Party (i) which becomes a Subsidiary of such Loan Party following the Closing Date, (ii) which is not a Wholly Owned Subsidiary of such Loan Party, and (iii) with respect to which such Loan Party does not have sufficient voting power (and is unable, after good faith efforts to do so, to cause any necessary non-Loan Party equity holders to agree) to cause such Subsidiary to execute the Guaranty pursuant to the terms of the Loan Documents or, notwithstanding such voting power, the interests of such non-Loan Party holders have material economic value in the reasonable judgment of the Principal Borrower that would be impaired by the execution of the Guaranty; and

(e) any other Subsidiary of a Loan Party that is not a domestic Material Subsidiary.

“Non-Guarantor Subsidiary” means any one of such entities.

“Non-Income Producing Properties” means a collective reference to all Properties which do not qualify as “Income Producing Properties” (following application of subsection (c)(ii) and each other provision of the definition thereof and including, without limitation, Properties qualifying as Pre-Leased Development Properties, Acquired Properties, Speculative Land and Properties Under Development).

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

“Notes Receivable” means, all promissory notes or other similar obligations to pay money, whether secured or unsecured, which are not over thirty (30) days past due in which any Person has an interest.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including (i) interest and fees that accrue under the Loan Documents after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (ii) any Swap Contract entered into in connection with the Loans by any Loan Party with respect to which a Lender or any Affiliate of a Lender is a party; provided that the “Obligations” shall exclude any Excluded Swap Obligations.

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

“Off-Balance Sheet Liabilities” means, with respect to any Person as of any date of determination thereof, without duplication and to the extent not included as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP: (a) with respect to any asset securitization transaction (including any accounts receivable purchase facility) (i) the unrecovered investment of purchasers or transferees of assets so transferred and (ii) any other payment, recourse, repurchase, hold harmless, indemnity or similar obligation of such Person or any of its Subsidiaries in respect of assets transferred or payments made in respect thereof, other than limited recourse provisions that are customary for transactions of such type and that neither (x) have the effect of limiting the loss or credit risk of such purchasers or transferees with respect to payment or performance by the obligors of the assets so transferred nor (y) impair the characterization of the transaction as a true sale under applicable Laws (including Debtor Relief Laws); (b) the monetary obligations under any financing lease or so called “synthetic,” tax retention or off balance sheet lease transaction which, upon the application of any Debtor Relief Law to such Person or any of its Subsidiaries, would be characterized as indebtedness; (c) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person and its Subsidiaries; or (d) any other monetary obligation arising with respect to any other transaction which (i) is characterized as indebtedness for tax purposes but not for accounting purposes in accordance with GAAP or (ii) is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheet of such Person and its Subsidiaries

(for purposes of this clause (d), any transaction structured to provide tax deductibility as interest expense of any dividend, coupon or other periodic payment will be deemed to be the functional equivalent of a borrowing).

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

“ Other Connection Taxes ” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“ Other Taxes ” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.13).

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

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

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

“ PBGC ” means the Pension Benefit Guaranty Corporation.

“ Pension Act ” means the Pension Protection Act of 2006.

“ Pension Funding Rules ” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

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

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

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Multiemployer Plan, established or maintained by any Loan Party and, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, established or maintained by any Loan Party or any ERISA Affiliate.

“Plan Assets” means the assets of a Benefit Plan pursuant to the Plan Assets Regulation, 29 C.F.R. *Section 2550.401c-1*, pursuant to the principles set forth in *John Hancock Mutual Life Insurance Company v. Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993), or otherwise.

“Plan Assets Regulation” means 29 C.F.R. *Section 2510.3-101*, *et seq.*, as modified by Section 3(42) of ERISA.

“Platform” has the meaning specified in Section 6.02.

“Pre-Leased Development Properties” means a collective reference to all Properties Under Development that are, prior to the issuance of any certificate of occupancy (temporary or otherwise) related to the applicable improvements, at least fifty percent (50%) (or, for purposes of the applicable clause in the definition of “Total Asset Value” only, seventy-five percent (75%)) pre-leased to third parties that are not affiliated with the Borrowers or any Subject Party pursuant to valid and binding lease agreements under which (a) commencement of rental payment obligations are contingent only upon completion of the applicable improvements and other standard conditions; (b) the applicable lessee is not the subject of any then-continuing bankruptcy or insolvency proceedings; and (c) no defaults or events of default are, to the knowledge of the Borrowers, then-continuing.

“Principal Borrower” means Highwoods Properties, together with its successors and assigns.

“Pro Forma Compliance Certificate” means a certificate of an officer of the Principal Borrower delivered to the Administrative Agent in connection with a Disposition and containing reasonably detailed calculations, upon giving effect to the applicable transaction on a pro forma basis, of the financial covenants set forth in Section 7.11.

“Properties” means, as of any date of determination, all interests in real property (direct or indirect), together with all improvements thereon, owned by any Subject Party; and “Property” means any one of them.

“Properties Under Development” means, as of any date of determination, all Properties, the primary purpose of which is to be leased in the ordinary course of business or to be sold upon completion and on which any Subject Party has commenced construction of a building or other improvements; provided that any such Property will no longer be considered a Property Under Development when, (a) such Property qualifies as an Income Producing Property or (b) prior to substantial completion of the construction work with respect to the property, such construction work has ceased for a period of thirty (30) days, in which case such Property shall be considered Speculative Land until such time as construction has resumed.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.02.

“Quarterly Subsidiary Joinder Statement” means a certificate, prepared on a quarterly basis by the Principal Borrower, setting forth a list of all Material Subsidiaries acquired or created during the immediately preceding fiscal quarter, together with a schedule of the assets owned by each such Material Subsidiary.

“Recipient” means (a) the Administrative Agent, (b) any Lender (including the Swing Line Lender), and (c) the L/C Issuer.

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

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

“REIT” means a Person qualifying for treatment as a “real estate investment trust” under the Code.

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

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

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

“Required Lenders” means, as of any date of determination, Lenders holding in the aggregate at least fifty-one percent (51%) of the Total Credit Exposure of all Lenders (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding at least fifty-one percent (51%) of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Facility. The unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings of any Defaulting Lender shall be disregarded in determining Required Revolving Lenders at any time; provided that, the amount of any participation in any Swing Line Loan and any Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer in making such determination.

“Required Term Lenders” means, as of any date of determination, Term Lenders holding at least fifty-one percent (51%) of the Term Facility on such date. The portion of the Term Facility held by any Defaulting Lender shall be disregarded in determining Required Term Lenders at any time.

“Responsible Officer” means the chief executive officer, president, chief operating officer, chief financial officer, general counsel or treasurer of a Loan Party, any other individual who may from time to time be authorized by the Board of Directors of the Principal Borrower to serve as a “Responsible Officer” for the purposes hereof and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of the Equity Interests of any Consolidated Party, now or hereafter outstanding (including any payment of dividends by the Principal Borrower necessary to retain its status as a REIT or to meet the distribution requirements of Section 857 of the Internal Revenue Code and any distributions by Highwoods Realty to the Principal Borrower necessary to allow the Principal Borrower to maintain its status as a REIT or to meet the distribution requirements of Section 857 of the Internal Revenue Code), (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of the Equity Interests of any Consolidated Party, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Equity Interests of any Consolidated Party, now or hereafter outstanding and (d) to the extent not otherwise accounted for in clauses (a) - (c) above, any payments,

dividends or distributions of any type made by any Consolidated Party with respect to operating partnership units to the extent attributable to Highwoods Realty.

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

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

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

“Revolving Credit Lender” means (a) at any time prior to the last day of the Availability Period in respect of the Revolving Credit Facility, any Lender that has a Revolving Credit Commitment at such time and (b) at any time thereafter, any Lender that holds Revolving Credit Loans and/or has an obligation to purchase participations in L/C Obligations or Swing Line Loans at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(b).

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

“Sanction(s)” means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“S&P” means S&P Global Ratings, a subsidiary of S&P Global, Inc., and any successor thereto.

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

“Scheduled Funded Debt Payments” means, for a given period, the sum of (a) all scheduled payments of principal on Funded Indebtedness for the Consolidated Parties on a consolidated basis for the applicable period ending on such date (including the principal component of payments due on capital leases during the applicable period), plus (b) an amount equal to the aggregate of all scheduled payments of principal on Funded Indebtedness for each Unconsolidated Affiliate for the applicable period (including the principal component of payments due on capital leases during the applicable period), multiplied by the respective Unconsolidated Affiliate Interest of each such entity, plus (c) the amount of the aggregate payments made by the Consolidated Parties during such period as a result of any guaranties of rental income levels (or shortfalls) or re tenancing costs (including tenant improvements, moving expenses, lease commissions and any other costs associated with procuring new tenants), plus (d) the amount of the aggregate payments made by any Unconsolidated Affiliate(s) during such period as a result of any guaranties of rental income levels (or shortfalls) or re tenancing costs (including tenant improvements, moving expenses, lease commissions and any other costs associated with procuring new tenants), multiplied by the respective Unconsolidated Affiliate Interest of each such entity; it being understood that Scheduled Funded Debt Payments shall not include any one-time “bullet”, “lump sum” or “balloon” payments due on the repayment date of Funded Indebtedness.

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

“Secured Debt” means, for any given calculation date, (a) the total aggregate principal amount of any Indebtedness (other than Indebtedness incurred hereunder) of the Consolidated Parties, on a consolidated basis, that is (i) secured in any manner by any Lien or (ii) entitled to the benefit of a Negative Pledge (other than under this Agreement), plus (b) the total aggregate principal amount of any Indebtedness (other than Indebtedness incurred hereunder) of each Unconsolidated Affiliate that is (i) secured in any manner by any Lien or (ii) entitled to the benefit of a Negative Pledge (other than under this Agreement), multiplied by the Unconsolidated Affiliate Interest with respect to each such Unconsolidated Affiliate. Indebtedness in respect of obligations under any capitalized lease shall not be deemed to be “Secured Debt.”

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

“Significant Acquisition” means the acquisition of one or more real property assets or portfolios of such assets or operating businesses in a single transaction for a purchase price of not less than ten percent (10%) of Total Asset Value.

“Solvent” means, as to a Person, that (a) the aggregate fair market value of its assets exceeds its liabilities, (b) it is able to pay its liabilities in the ordinary course of business and (c) it does not have unreasonably small capital to conduct its businesses.

“SPC” has the meaning specified in Section 10.06(h).

“Specified Loan Party” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 6.16).

“Speculative Land” means, at any given time, all land owned by any Subject Party that has not been developed and is not currently being developed.

“Straight-Lining of Rents” means, with respect to any lease, the method by which rent received with respect to such lease is considered earned equally over the term of such lease despite the existence of (i) any free rent periods under such lease and (ii) any rent step up provisions under such lease.

“Subject Parties” means the Principal Borrower and each of its Subsidiaries and Affiliates.

“Subsidiary” means, as to any entity, a corporation, partnership, joint venture, limited liability company or other business entity (a) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person or (b) the financial statements of which are required, pursuant to GAAP, to be consolidated with such entity.

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

together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

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

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

“Swing Line” means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.04.

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

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

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

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent), appropriately completed and signed by a Responsible Officer of Borrower.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$50,000,000.00 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

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

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to Borrowers pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 2.01 under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Term Commitments of all Term Lenders as of the Closing Date shall be \$200,000,000.



“Term Facility” means (a) at any time prior to the last day of the Availability Period in respect of such Facility, the aggregate amount of the Term Commitments at such time and (b) at any time thereafter, the Outstanding Amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Lender” means (a) at any time prior to the last day of the Availability Period in respect of the Term Facility, any Lender that has a Term Commitment at such time and (b) at any time thereafter, any Lender that holds Term Loans at such time.

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

“Term Note” means a promissory note made by Borrowers in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit C-2.

“Threshold Amount” means \$30,000,000.00.

“TL/TA Ratio” means, as of any date of calculation, the ratio of (a) Total Liabilities to (b) Total Asset Value.

“Total Asset Value” means, as of any date of determination, the sum of, without duplication, (a) the aggregate Value of all Income Producing Properties; plus (b) the aggregate Value of all Non-Income Producing Properties; plus (c) cash and Cash Equivalents held by the Loan Parties, plus (d) up to \$100,000,000 (in the aggregate) in notes receivable related to secured first mortgage or mezzanine financings pursuant to each of which the initial loan to cost ratio is not in excess of seventy-five percent (75.0%); provided that the amount of Total Asset Value attributable to assets held by parties that are not Consolidated Parties shall be limited to twenty percent (20.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value); and provided, further, that (i) the amount of Total Asset Value attributable to the Value of all Non-Income Producing Properties shall be limited to twenty-five percent (25.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value), (ii) the amount of Total Asset Value attributable to the Value of Speculative Land shall be limited to fifteen percent (15.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value), (iii) the amount of Total Asset Value attributable to the Value of Properties Under Development (including Pre-Leased Development Properties) shall be limited to fifteen percent (15.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value), and (iv) the amount of Total Asset Value attributable to the Value of Income Producing Properties other than “for lease” office, amenity retail and industrial properties shall be limited to fifteen percent (15.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value).

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments and Total Outstandings of such Lender at such time.

“Total Liabilities” means, as of any date of determination, the sum of (a) total liabilities of the Consolidated Parties on a consolidated basis, as determined in accordance with GAAP, plus (b) an amount equal to the aggregate of total liabilities, as determined in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest of each such entity (except to the extent any Loan Party would be legally liable for a greater percentage of such liabilities, in which such larger percentage shall be used), plus (c) without duplication, the Indebtedness of the Consolidated Parties on a consolidated basis plus (d) without duplication, the aggregate Indebtedness of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest of each such entity (except to the extent any Loan Party would be legally liable for a greater percentage of such Indebtedness, in which case such larger percentage shall be used).

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

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

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

“ Unconsolidated Affiliate Interest ” means the percentage of the Equity Interests owned by a Consolidated Party in an Unconsolidated Affiliate accounted for pursuant to the equity method of accounting under GAAP.

“ Unconsolidated Affiliate ” means any corporation, partnership, association, joint venture or other entity in each case which is not a Consolidated Party and in which a Consolidated Party owns, directly or indirectly, any Equity Interest.

“ Unencumbered Assets ” means, as of any date of determination, all Properties that are not subject to any Liens or Negative Pledges and which are (a) Wholly-Owned by a Borrower or a Wholly Owned Subsidiary that is a Loan Party, or (b) Wholly-Owned by a Subsidiary that is a Loan Party but that is not a Wholly Owned Subsidiary (but at least ninety percent (90%) of whose Equity Interests are owned, directly or indirectly, by the Principal Borrower), and such Properties are controlled exclusively by such Subsidiary (including control over the ability to dispose of, grant Liens in, or otherwise encumber assets, and to incur, repay and prepay Indebtedness, provide guarantees and make restricted payments in respect thereof, in each case without any requirement for the consent of any other Person).

“ Unencumbered Asset Value ” means the sum of, without duplication, (a) the Value of all Properties (other than Pre-Leased Development Properties) that are Unencumbered Assets, provided that, with respect to any Unencumbered Assets that are Wholly-Owned by a Subsidiary that is not a Wholly Owned Subsidiary, the Value of such Properties shall be limited to the pro rata interest (based on the percentage ownership of Equity Interests in the applicable Subsidiary owned by the Consolidated Parties) in such Properties; plus (b) the Value of all Pre-Leased Development Properties that are Unencumbered Assets, plus (c) the Value of unrestricted cash and Cash Equivalents held by the Loan Parties in excess of \$20,000,000; provided, however, that (x) to the extent the Value of Pre-Leased Development Properties included in the amount calculated pursuant to clause (b) above, as determined on any calculation date, exceeds twenty percent (20.0%) of the total Unencumbered Asset Value, such Value of Pre-Leased Development Properties to be included in the calculation of Unencumbered Asset Value shall be automatically reduced to an amount which is equal to twenty percent (20.0%) of the total Unencumbered Asset Value (before taking into account the reduction in the total Unencumbered Asset Value resulting from such reduction), and (y) to the extent the Properties that are Wholly-Owned by a Subsidiary that is not a Wholly Owned Subsidiary included in the amount calculated pursuant to clause (a) above, as determined on any calculation date, exceeds fifteen percent (15.0%) of the total Unencumbered Asset Value, the Value of such Properties to be included in the calculation of Unencumbered Asset Value shall be automatically reduced to an amount which is equal to fifteen percent (15.0%) of the total Unencumbered Asset Value (before taking into account the reduction in the total Unencumbered Asset Value resulting from such reduction).

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

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

“ Unsecured Debt ” means, for any given calculation date, the total aggregate principal amount of Indebtedness of the Consolidated Parties, on a consolidated basis, that is not Secured Debt (including all Indebtedness in respect of obligations under any capitalized leases); it being understood that Unsecured Debt shall not include principal amounts available to be drawn (but not drawn) under outstanding commitments.

“ U.S. Borrower ” means any Borrower that is a U.S. Person.

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

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

“ Value ” means:

(a) with respect to any Income Producing Property, either (i) the Annualized Adjusted NOI allocable to such Property, divided by the Capitalization Rate or (ii) with respect to the calculation of the value

of such Income Producing Property for purposes of the Total Asset Value calculation only and to the extent specifically requested by the Principal Borrower in writing with respect to such Income Producing Property on or prior to the applicable date of calculation, the appraised value of such Income Producing Property; provided, that (y) such appraisal shall be in form and substance acceptable to the Administrative Agent in its discretion and that the “Value” of an Income Producing Property for purposes of determining Total Asset Value may not be determined by reference to its appraised value for a period in excess of one calendar year during the term of this Agreement and (z) to the extent that any such Income Producing Properties are owned by an Unconsolidated Affiliate, any appraised value used pursuant to subclause (ii) above shall be multiplied by the applicable Unconsolidated Affiliate Interest with respect thereto; and

(b) with respect to any Pre-Leased Development Property, the undepreciated book value of such Property or assets (as determined in accordance with GAAP); provided, that to the extent that any such Pre-Leased Development Properties are owned by an Unconsolidated Affiliate, such value shall be multiplied by the applicable Unconsolidated Affiliate Interest with respect thereto; and

(c) with respect to any other Non-Income Producing Property (including, without limitation, Properties qualifying as Acquired Properties, Speculative Land and Properties Under Development) or other assets held by any Person which do not qualify as Income Producing Properties:

(i) for all calculations other than those related to Unencumbered Asset Value, the undepreciated book value of such Property or assets (as determined in accordance with GAAP);

(ii) for all calculations related to Unencumbered Asset Value (other than with respect to Acquired Properties), the Annualized Adjusted NOI allocable to such Property, divided by the Capitalization Rate; and

(iii) for Unencumbered Asset Value, the undepreciated book value of Acquired Properties;

provided, in each case, that to the extent that any such Non-Income Producing Properties are owned by an Unconsolidated Affiliate, such value shall be multiplied by the applicable Unconsolidated Affiliate Interest with respect thereto.

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to vote has been suspended by the happening of such a contingency.

“Wholly-Owned” means, with respect to the ownership by any Person of any Property, that one hundred percent (100%) of the ownership of such Property is held, directly or indirectly, by such Person.

“Wholly Owned Subsidiary” means, (a) with respect to Highwoods Realty, any direct or indirect Subsidiary of Highwoods Realty one hundred percent (100%) of whose Equity Interests are owned by (i) Highwoods Realty, (ii) Highwoods Realty and Highwoods Properties, or (iii) Highwoods Realty and one or more of Highwoods Properties or another Wholly Owned Subsidiary of Highwoods Realty, (b) with respect to Highwoods Properties, (i) Highwoods Realty, (ii) any Wholly Owned Subsidiary of Highwoods Realty, or (iii) any direct or indirect Subsidiary of Highwoods Properties one hundred percent (100%) of whose Equity Interests are owned by Highwoods Properties or by one or more of Highwoods Realty and a Wholly Owned Subsidiary of Highwoods Realty, and (c) with respect to Highwoods Services, any direct or indirect Subsidiary of Highwoods Services one hundred percent (100%) of whose Equity Interests are owned by (i) Highwoods Services, or (ii) Highwoods Services and one or more of Highwoods Properties, Highwoods Realty, or another Wholly Owned Subsidiary of Highwoods Realty.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Write-down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

## **1.02 Other Interpretive Provisions.**

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

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

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

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

## **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrowers and their respective Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Notwithstanding anything to the contrary contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made in a manner such that any obligations relating to a lease that was accounted for by such Person as an operating lease as of the date of this Agreement and any similar lease entered into after the date of this Agreement by such Person shall be accounted for as obligations relating to an operating lease and not as capital lease.

(b) Changes in GAAP. The parties hereto acknowledge and agree that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall

negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Principal Borrower and its Subsidiaries or to the determination of any amount for the Principal Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Principal Borrower is required to consolidate pursuant to FASB Interpretation No. 46 - Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Subsidiary as defined herein.

(d) Treatment of Equity Interests Subject to Redemption Notices. Notwithstanding anything contained herein to the contrary or anything set forth in GAAP to the contrary, all Equity Interests constituting preferred stock of Highwoods Properties that is the subject of an outstanding redemption notice from Highwoods Properties shall, for purposes of the Section 7.11 financial covenant calculations required to be performed herein and any other determination of the liabilities or the Indebtedness of Highwoods Properties (regardless of whether liabilities or Indebtedness of any other Persons are included in such calculation) shall be treated as equity rather than as a liability for purposes of this Agreement; provided, that such treatment shall be given subject to the following terms and conditions: (i) the treatment of any given share of Highwoods Properties' preferred stock as equity during any redemption notification period shall not exceed a period of sixty (60) days during the term of this Agreement (provided, that the status of such share shall, following any such sixty (60) day period, be subject to interpretation under GAAP) and (ii) the treatment of any given share of Highwoods Properties' preferred stock as equity when such share would otherwise be treated as a liability pursuant to GAAP shall be effective only with respect to shares of preferred stock that are subject to the giving of mandatory redemption notices.

(e) Joint Ventures. Except to the extent otherwise set forth herein, if any Borrower, any Loan Party or any of their respective subsidiaries enters into a joint venture agreement or similar arrangement, for purposes of calculating the financial covenants set forth in Section 7.11, any such investment will be treated on a pro rata basis and the Borrowers will be credited with their pro rata share of the income and investment and will be charged with its pro rata share of the expenses and liabilities, including Indebtedness and debt service. If however, any Indebtedness of a joint venture of any type is recourse to any Borrower or any other Loan Party, then the greater of the Borrowers' pro rata portion of the debt or the portion of the debt which is recourse to the Borrowers or such Loan Party shall be used in calculating the financial covenants set forth in Section 7.11.

#### **1.04 Rounding.**

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

#### **1.05 Times of Day; Rates.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern Time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility for, nor shall the Administrative Agent have any liability with respect to, the administration, submission or any other matter related to the published rates in the definition of "Eurodollar Rate" or with respect to any comparable or successor rate thereto.

#### **1.06 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such

Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.07 Calculation of Values.**

To the extent any calculation of the value of any Property contained herein is based on the appraised value of such Property, the Administrative Agent shall have the right, in its reasonable discretion (or at the request of the Required Lenders) to obtain, in addition to any appraisals obtained on or prior to the date hereof, additional appraisals with respect to each such Property not more than once every twelve (12) calendar months after the date hereof, and such cost of such additional appraisals shall be paid by Borrower to the Administrative Agent within five (5) Business Days after written demand pursuant to Section 10.04 hereof.

**1.08 Joint and Several Liability of the Borrowers.**

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

(b) Each of the Borrowers jointly and severally hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers with respect to the payment and performance of all of the Obligations arising under this Agreement and the other Loan Documents, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them.

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

(d) The obligations of each Borrower under the provisions of this Section 1.08 constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided herein, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of occurrence of any Default or Event of Default (except to the extent notice is expressly required to be given pursuant to the terms of this Agreement), or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent and/or Lenders under or in respect of any of the Obligations hereunder, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations hereunder, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent and/or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent and/or Lenders in respect of any of the Obligations hereunder, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of such Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or any failure to act on the part of the Administrative Agent and/or Lenders, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable Laws or regulations thereunder which might, but for the provisions of this Section 1.08, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 1.08, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the obligations of such Borrower under this Section 1.08 shall not be discharged except by performance and then only to the extent of such performance. The obligations of each Borrower under this Section 1.08 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with

respect to any reconstruction or similar proceeding with respect to any Borrower, the Administrative Agent or any Lender. The joint and several liability of the Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower, the Administrative Agent or any Lender.

(f) The provisions of this Section 1.08 are made for the benefit of the Administrative Agent and the Lenders and their respective successors and assigns, and may be enforced by any such Person from time to time against any of the Borrowers as often as occasion therefor may arise and without requirement on the part of any Lender first to marshal any of its claims or to exercise any of its rights against any of the other Borrowers or to exhaust any remedies available to it against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy. Without limiting the generality of the foregoing, each Borrower hereby specifically waives the benefits of N.C. Gen. Stat. §§26-7 through 26-9, inclusive, to the extent applicable. The provisions of this Section 1.08 shall remain in effect until all the Obligations hereunder shall have been Fully Satisfied.

(g) Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, the obligations of each Borrower hereunder shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any applicable state law.

#### **1.09 Appointment of Principal Borrower as Agent for Borrowers.**

Each of the Borrowers hereby appoints the Principal Borrower to act as its exclusive agent for all purposes under this Agreement and the other Loan Documents (including, without limitation, with respect to all matters related to the borrowing, repayment and administration of Credit Extensions as described in Articles II and III hereof). Each of the Borrowers acknowledges and agrees that (a) the Principal Borrower may execute such documents on behalf of all the Borrowers as the Principal Borrower deems appropriate in its sole discretion and each Borrower shall be bound by and obligated by all of the terms of any such document executed by the Principal Borrower on its behalf, (b) any notice or other communication delivered by the Administrative Agent or any Lender hereunder to the Principal Borrower shall be deemed to have been delivered to each of the Borrowers and (c) the Administrative Agent and each of the Lenders shall accept (and shall be permitted to rely on) any document or agreement executed by the Principal Borrower on behalf of the Borrowers (or any of them). The Borrowers must act through the Principal Borrower for all purposes under this Agreement and the other Loan Documents. Notwithstanding anything contained herein to the contrary, to the extent any provision in this Agreement requires any Borrower to interact in any manner with the Administrative Agent or the Lenders, such Borrower shall do so through the Principal Borrower.

### **ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS**

#### **2.01 The Loans.**

(a) The Term Loan. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a Term Borrowing to Borrowers on the Closing Date in an amount not to exceed such Term Lender's Term Commitment. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans in Dollars (each such loan, a "Revolving Credit Loan") to the Borrowers from time to time, on any Business Day during the Availability Period in respect to the Revolving Credit Facility, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all

Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

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

(a) Each Borrowing, each conversion of Revolving Credit Loans or Term Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrowers' irrevocable notice to the Administrative Agent (which notice shall be delivered by the Principal Borrower), which may be given by (x) telephone or (y) a Committed Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to Administrative Agent of a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in the principal amount of \$2,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in the principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrowers are requesting a Revolving Credit Borrowing, a Term Borrowing or a conversion of Revolving Credit Loans or Term Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Revolving Credit Loans or Term Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrowers fail to specify a Type of Loan in a Committed Loan Notice or if the Borrowers fail to give a timely notice requesting a conversion or continuation, then the applicable Revolving Credit Loans or Term Loans shall be made as, or converted to, one (1) month Eurodollar Rate Loans. Any such automatic conversion to one month Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable expiring Eurodollar Rate Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fail to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Revolving Credit Loans or Term Loans, and if no timely notice of a conversion or continuation is provided by the Borrowers, the Administrative Agent shall notify each Lender of the details of any automatic conversion to one month Eurodollar Rate Loans described in the preceding subsection. In the case of a Revolving Credit Borrowing or a Term Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable Borrower(s) on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrowers; provided, however, that if, on the date the Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrowers, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that



Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to (i) all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type and (ii) all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than fifteen (15) Interest Periods in effect with respect to the Revolving Credit Facility and the Term Facility.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by Borrower, Administrative Agent, and such Lender.

## **2.03 Letters of Credit.**

### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the respective Borrowers or their Subsidiaries (as requested by the Principal Borrower), and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the respective Borrowers or their Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrowers for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. The parties hereto all agree that all Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

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

(A) the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance, unless the L/C Issuer shall have approved such expiry date (in its sole discretion); or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the Borrowers Cash-Collateralize such Letter of Credit pursuant to Section 2.03(g) or all of the Revolving Credit Lenders have otherwise approved such expiry date.

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

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

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

(C) such Letter of Credit is to be denominated in a currency other than Dollars;

(D) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(E) any Revolving Credit Lender is at such time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole but reasonable discretion) with the Borrowers or such Revolving Credit Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

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

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

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

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

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrowers delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Principal Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the

expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may require. Additionally, the Borrowers shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

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

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

(c) Drawings and Reimbursements: Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrowers and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrowers shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Revolving Credit Lender's Applicable Revolving Credit Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each

Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

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

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

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

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

(d) Repayment of Participations.

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

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

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

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

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

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

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

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any Subsidiary thereof.

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

(f) Role of L/C Issuer. Each Revolving Credit Lender and each of the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Revolving Credit Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any

beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as they may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. Upon the request of the Administrative Agent or the L/C Issuer (with a copy to the Administrative Agent) (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation or Letter of Credit for any reason remains outstanding and, with respect to any such Letter of Credit, partially or wholly undrawn, the Borrowers shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations in an amount equal to one hundred percent (100%) of such Outstanding Amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be. Sections 2.05, and 8.02(c) set forth certain additional requirements to deliver Cash Collateral hereunder. In addition, at any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or any L/C Issuer or the Swing Line Lender (in each case with a copy to the Administrative Agent), the Borrowers shall Cash Collateralize the L/C Issuers' (and, if applicable, the Swing Line Lender's) Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender in accordance with the terms of this Agreement) in an amount equal to one hundred percent (100%) of such Fronting Exposure. For purposes of this Agreement, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Revolving Credit Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Revolving Credit Lenders). Derivatives of such term have corresponding meanings. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the L/C Issuer and the Revolving Credit Lenders, a first priority security interest in all such cash, deposit accounts and all balances therein and in all other property so provided as collateral pursuant to this Agreement, and in all proceeds of the foregoing, all as security for the obligations to which Cash Collateral may be applied. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the amount required by this Section or Section 2.05, as applicable, the Borrowers or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Agreement in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or payment in full of all

other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Credit Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi)) or (ii) the Administrative Agent's determination that there exists excess Cash Collateral; provided, however, that Cash Collateral furnished by or on behalf of the Borrowers shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.05 or in Section 2.17, as applicable, may be otherwise applied in accordance with Section 8.03).

(h) Applicability of ISP. Unless otherwise expressly agreed by the L/C Issuer and the Principal Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each standby Letter of Credit.

(i) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Revolving Credit Percentages allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Other Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee and other fees and charges for each Letter of Credit as mutually agreed to in writing by the Borrowers and the L/C Issuer.

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

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of any Borrower, the Borrowers shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of any such Subsidiaries inures to the benefit of the Borrowers, and that the Borrowers' business derives substantial benefits from the businesses of such Subsidiaries.

#### **2.04 Swing Line Loans.**

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this Section 2.04, agrees to make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Revolving Credit Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Revolving Credit Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving

Credit Facility, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender at such time, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Revolving Credit Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrowers' irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (x) telephone or (y) a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to Swing Line Lender and Administrative Agent of a Swing Line Loan Notice. Each Swing Line Notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrowers.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (each of which hereby irrevocably authorize the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrowers with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving



Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

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

(d) Repayment of Participations.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Revolving Credit Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender; provided that any such payment shall, to the extent distributed after the Business Day following the Swing Line Lender's receipt thereof, be accompanied by interest on such payment amount (payable by the Swing Line Lender) calculated at the Federal Funds Rate commencing as of the date which is two (2) days following the Business Day following the Swing Line Lender's receipt of such payment through the date on which the Swing Line Lender makes such payment to the applicable Revolving Credit Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand (if such demand is received by a Revolving Credit Lender by 2:00 p.m., and if such demand is received after 2:00 p.m., then the next Business Day) to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

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

(g) Existence of a Defaulting Lender. The Swing Line Lender shall not be required to make any portion of a Swing Line Loan attributable to the risk participation of a Defaulting Lender unless (i) the Swing Line Lender has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Swing Line Lender (in its sole but reasonable discretion) with the Borrowers or such Defaulting Lender to eliminate the Swing Line Lender's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Swing Line Loan then proposed to be made or that Swing Line Loan and all other Swing Line Loans to which the Swing Line Lender has Fronting Exposure, as it may elect in its sole discretion or (ii) the Fronting Exposure resulting from such Defaulting Lender has been reallocated pursuant to Section 2.17(a)(iv).

## **2.05 Prepayments.**

(a) The Borrowers may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Credit Loans or Term Loans in whole or in part without premium or penalty; provided that (i) such notice must be in a form acceptable to Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days (or such lesser number of days as may be agreed to by the Administrative Agent) prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in the principal amount of \$2,000,000 or a whole multiple of \$500,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in the principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility) of such prepayment. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein (which date may be conditioned upon the effectiveness of other credit facilities or other transactions specified therein). Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.17, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages in respect of the relevant Facility.

(b) The Borrowers may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein (which date may be conditioned upon the effectiveness of other credit facilities or other transactions specified therein).

(c) If, for any reason and at any time, (i) the Total Revolving Credit Outstandings exceed the Revolving Credit Facility at such time, (ii) the Outstanding Amount of L/C Obligations exceeds the Letter of Credit Sublimit at such time, or (iii) the Outstanding Amount of Swing Line Loans exceeds the Swing Line Sublimit at such time, Borrowers shall immediately prepay the Revolving Credit Loans, the Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations, as applicable, in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c), unless, after the prepayment in full of the Revolving Credit Loans and Swing Line Loans, the Total Revolving Credit Outstandings exceed the Revolving Credit Facility at such time.

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

(a) Optional. The Borrowers may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days (or such lesser number of days as may be agreed to by the Administrative Agent) prior to the date of termination or reduction (which such notice may be conditioned upon the effectiveness of other credit facilities or other transactions specified therein), (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the (A) Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit.

(b) Mandatory. (i) The aggregate Term Commitments shall be automatically and permanently reduced to zero on the Closing Date, and (ii) if, after giving effect to any reduction of the Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such Sublimit shall be automatically reduced by the amount of such excess.

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

(d) Effect on Fees. Any termination or reduction of any Revolving Credit Commitments under this Section 2.06 shall terminate or proportionately reduce the fees in respect of the Revolving Credit Facility accruing after the effective date of such termination or reduction including those under Section 2.09.

## **2.07 Repayment of Loans.**

(a) The Borrowers shall repay to the Revolving Credit Lenders on the Maturity Date with respect to the Revolving Credit Facility the aggregate principal amount of Revolving Credit Loans outstanding on such date in accordance with Section 2.14 hereof.

(b) The Borrowers shall repay to the Term Lenders on the Maturity Date with respect to the Term Facility the aggregate principal amount of all Term Loans outstanding on such date.

(c) The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) the date five (5) Business Days after such Loan is made and (ii) the Maturity Date with respect to the Revolving Credit Facility.

## **2.08 Interest.**

(a) Revolving Credit Facility. Subject to the provisions of subsection (d) below: (i) each Eurodollar Rate Loan under the Revolving Credit Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate for the Revolving Credit Facility; and (ii) each Base Rate Loan under the Revolving Credit Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Credit Facility.

(b) Term Facility. Subject to the provisions of subsection (d) below: (i) each Eurodollar Rate Loan under the Term Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate for the Term Facility; and (ii) each Base Rate Loan under the Term Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Term Facility.

(c) Swing Line. Subject to subsection (d) below, each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Credit Facility.

(d) Default Interest.

(i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) The Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws if (A) any Event of Default under Section 8.01(a) exists and (B) upon the request of the Required Lenders, while any Event of Default (other than an Event of Default under Section 8.01(a)) exists,.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) Payment. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.09 Fees.**

In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Facility Fee. For each day prior to the termination of this Agreement and the payment in full of the Total Revolving Credit Outstandings, the Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender (other than Defaulting Lenders to the extent set forth in Section 2.17(a)(iii)) in accordance with its Applicable Revolving Credit Percentage, a facility fee (the “Facility Fee”) equal to the Applicable Rate times the actual daily amount of the Aggregate Revolving Credit Commitments (or, if the Revolving Credit Facility has terminated, on the actual daily Total Revolving Credit Outstandings), regardless of usage, subject to adjustment as provided in Section 2.17. The Facility Fee shall accrue at all times during the Availability Period (and thereafter so long as Total Revolving Credit Outstandings is greater than zero (0)), including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date in respect of the Revolving Credit Facility (and, if applicable, thereafter on demand). The Facility Fee shall be calculated quarterly in arrears, and if there is any change in the Revolving Credit Facility Applicable Rate for Facility Fees set forth in the definition of “Applicable Rate” during any quarter, the actual daily amount shall be

computed and multiplied by the applicable Revolving Credit Facility Applicable Rate for Facility Fees separately for each period during such quarter that such Revolving Credit Facility Applicable Rate for Facility Fees was in effect.

(b) Other Fees. The Borrowers shall, without duplication of any fees documented herein, pay to the Arrangers and the Administrative Agent any such other fees as mutually agreed to. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, except as otherwise specifically agreed.

## **2.10 Computation of Interest and Fees**

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

## **2.11 Evidence of Debt**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.12 Payments Generally; Administrative Agent's Clawback**

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office; provided that any such payment shall, to the extent distributed after the Business Day following the Administrative Agent's receipt thereof, be accompanied by interest on such payment amount (payable by the Administrative Agent) calculated at the Federal Funds Rate commencing as of the date which is two (2) days following the Business Day following the Administrative Agent's receipt of such payment through the date on which the Administrative Agent makes such payment to the applicable Lender(s). All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next

succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Credit Loans and Term Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

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

### **2.13 Sharing of Payments by Lenders.**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (x) notify the Administrative Agent of such fact, and (y) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.13 shall not be construed to apply to (x) any payment made by or on behalf of the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.03(g), or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section 2.13 shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

### **2.14 Maturity Date.**

(a) Maturity Date. Subject to the provisions of clause (b) of this Section 2.14, the Borrowers shall, on the Maturity Date, cause the Obligations (including, without limitation, all outstanding principal and interest on the Revolving Credit Loans, Term Loans and Swing Line Loans and all fees, costs and expenses due and owing under the Loan Documents) to be paid in full.

(b) Satisfaction of Obligations Upon Acceleration. Notwithstanding anything contained herein or in any other Loan Document to the contrary, to the extent any of the Obligations are accelerated pursuant to the terms hereof (including, without limitation, Section 8.02 hereof), the Borrowers shall, immediately upon the occurrence of such acceleration, cause such accelerated Obligations to be paid in full.

(c) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

#### **2.15 Extension of Maturity Date With Respect to the Revolving Credit Facility.**

(a) Request for an Extension. The Principal Borrower may, by written notice to the Administrative Agent (who shall promptly notify the Lenders) not earlier than ninety (90) days and not later than sixty (60) days prior to (i) the original Maturity Date with respect to the Revolving Credit Facility, request that the Lenders extend the Maturity Date with respect to the Revolving Credit Facility for an additional six (6) months to July 31, 2022 (the “First Extended Revolving Maturity Date”), and (ii) the First Extended Revolving Maturity Date, request that the Lenders extend the Maturity Date with respect to the Revolving Credit Facility for an additional six (6) months to January 31, 2023, in each case so long as no Default exists at the time of such request.

(b) Conditions to Effectiveness of Extension. As a condition precedent to each extension of the Maturity Date pursuant to this Section:

(i) the Borrowers shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the then-existing Maturity Date with respect to the Revolving Credit Facility (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such extension and (B) in the case of the Borrowers, certifying that, before and after giving effect to such extension, (1) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or in all respects in the case of a representation or warranty containing a materiality qualifier) on and as of the then-existing Maturity Date with respect to the Revolving Credit Facility, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or in all respects in the case of a representation or warranty containing a materiality qualifier) as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (2) no Default exists;

(ii) on the then-existing Maturity Date with respect to the Revolving Credit Facility, the Borrowers shall pay to Administrative Agent for the pro rata account of each Lender in accordance with their respective Applicable Percentages an extension fee equal to three-quarters of one-tenth of one percent (0.075%) of the Aggregate Revolving Credit Commitments as of such date, which fee shall, when paid, be fully earned and non-refundable under any circumstances; and

(iii) no Default or Event of Default shall exist on the date of such extension or after giving effect thereto.

(c) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

#### **2.16 Increase in Commitments.**

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrowers may request increases in the Total Credit Exposure of all Lenders (which increase may take the form of additional Revolving Credit Commitments under the Revolving Credit Facility, an increase to the Term Facility, one or more additional term loan tranches or any combination of the foregoing) by an amount not exceeding, in the aggregate, \$400,000,000; provided that any such request for an increase shall be in a minimum amount of \$25,000,000. At the time of sending such notice, the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).



(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Total Credit Exposure and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Total Credit Exposure.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrowers and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent and the L/C Issuer (which approvals shall not be unreasonably withheld), the Borrowers may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Total Credit Exposure of any Lender is increased in accordance with this Section, the Administrative Agent and the Borrowers shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrowers shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrowers, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or in all respects in the case of a representation or warranty containing a materiality qualifier) on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or in all respects in the case of a representation or warranty containing a materiality qualifier) as of such earlier date, and except that for purposes of this Section 2.16, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (B) no Default or Event of Default exists. To the extent that the increase of the Total Credit Exposure shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance satisfactory to Administrative Agent, to include such terms as are customary for a term loan commitment. The Borrowers shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Total Credit Exposure of any Lender under this Section 2.16, and each Loan Party shall execute and deliver such documents or instruments as Administrative Agent may reasonably require to evidence such increase in the Total Credit Exposure of any Lender and to ratify each such Loan Party's continuing obligations hereunder and under the other Loan Documents. In addition, the Borrowers shall, to the extent requested by any Lender(s), deliver to such Lender(s), as of the Increase Effective Date, new Notes representing the Commitment(s) of such Lender(s).

(f) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

## **2.17 Defaulting Lenders**

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

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

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative

Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Principal Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Principal Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall be entitled to receive any facility fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the Outstanding Amount of the Revolving Credit Loans funded by it and (2) its Applicable Percentage of the stated amount of Letters of Credit and Swing Line Loans for which it has provided Cash Collateral pursuant to Section 2.03, Section 2.04, or Section 2.17(a)(ii), as applicable (and the Borrowers shall (A) be required to pay to each of the L/C Issuer and the Swing Line Lender, as applicable, the amount of such fee allocable to its Fronting Exposure arising from that Defaulting Lender and (B) not be required to pay the remaining amount of such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(i).

(iv) Reallocation of Applicable Revolving Credit Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Applicable Revolving Credit Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Credit Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Credit Loans of that Lender. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Principal Borrower, the Administrative Agent, the Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

### ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (x) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(e) relating to the maintenance of a Participant Register and (z) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times prescribed by applicable Law or reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.01(e)(ii)(A), 3.01(e)(ii)(B), and 3.01(e)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W 8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or Form W-8BEN, as applicable), or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or Form W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this paragraph, “FATCA” shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, Borrower and Administrative Agent shall treat (and the Lenders hereby authorize Administrative Agent to treat) the Obligations as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01) it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount

paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to the indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Defined Terms. For purposes of this Section 3.01, the term “Lender” includes the Swing Line Lender and the L/C Issuer, and the term “applicable Law” includes FATCA.

(h) Survival. Each party’s obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

### **3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain or fund or charge interest with respect to any Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts in good faith the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts in good faith the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

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

If, in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (a)(i) above, “Impacted Loans”), or (b) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative

Agent will promptly so notify the Borrowers and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in this Section, the Administrative Agent, in consultation with the Borrowers and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, which alternative interest rate shall be consistent with the rates generally provided to similarly situated borrowers (but not necessarily all such borrowers) and without any obligation to disclose information regarding any other customers. Such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) of the first sentence of this Section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrowers that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrowers written notice thereof.

### **3.04 Increased Costs .**

(a) Increased Costs Generally . If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, Letters of Credit, participations in a Letter of Credit or any Eurodollar Rate Loan made by it; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, continuing, converting to or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements . If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if

any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

### **3.05 Compensation for Losses.**

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

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrowers; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 10.13;

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

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



### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then, at the request of the Borrowers, such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 10.13.

### **3.07 Survival.**

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

## **ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

### **4.01 Conditions of Initial Credit Extension.**

The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

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

(i) fully executed counterparts of this Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Principal Borrower;

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

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party (provided, that with respect to all of the above other than resolutions or similar approval/authority documents, to the extent such materials were delivered in connection with the Existing Credit Agreements, the Loan Parties shall be permitted to provide certificates of no change with respect to such items);

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is validly existing and in good standing in the jurisdiction of such Loan Party's incorporation, organization, or formation, as applicable;

(v) favorable opinions of (1) Hunton and Williams, LLP, special counsel to the Loan Parties and (2) Jeffrey D. Miller, general counsel of the Principal Borrower, addressed to the Administrative Agent and each Lender, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(vi) a certificate of the chief financial officer of the Principal Borrower:

(A) either (1) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by the Loan Parties and the validity against the Loan Parties of the Loan Documents to which each is a party, and such consents, licenses and approvals shall be in full force and effect, or (2) stating that no such consents, licenses or approvals are so required;

(B) certifying (1) that immediately after giving effect to this Agreement, the other Loan Documents and all the transactions contemplated therein to occur on such date, (x) each Borrower is, and the Loan Parties, taken as a whole, are, Solvent, (y) no Default or Event of Default exists, and (z) all representations and warranties contained herein and in the other Loan Documents are true and correct in all material respects (or in all respects in the case of a representation or warranty containing a materiality qualifier), (2) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (3) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (4) the current Credit Ratings; and

(C) demonstrating compliance, as of the end of the fiscal period ended June 30, 2017, with the financial covenants contained in Section 7.11 by detailed calculation thereof (which calculation shall be in form satisfactory to the Administrative Agent and which shall include, among other things, an explanation of the methodology used in such calculation and a breakdown of the components of such calculation);

(vii) receipt by Wells Fargo Bank, National Association, of a principal prepayment in an amount equal to or greater than \$100,000,000 (exclusive of any prepayment fees) with respect to that certain Amended and Restated Seven-Year Term Loan Agreement dated as of November 12, 2013, by and among Borrowers, the guarantors (as defined therein), the lenders (as defined therein), and Wells Fargo Bank, National Association, as Administrative Agent, as amended prior to the date hereof; and

(viii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) There shall not have occurred a material adverse change since December 31, 2016 in the business, assets, operations or financial condition of the Borrowers and the other Loan Parties, taken as a whole, or in the facts and information, taken as a whole, regarding such entities as represented to date.

(c) There shall not exist any action, suit, investigation, or proceeding pending or threatened in writing, in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect.

(d) Any fees required to be paid on or before the Closing Date shall have been paid (or provisions reasonably satisfactory to the Administrative Agent shall have been made for the concurrent payment thereof).

(e) Unless waived by the Administrative Agent, the Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute their reasonable estimate of such fees, charges and disbursements incurred or to be incurred by them through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **4.02 Conditions to all Credit Extensions.**

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or in all respects in the case of a representation or warranty containing a materiality qualifier) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (unless such representation and warranty is subject to a materiality or Material Adverse Effect qualifier in which case it will be true and correct in all respects) on and as of the date of such Credit Extension, it being understood and agreed that any violation of any covenant contained in Section 7.11 shall be deemed material such that any representation with respect to compliance therewith shall be deemed material in any event, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default or Event of Default shall exist and be continuing either prior to or after giving effect to such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrowers shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

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

Each of the Borrowers hereby represents and warrants to the Administrative Agent and the Lenders that:

#### **5.01 Existence, Qualification and Power; Compliance with Laws.**

Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all Laws; except in each case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **5.02 Authorization; No Contravention .**

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law. Each Loan Party and each Subsidiary thereof is in compliance with all Contractual Obligations referred to in clause (b) (i), except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **5.03 Governmental Authorization; Other Consents .**

Except for such approvals, consents, exemptions, authorizations, actions, notices or filings that have been made or obtained, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

#### **5.04 Binding Effect .**

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

#### **5.05 Financial Statements; No Material Adverse Effect .**

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

(b) The unaudited consolidated balance sheet of the Principal Borrower and its Subsidiaries dated June 30, 2017, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Principal Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

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

#### **5.06 Litigation .**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or any of their Subsidiaries or against any of their properties or revenues (a) that purport to affect or pertain to this Agreement or any other Loan Document, or any of

the transactions contemplated hereby, or (b) as to which there is a reasonable likelihood of an adverse determination, and if determined adversely, could reasonably be expected to have a Material Adverse Effect.

#### **5.07 No Default.**

Neither the Borrowers nor any of their Subsidiaries is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property; Liens.**

Each of the Borrowers and each of their Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Borrowers and their Subsidiaries is subject to no Liens, other than Liens not prohibited by Section 7.01.

#### **5.09 Environmental Compliance.**

Each of the Borrowers and each of their Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrowers have reasonably concluded that, except as specifically disclosed in Schedule 5.09, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. In furtherance (and not in limitation) of the foregoing, the Borrowers hereby represent and warrant that:

(a) To the knowledge of each Responsible Officer of the Loan Parties after due and diligent investigation, there is no violation of any Environmental Law with respect to the facilities and properties owned, leased or operated by the Subject Parties or the businesses operated by the Subject Parties which would, in the aggregate, result in anticipated clean-up costs in excess of \$30,000,000.

(b) No Subject Party has, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, been notified of any material action, suit, proceeding or investigation which calls into question compliance by any Subject Party with any Environmental Laws or which seeks to suspend, revoke or terminate any license, permit or approval necessary for the generation, handling, storage, treatment or disposal of any Hazardous Material in any material respect of the Subject Parties taken as a whole.

#### **5.10 Insurance.**

The properties of each of the Borrowers and each of their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of any Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Borrower or the applicable Subsidiary operates.

#### **5.11 Taxes.**

Each of the Borrowers and each of their Subsidiaries (as applicable) have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Borrower or any of their Subsidiaries that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

## **5.12 ERISA Compliance.**

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws except in such instances in which the failure to comply could not reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed (or an application may be filed during the remedial amendment period under Section 401(b) of the Code) with respect thereto and, to the knowledge of any Responsible Officer of the Borrowers after due and diligent investigation, nothing has occurred which would prevent, or cause the loss of, such qualification, except in such instances that the loss of such qualification or failure to so qualify could not reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and have not applied for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Plan subject to Section 412 of the Code, except in such instances that the failure to make timely contributions or a funding waiver or extension could not reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount.

(b) There are no pending or, to the knowledge of the Borrowers after due and diligent investigation, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred and no ERISA Event is reasonably expected to occur that has resulted or could reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is sixty percent (60%) or higher, or if lower than sixty percent (60%), it is not reasonably expected to result (together with any ERISA Events) in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount; (iv) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; (v) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums in an aggregate amount in excess of the Threshold Amount and there are no premium payments which have become due that are unpaid; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan if such termination has resulted or could reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount.

(d) Each Loan Party represents and warrants that the underlying assets of such Loan Party do not constitute Plan Assets, and that such Loan Party is not and will not be using Plan Assets of one or more Benefit Plans to satisfy any obligations under the Loans, the Letters of Credit or the Commitments.

## **5.13 Subsidiaries; Equity Interests.**

Set forth on Schedule 5.13 is a complete and accurate list of all Subsidiaries of each Consolidated Party as of the Closing Date (or any date such Schedule is updated pursuant to this Section). Information on Schedule 5.13 includes (a) jurisdiction of incorporation or organization and (b) with respect to any Subsidiary that is not a Wholly Owned Subsidiary, the number of shares of each class of Equity Interests outstanding, the number and percentage of outstanding shares of each class owned (directly or indirectly) by such Subsidiary, and the number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. The outstanding Equity Interests of all such Subsidiaries are validly issued, fully paid and non-assessable and is owned by each such Consolidated Party, directly or indirectly, free and clear of all Liens. Other than as set forth in Schedule 5.13, no Subsidiary that is not a Wholly Owned Subsidiary has outstanding any securities convertible into or exchangeable

for its Equity Interests nor does any such Person have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its Equity Interests. Schedule 5.1.3 may be updated from time to time by the Borrowers by giving written notice thereof to the Administrative Agent.

**5.14 Margin Regulations; Investment Company Act.**

(a) The Borrowers are not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Loan Party is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.**

The Borrowers have disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which they or any of their respective Subsidiaries are subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that projections are not guarantees of future performance, and the actual results could differ materially).

**5.16 Compliance with Laws.**

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

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

Each Borrower and each of their Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except where such conflict could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrowers or any Subsidiary of any of them infringes upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, threatened in writing, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18 OFAC.**

Neither the Borrowers, nor any of their Subsidiaries, nor, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, any director, officer, employee, agent, affiliate or representative thereof acting or benefiting in any capacity in connection with this Agreement, is an individual or entity that is (a) currently the subject of any Sanctions, (b) included on OFAC’s List of Specially Designated Nationals, Her Majesty’s Treasury’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction.

**5.19 Solvency.**

Each Borrower is, and the Loan Parties, taken as a whole, are, and after giving effect to all Obligations hereunder will be, Solvent.

**5.20 Anti-Corruption Laws.**

Each Borrower and its Subsidiaries, and, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, their respective officers and employees, have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Laws and applicable Sanctions by Borrower, its Subsidiaries, and their respective officers and employees.

**5.21 EEA Financial Institutions.**

No Loan Party is an EEA Financial Institution.

**ARTICLE VI  
AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder is not Fully Satisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of their Subsidiaries to:





## **6.01 Financial Statements.**

Deliver to the Administrative Agent, which in turn will deliver to each Lender, in form and detail satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Principal Borrower, a consolidated balance sheet of the Principal Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Principal Borrower, a consolidated balance sheet of the Principal Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Principal Borrower's fiscal year then ended (including applicable 10-Q's and 10-K's), setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by a Responsible Officer of the Principal Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Principal Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrowers shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrowers to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

## **6.02 Certificates; Other Information.**

Deliver to the Administrative Agent, which in turn will deliver to each Lender, in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a projection of Capital Expenditures for the next fiscal year for each Property of any Subject Party;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b):

(i) a certificate of the chief financial officer of the Principal Borrower substantially in the form of Exhibit D attached hereto, (A) demonstrating compliance, as of the end of each such fiscal period, with the financial covenants contained in Section 7.11 by detailed calculation thereof (which calculation shall be in form satisfactory to the Administrative Agent and which shall include, among other things, an explanation of the methodology used in such calculation and a breakdown of the components of such calculation), (B) stating that, at all times during each such fiscal period, no Default or Event of Default occurred or exists, or if any Default or Event of Default did occur or does exist, specifying the nature and extent thereof and what action the Loan Parties propose to take with respect thereto, and (C) attaching a Quarterly Subsidiary Joinder Statement, together with (1) a certification from a Responsible Officer stating whether, as of the date of such Quarterly Subsidiary Joinder Statement, there are any Material Subsidiaries of any Borrower that, pursuant to the terms of the Loan Documents, should be, but have not yet been, joined as Loan Parties and (2) copies of all counterparts to the Guaranty executed by any Person during the immediately preceding fiscal quarter;

(ii) a schedule of the Properties summarizing total revenues, expenses, Net Operating Income, Adjusted NOI, Annualized Adjusted NOI and occupancy rates as of the last day of the applicable quarter (to the extent not otherwise delivered pursuant to Section 6.01(a) or (b));

(iii) a listing of all Properties Under Development showing the total capital obligation of the Loan Parties with respect to each such Property Under Development and funds expended to date in connection with each such Property Under Development;

(iv) a projection of Dispositions for the next fiscal quarter for each Consolidated Party and each other Subject Party;

(v) a summary of land purchases by the Consolidated Parties and each other Subject Party for the prior quarter;

(vi) a summary of all Net Cash Proceeds received by the Loan Parties during such fiscal quarter, together with a verification of the amount of such Net Cash Proceeds, in each case in form and detail satisfactory to the Administrative Agent; and

(vii) promptly after request by the Administrative Agent, a complete list of all Guarantees of the Loan Parties described in clause (a)(iv) of the definition of the term “Guarantee” set forth in Section 1.01 hereof and, for each of such obligations, information as to (A) the amount of leasable space, per square foot rental rate and term applicable to such obligations, (B) any leases or other revenue sources for which the Loan Parties receive credit towards such obligations and (C) any cash reserves being maintained in relation to such obligations and the method of calculation thereof;

(c) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Principal Borrower by independent accountants in connection with the accounts or books of the Principal Borrower or any Subsidiary of any Borrower, or any audit of any of them, in each case subject to applicable professional guidelines or ethical rules;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrowers, and copies of all annual, regular, periodic and special reports and registration statements which any of the Borrowers may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(e) promptly, such additional information regarding the business, financial or corporate affairs of the Principal Borrower or any other Subject Party, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Principal Borrower posts such documents, or provides a link thereto on the Principal Borrower’s website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Principal Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third party website or whether sponsored by the Administrative Agent). The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, “ Borrower Materials ”) by posting the Borrower Materials on IntraLinks or a substantially similar electronic

transmission system (the “ Platform ”) and (b) certain of the Lenders (each, a “ Public Lender ”) may have personnel who do not wish to receive material non-public information with respect to the Borrowers or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrowers hereby agree that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrowers shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrowers or their respective securities for purposes of United States Federal and state securities laws ( provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07 ); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information   ” and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

### **6.03 Notices.**

After a Responsible Officer of the Borrowers obtains knowledge of the same, promptly notify the Administrative Agent (who will notify each Lender):

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the commencement of, or any material development in, any litigation or proceeding affecting any Borrower or any Subsidiary of any of them, to the extent that such litigation has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (d) of the occurrence of any ERISA Event;
- (e) of any material change in accounting policies or financial reporting practices by any Borrower or any Subsidiary of any of them; and
- (f) of any announcement by Moody’s or S&P of any change in a Credit Rating.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Principal Borrower setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and propose to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

### **6.04 Payment of Obligations.**

Pay and discharge as the same shall become due and payable, all its material obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the applicable Borrower or Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (except to the extent such Lien would not be prohibited by Section 7.01 ); and (c) all material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

### **6.05 Preservation of Existence, Etc.**

- (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 ;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted;

(b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**6.07 Maintenance of Insurance.**

Maintain with financially sound and reputable insurance companies not Affiliates of any Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

**6.08 Compliance with Laws.**

Comply in all material respects with the requirements of all Laws (including, without limitation, all Environmental Laws) and all other orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.**

(a) Maintain proper books of record and account in accordance with GAAP consistently applied; and

(b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Borrower or such Subsidiary, as the case may be.

**6.10 Inspection Rights.**

Permit representatives appointed by the Administrative Agent, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect any of its Properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (provided that the Borrowers shall have the right to be present at all such meetings), all at the expense of the Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrowers in a manner that will not unreasonably interfere with such Person's business operations; provided, however, that, so long as no Event of Default then exists or is continuing, such visits and inspections shall not occur more than once per fiscal year of Borrowers; provided, further that while an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

### **6.11 Use of Proceeds.**

Use the proceeds of the Credit Extensions solely for the following purposes: (a) to finance the acquisition of real properties or the buyout of third-party equity owners in any joint venture; (b) to finance the acquisition of Persons whose primary business is the ownership, leasing and management of real properties; (c) to finance the development of improvements to real properties owned by the Borrowers and their respective Subsidiaries; (d) to pay any outstanding sums pursuant to, or to refinance, existing Indebtedness and related transaction fees and expenses; and (e) for working capital and other general corporate purposes; each pursuant to the terms hereof or of the other Loan Documents.

### **6.12 Additional Guarantors; Release of Guarantors.**

(a) If (x) any Person (other than a Non-Guarantor Subsidiary) becomes a Material Subsidiary of the Principal Borrower, (y) at any time any Non-Guarantor Subsidiary qualifying as such as a result of clauses (a), (b) or (c) of the definition thereof could become a Loan Party without violating the terms of any material contract, agreement or document to which it is a party, or (z) a Subsidiary of the Principal Borrower guarantees, or otherwise becomes obligated in respect of, any Unsecured Debt of the Consolidated Parties, the Principal Borrower shall, contemporaneously, in the case of clause (z), and within thirty (30) days after delivery of the Quarterly Subsidiary Joinder Statement pursuant to Section 6.02(b)(i) (or such longer period as may be agreed to by the Administrative Agent) in the case of clauses (x) and (y), (i) if such Person is a Domestic Subsidiary of the Principal Borrower, cause such Person to become a Guarantor by executing and delivering to the Administrative Agent a counterpart of the Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) cause such Person to deliver to the Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a), all in form, content and scope reasonably satisfactory to the Administrative Agent; provided, that to the extent such Person holds (whether upon delivery of the items required above or at any time after the delivery of the items required above) assets with a fair market value in excess of \$5,000,000 or to the extent requested by Administrative Agent, the Borrowers shall cause to be delivered to the Administrative Agent favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in this clause (a)). If a Non-Guarantor Subsidiary executes and delivers the Guaranty, it shall no longer be deemed a Non-Guarantor Subsidiary under this Agreement.

(b) Notwithstanding any other provisions of this Agreement to the contrary, to the extent a Guarantor anticipates becoming or intends to become a Non-Guarantor Subsidiary pursuant to any of clauses (b), (c) or (d) of the definition thereof, the Principal Borrower may request a release of such Guarantor as a Guarantor hereunder in accordance with the following:

(i) the Principal Borrower shall deliver to the Administrative Agent, not less than ten (10) days and not more than thirty (30) days prior to the anticipated or intended conversion of a Guarantor into a Non-Guarantor Subsidiary, a written request for release of the applicable Guarantor and a pro forma compliance certificate of the chief financial officer of the Principal Borrower in form and substance acceptable to the Administrative Agent, (A) demonstrating that upon such release the Loan Parties will on a pro forma basis continue to comply with (1) the financial covenants contained in Section 7.11 and (2) the financial covenants contained in each of the indentures or other agreements relating to any publicly issued debt securities of any Consolidated Party, in each case by a reasonably detailed calculation thereof (which calculation shall be in form reasonably satisfactory to the Administrative Agent and which shall include, among other things, an explanation of the methodology used in such calculation and a breakdown of the components of such calculation), (B) stating that the Loan Parties will be in compliance with each of the covenants set forth in Articles VI and VII of the Agreement at all times following such release, (C) stating that, following such release, no Default or Event of Default will exist under the Agreement or any of the other Loan Documents, or if any Default or Event of Default will exist, specifying the nature and extent thereof and what action the Loan Parties propose to take with respect thereto, and (D) attaching, pursuant to Section 5.13 of the Agreement, an updated version of Schedule 5.13 to the Agreement;

(ii) the Administrative Agent shall have reviewed and approved (in writing) the request for release and pro forma compliance certificate delivered pursuant to subclause (i) above; provided, that the

failure of the Administrative Agent to respond to such a request within ten (10) days of its receipt thereof shall constitute the Administrative Agent's approval thereof; provided, that any approval of the Administrative Agent provided pursuant to this subclause (ii) shall lapse and be null and void thirty (30) days following the granting thereof if the applicable Guarantor has not, on or prior to the completion of such period, met the criteria for qualification as a Non-Guarantor Subsidiary (as evidenced by the delivery by the Principal Borrower of a notice and certification in accordance with subclause (iii) below); and

(iii) the Principal Borrower shall, concurrently with or promptly following the applicable Guarantor's satisfaction of the criteria for qualification as a Non-Guarantor Subsidiary deliver to the Administrative Agent a notice and certification of such qualification.

Notwithstanding any language to the contrary above, so long as the chief financial officer of the Principal Borrower has certified in a compliance certificate (and the Administrative Agent has no evidence or information which brings into reasonable doubt the veracity of such certifications) that: (A) upon such release the Loan Parties (1) will on a pro forma basis continue to comply with the financial covenants contained in Section 7.11 hereof, and the financial covenants contained in each of the indentures or other agreements relating to any publicly issued debt securities of any Consolidated Party, and (2) will be in compliance with each of the covenants set forth in Articles VI and VII of the Agreement at all times following such release, (B) following such release, no Default or Event of Default will exist under this Agreement or any of the other Loan Documents, or if any Default or Event of Default will exist, the nature and extent thereof and what action the Loan Parties propose to take with respect thereto will be specified, and (C) attached pursuant to Section 5.13 of the Agreement, is an updated version of Schedule 5.13 to the Agreement, the request for release shall be approved and issued by the Administrative Agent within the ten (10)-day time period specified in subsection (b)(ii).

Upon satisfaction of each of the above-noted conditions, a Guarantor shall be deemed released from its obligations hereunder and under each of the Loan Documents.

#### **6.13 Intentionally Omitted.**

#### **6.14 REIT Status.**

Take all action necessary to maintain Highwoods Properties' status as a REIT (giving effect to any applicable cure or corrective provisions pursuant to Section 856(c), 857, or 860 of the Code).

#### **6.15 Environmental Matters.**

(a) Reimburse the Administrative Agent and Lenders for and hereby hold the Administrative Agent and Lenders harmless from all fines or penalties made or levied against the Administrative Agent or any of the Lenders by any Governmental Authority as a result of or in connection with (i) the use of Hazardous Materials at the Properties, (ii) the use of Hazardous Materials at the facilities thereon, or (iii) the use, generation, storage, transportation, discharge, release or handling of any Hazardous Materials at the Properties, or as a result of any release of any Hazardous Materials onto the ground or into the water or air from or upon the Properties at any time. The Loan Parties also agree that they will reimburse the Administrative Agent and Lenders for and indemnify and hold the Administrative Agent and Lenders harmless from any and all costs, expenses (including reasonable attorneys' fees actually incurred) and for all civil claims, judgments or penalties incurred entered, assessed, or levied against the Administrative Agent or any of the Lenders as a result of any of the Loan Parties' use of Hazardous Materials at the Properties or as a result of any release of any Hazardous Materials on the ground or into the water or air by any of the Loan Parties from or upon the Properties. Such reimbursement or indemnification shall include but not be limited to any and all judgments or penalties to recover the costs of cleanup of any such release by any of the Loan Parties from or upon Properties and all reasonable expenses incurred by the Administrative Agent or any of the Lenders as a result of such a civil action, including but not limited to reasonable attorneys' fees. The Loan Parties' obligations under this section shall survive the repayment of the Loans and be in supplement of any and all other reimbursement or indemnity obligations of the Borrowers set forth herein.

(b) If the Administrative Agent requests in writing and if (i) the applicable Borrower or Subsidiary does not have environmental insurance with respect to any property owned, leased or operated by a Subject Party or (ii) the

Administrative Agent has reason to believe that there exist Hazardous Materials on any property owned, leased or operated by a Subject Party which materially affect the value of such property and with respect to which the Borrowers have not furnished a report within the immediately previous twelve (12)-month period, furnish or cause to be furnished to the Administrative Agent, at the Borrowers' 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 Administrative Agent as to the nature and extent of the presence of any Hazardous Materials on any such property and as to the compliance by the applicable Subject Party(ies) with Environmental Laws; provided that if there exists a continuing Default or Event of Default as of the date of the Administrative Agent's written request for an environmental report pursuant to the terms hereof, the Borrowers shall provide such report regardless of whether either of the conditions set forth in subsections (i) and (ii) above have been satisfied. If the Borrowers fail to deliver such an environmental report within seventy-five (75) days after receipt of such written request then the Administrative Agent may arrange for same, and the parties hereto hereby grant to the Administrative Agent and their representatives or shall attempt in good faith to cause the applicable Subject Party(ies) to so grant 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).

(c) Conduct and complete (or use good faith efforts to cause to be conducted and completed) all investigations, studies, sampling, and testing and all remedial, removal, and other actions necessary to address all Hazardous Materials on, from, or affecting any Property 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 could reasonably be expected to have a Material Adverse Effect.

#### **6.16 Keepwell.**

Each Borrower at the time the Guaranty by any Specified Loan Party becomes effective with respect to any Swap Obligations, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Borrower's obligations and undertakings under this Section 6.16 voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Borrower under this Section 6.16 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Borrower intends this Section 6.16 to constitute, and this Section 6.16 shall be deemed to constitute, a Guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

#### **6.17 Anti-Corruption Laws.**

Each Borrower and each Loan Party shall conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

### **ARTICLE VII NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder is not Fully Satisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall not, nor shall they permit any of their respective Subsidiaries to, directly or indirectly:

**7.01 Liens.**

Contract, create, incur, assume or permit to exist any Lien with respect to any of its other property, assets or revenues or the property, assets or revenues of any other Person, whether now owned or hereafter acquired, if the Indebtedness underlying such Lien would cause the Borrowers to be in violation of Section 7.11(c) hereof.

**7.02 Intentionally Omitted.**

**7.03 Intentionally Omitted.**

**7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

- (a) any Borrower may merge with any other Borrower or may Dispose of all or substantially all of its assets to any other Borrower;
- (b) any Subsidiary may merge with (i) a Borrower, provided that such Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Guarantor is merging with another Subsidiary, the Guarantor shall be the continuing or surviving Person;
- (c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to a Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Guarantor, then the transferee must either be a Borrower or a Guarantor;
- (d) any of the Borrowers (other than the Principal Borrower and Highwoods Realty) or Guarantors may be merged into or consolidated with any other Borrower or Guarantor so long as the surviving entity is a Borrower or Guarantor; and
- (e) all or substantially all of the assets or all of the Equity Interests of a Subsidiary may be Disposed of to the extent such Disposition is permitted pursuant to Section 7.05.

**7.05 Dispositions.**

Make any Disposition, except:

- (a) Dispositions of obsolete or worn out property, or property no longer used or useful, whether now owned or hereafter acquired, in the ordinary course of business;
- (b) Dispositions of inventory in the ordinary course of business;
- (c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) Dispositions of property by any Subsidiary to the Borrowers or to any Wholly Owned Subsidiary thereof; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be a Borrower or a Guarantor;
- (e) Dispositions permitted by Section 7.04(a) - (d);



(f) Dispositions by the Borrowers and their Subsidiaries of any property (whether in one transaction or in several related transactions), the aggregate fair market value of which is less than \$200,000,000; and

(g) Dispositions in which the fair market value of the assets subject to such Disposition exceeds \$200,000,000, if and to the extent the Principal Borrower shall have delivered to the Administrative Agent at least two (2) Business Days prior to such Disposition a Pro Forma Compliance Certificate demonstrating that, upon giving effect to such Disposition, on a pro forma basis, the Borrowers shall be in compliance with all of the covenants contained in Section 7.11.

**7.06 Intentionally Omitted.**

**7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by the Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.**

Except as otherwise contemplated or permitted pursuant to Section 7.04 or Section 7.05, enter into any transaction of any kind with any Affiliate of any Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to such Borrower or such Subsidiary as would be obtainable by such Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate.

**7.09 Burdensome Agreements.**

Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability of any Subsidiary to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property to any Borrower or any Guarantor, (b) limits the ability of any Subsidiary to Guarantee the Indebtedness of the Borrowers, (c) constitutes a Negative Pledge or otherwise limits the ability of any Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; or (d) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided, that this Section 7.09 (i) shall not apply to provisions in Indebtedness documents permitted hereunder and that do not result in a violation of the covenants set forth in Section 7.11, provided that any such restriction contained therein relates only to the properties or assets constructed or acquired in connection with such Indebtedness and (ii) shall not be deemed to restrict the ability of any Non-Guarantor Subsidiary from entering into Contractual Obligations of any type related to secured financing transactions.

**7.10 Use of Proceeds.**

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.**

(a) Permit, as of the last day of any fiscal quarter, the TL/TA Ratio to be greater than 0.60x; provided that, as of the last day of the fiscal quarter in which any Significant Acquisition occurs and the last day of the two (2) consecutive quarters thereafter (but only for up to two (2) times during the period commencing on the Closing Date through and including the Maturity Date), the TL/TA Ratio may exceed 0.60x so long as it does not exceed 0.65x.

(b) Permit, as of the last day of any fiscal quarter, the ratio of Unencumbered Asset Value to Unsecured Debt to be less than 1.67x; provided that, as of the last day of the fiscal quarter in which any Significant Acquisition

occurs and the last day of the two (2) consecutive quarters thereafter (but only for up to two (2) times during the period commencing on the Closing Date through and including the Maturity Date), the ratio of Unencumbered Asset Value to Unsecured Debt may be less than 1.67x so long as it is not less than 1.54x.

(c) Permit, as of the last day of any fiscal quarter, the ratio of Secured Debt to Total Asset Value to be greater than 0.35x.

(d) Permit, as of the last day of any fiscal quarter, the ratio of Adjusted EBITDA for the immediately preceding twelve (12) months to Fixed Charges for the immediately preceding twelve (12) months to be less than 1.50x.

(e) Permit, as of the last day of any fiscal quarter, the ratio of Annualized Adjusted NOI from Unencumbered Assets to Interest Expense with respect to Unsecured Debt for the immediately preceding twelve (12) months, to be less than 1.75x.

(f) Permit Restricted Payments, for any twelve (12) month period, to exceed an amount equal to (i) ninety-five percent (95.0%) multiplied by (ii) FFO for such period; provided, that the Principal Borrower shall, in addition to the Restricted Payments permitted above, be permitted to make Restricted Payments (1) in any amount for the purpose of repurchasing or otherwise redeeming shares of its outstanding preferred stock, (2) in an aggregate amount equal to not more than \$200,000,000 during the period commencing on the Closing Date through and including the Maturity Date for the purpose of repurchasing or otherwise redeeming Equity Interests and (3) in such amounts as may be necessary in order for the Principal Borrower to maintain its REIT status and for the Principal Borrower or any of its Subsidiaries to eliminate any income or excise tax. Notwithstanding the foregoing, (x) if any Default or Event of Default has occurred and is continuing, the Restricted Payments shall not exceed the minimum amount necessary for the Principal Borrower to maintain its status as a REIT and for the Principal Borrower or any of its Subsidiaries to eliminate any income or excise tax, and (y) Borrowers shall not, and shall not permit any Subsidiary to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so if any Default or Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be directly or indirectly caused as a result thereof, or if the Obligations have been accelerated pursuant to Section 8.02(b) or otherwise pursuant to Section 8.02. For the avoidance of doubt, Highwoods Realty may make Restricted Payments (A) to the Principal Borrower to permit the Principal Borrower to make the Restricted Payments permitted in this clause (f) and (B) to Highwoods Realty's outside limited partners as required by its Organization Documents.

#### **7.12 Organization Documents.**

Permit any Loan Party to amend, modify, waive or change its Organization Documents in a manner materially adverse to the Lenders.

#### **7.13 Non-Guarantor Subsidiary Restrictions.**

Notwithstanding any other provision of this Agreement, the Loan Parties shall prohibit any Non-Guarantor Subsidiary from incurring any Indebtedness that is recourse to any Loan Party, other than Indebtedness in the form of customary non-recourse carve-outs for fraud, misapplication of funds, environmental indemnities, and other similar exceptions to non-recourse provisions (including exceptions relating to bankruptcy, insolvency, receivership, non-approved transfers or other similar events).

#### **7.14 Intentionally Omitted.**

#### **7.15 Sale Leasebacks.**

Except as could not reasonably be expected to have a Material Adverse Effect, directly or indirectly, become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any property (whether real or personal or mixed), whether now owned or hereafter acquired, (a) which such Person has sold or transferred or is to sell or transfer to a Person which is not a Consolidated Party or (b) which

such Person intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by such Person to another Person which is not a Consolidated Party in connection with such lease.

**7.16 Prepayments of Indebtedness, etc.**

If any Event of Default has occurred and is continuing, or if any Default or Event of Default would be directly or indirectly caused as a result thereof, make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any other Indebtedness.

**7.17 Anti-Terrorism Laws; FCPA.**

(a) Be an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§1 et seq.), as amended. Neither any Loan Party nor any of its Subsidiaries is in violation of (i) the Trading with the Enemy Act, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (iii) the Act (as defined in Section 10.17); or

(b) Fail to be in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§78dd-1, et seq., and any foreign counterpart thereto.

**7.18 Sanctions.**

Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Unconsolidated Affiliate, joint venture partner or other Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

**7.19 ERISA.**

Be, or permit any Loan Party to be, (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to Section 4975 of the Code), or (c) an entity deemed to hold Plan Assets of any such plans or accounts for purposes of ERISA or the Code.

**7.20 Anti-Corruption Laws.**

Use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar anti-corruption or anti-bribery legislation in other jurisdictions which have jurisdiction over the Loan Parties.

**ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES**

**8.01 Events of Default.**

Any of the following shall constitute an Event of Default:

(a) Non Payment. Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three (3) days after the same becomes

due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrowers fail to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07 (with respect to maintenance of insurance), 6.10, 6.11 or 6.12 or Article VII or the Guaranty given by any Guarantor or any provision thereof shall cease to be in full force and effect (other than as a result of a release of the applicable Guarantor in accordance with the terms and conditions hereof), or any Guarantor or any Person acting by or on behalf of such Guarantor shall deny or disaffirm in writing such Guarantor's obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to any Guaranty; or

(c) Other Defaults. Any Loan Party fails to (i) perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained herein on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of notice thereof from the Administrative Agent or a Responsible Officer of any Borrower has knowledge of such failure or (ii) perform or observe any other covenant or agreement in any other Loan Document within the grace or cure period provided for therein (or, if no such grace or cure period is specified, within thirty (30) days after the earlier of notice thereof from the Administrative Agent or a Responsible Officer of any Borrower has knowledge of such failure); or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrowers or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect in any material respect (or in any respect in the case of a representation or warranty containing a materiality qualifier) when made or deemed made; or

(e) Cross Default.

(i) The Borrowers or any Subsidiary of any of them: (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any Indebtedness or Guarantee having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Borrower or any Subsidiary of any of them is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Borrower or any Subsidiary of any of them is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary or Subsidiaries of any Loan Party to which, individually or in the aggregate, more than five percent (5%) of Total Asset Value or Net Income is attributable, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator,

liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary or Subsidiaries of any Loan Party to which, individually or in the aggregate, more than five percent (5%) of Total Asset Value or Net Income is attributable, becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against any Borrower or any Subsidiary of any of them (i) a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

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

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

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

#### **8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the L/C Issuer and the Lenders all rights and remedies available to it, the L/C Issuer and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

### **8.03 Application of Funds .**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.03(g) and Section 2.17, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer, but expressly excluding any amounts due in connection with any Swap Contracts that constitute a portion of the Obligations) and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations (other than Obligations related to Swap Contracts), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Section 2.03;

Sixth, to any counterparties under any Swap Contracts constituting a portion of the Obligations, any amounts due and owing by any Loan Party or any Subsidiary thereof under such Swap Contracts ratably among such counterparties in proportion to the net obligations due and owing by any Loan Party or any Subsidiary thereof under such Swap Contracts; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law;

provided that Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth in this Section 8.03. Subject to Sections 2.03(c) and (g), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit

as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## **ARTICLE IX ADMINISTRATIVE AGENT**

### **9.01 Appointment and Authority.**

Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

### **9.02 Rights as a Lender.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Borrower or any Subsidiary or Affiliate of any of them as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

### **9.03 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any Subsidiary or Affiliate of any of them that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrowers, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) reasonably believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06 Resignation of Administrative Agent.**

The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States (such successor to be approved by the Principal Borrower, such approval not to be unreasonably withheld or delayed; provided, however, if an Event of Default shall exist at such time, no approval of the Principal Borrower shall be required hereunder). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that, in no event shall any such successor Administrative Agent be a Defaulting Lender; provided further that if the Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer



directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor.

In addition to the foregoing, the Required Lenders may remove the Administrative Agent from its capacity as administrative agent (a) if Administrative Agent is a Defaulting Lender pursuant to clause (e) of the definition thereof, or (b) in the event of the Administrative Agent's willful misconduct or gross negligence. Such removal shall be effective upon appointment and acceptance of a successor Administrative Agent selected by the Required Lenders. Any successor Administrative Agent must satisfy the conditions set forth in this Section 9.06 (including, without limitation, the consultation with, and approval from, the Borrower, to the extent required under this Section 9.06). Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the removed Administrative Agent, and the removed Administrative Agent shall be discharged from all further duties and obligations as Administrative Agent under this Agreement and the Loan Documents, provided that the Administrative Agent shall remain liable to the extent provided in the Loan Documents for its actions and omissions occurring prior to such removal. The Commitment of the Lender which is acting as Administrative Agent shall not be taken into account in the calculation of Required Lenders for the purposes of removing Administrative Agent in the event of the Administrative Agent's willful misconduct or gross negligence.

Any resignation by, or removal of, Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation or removal, as applicable, as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed L/C Issuer and Swing Line Lender, (b) the retiring or removed L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring or removed L/C Issuer to effectively assume, at the time of such succession, the obligations of the retiring or removed L/C Issuer with respect to such Letters of Credit.

After the retiring or removed Administrative Agent's, L/C Issuer's and/or Swing Line Lender's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, L/C Issuer and/or Swing Line Lender, their sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent, L/C Issuer and/or Swing Line Lender were acting as Administrative Agent, L/C Issuer and/or Swing Line Lender, respectively, and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

#### **9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents or other titles as necessary listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

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

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

**9.10 Guaranty Matters.**

The Lenders and the L/C Issuer irrevocably authorize the Administrative Agent to release any Guarantor from its obligations hereunder and under each of the other Loan Documents to the extent (a) such release is requested by such Guarantor and the Principal Borrower in accordance the provisions set forth in Section 6.12(b) hereof and upon the satisfaction of the conditions set forth in such Section 6.12(b) (as reasonably determined by the Administrative Agent) or (b) if such Guarantor ceases to be a Subsidiary as a result of a transaction permitted hereunder. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to grant releases and terminations pursuant to this Section 9.10. Further, the Administrative Agent is hereby authorized by the Lenders, upon the request of any Guarantor released pursuant to Section 6.12(b) hereof, to execute and deliver to such Guarantor a document (in form and substance acceptable to the Administrative Agent) evidencing such release.

**9.11 ERISA Representations.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a

Lender party hereto, for the benefit of, the Administrative Agent, the Arrangers and their respective Affiliates, and for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using Plan Assets of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender to assure that the Loans, the Letters of Credit and the Commitments will not constitute a non-exempt prohibited transaction under ERISA or the Code.

(b) In addition, unless subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Loan Parties, that:

(i) none of the Administrative Agent, the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto);

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR §2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR §2510.3-21(c)(1)(i)(A)-(E);

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations);

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(v) no fee or other compensation is being paid directly to the Administrative Agent, the Arrangers or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent, the Arrangers hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## ARTICLE X MISCELLANEOUS

### 10.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment of any Lender terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (v) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Rate that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(e) change (i) Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender; or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.06(c) in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (A) if such Facility is the Term Facility, the Required Term Lenders and (B) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(f) change (i) any provision of this Section or the definitions of “Required Lenders” or “Defaulting Lender” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(f)) without the written consent of each Lender; or (ii) the definition of “Required Revolving Lenders” or “Required Term Lenders” without the written consent of each Lender under the applicable Facility;

(g) release (i) any Borrower, or (ii) other than in accordance with the provisions of Section 9.10 hereof, any Guarantor from the Guaranty or otherwise modify the material provisions thereof without the written consent of each Lender; or

(h) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) Section 10.06(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of Administrative Agent and Borrowers (i) to add one or more additional term loan facilities to this Agreement subject to the limitations in Section 2.16 and this Section 10.01 and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing Facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing Facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by Administrative Agent, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

If, in connection with any future amendment or modification of this Agreement or any other Loan Document, the Administrative Agent requires an opinion of counsel to the Loan Parties regarding the enforceability of such amendment or modification, then in-house counsel to the Loan Parties may provide such opinion on behalf of the Loan Parties, assuming such amendment or modification were governed by the Laws of the State of North Carolina rather than the Laws of the State of New York.

## **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any of the Borrowers, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for the Principal Borrower on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in their respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrowers, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrowers' or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final

and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the respective Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrowers or their securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(f) Delivery of Consents/Responses by Lenders. To the extent any consent, acknowledgement, agreement or response is requested by the Administrative Agent from one or more of the Lenders hereunder, unless otherwise specified in such request (as determined in the discretion of the Administrative Agent) such Lenders shall use good faith efforts provide any such consent, acknowledgement, agreement or response within ten (10) days.

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

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing

and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04 Expenses; Indemnity; Damage Waiver .**

(a) Costs and Expenses . The Borrowers shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of one primary counsel, and one local counsel in each applicable jurisdiction, for the Administrative Agent and its Affiliates), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including the rights of the Administrative Agent, the Lenders and the L/C Issuer under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; provided that absent a conflict of interest, the Borrowers shall not be required to pay for more than one (1) counsel (and appropriate local and special counsel) pursuant to this clause (iii) .

(b) Indemnification by the Borrower . The Borrowers shall indemnify the Administrative Agent (and any sub agent thereof), each Arranger, each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “ Indemnitee ”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01 ), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrowers or any of their Subsidiaries, or any Environmental Liability related in any way to the Borrowers or any of their Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrowers or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, or is in connection with any controversy, dispute or litigation



in which Borrowers are determined to be the prevailing party, if the Borrowers or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Borrowers shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the Swing Line Lender and the L/C Issuer, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### **10.05 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrowers is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without

the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (h) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund (determined after giving effect to such assignments), no minimum amount need be assigned;

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Principal Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to rights in respect of the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations under separate Facilities on a non-pro-rata-basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Principal Borrower (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Principal Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Revolving Credit

Commitment or Term Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding) or in respect of any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such a Lender or an Approved Fund with respect to such a Lender; and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such a Lender or an Approved Fund with respect to such a Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Borrower or any of the Borrowers' Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Principal Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will

constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Principal Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, the L/C Issuer, or the Swing Line Lender, sell participations to any Person (other than a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender, any Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (iv) such participations shall not be less than \$10,000,000 (other than participations to such Lender's Affiliates which may be for any amount). For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the entitlement to a greater payment results from a Change in Law that occurs after the Participant acquires its participation. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is

recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as the Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

(g) Intentionally Omitted.

(h) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrowers (an “SPC”) the option to provide all or any part of any Revolving Credit Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Revolving Credit Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Revolving Credit Loan, the Granting Lender shall be obligated to make such Revolving Credit Loan pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent as is required under Section 2.12(b)(ii). Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrowers under this Agreement (including its obligations under Section 3.04), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Revolving Credit Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Revolving Credit Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrowers and the Administrative Agent and with the payment of a processing fee in the amount of \$2,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Revolving Credit Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Revolving Credit Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days’ notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days’ notice to the Borrowers, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (y) such successor shall

succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (z) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**10.07 Treatment of Certain Information: Confidentiality.**

Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates (including the Arrangers) and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or any Subsidiary or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrowers or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "Information" means all information received from the Borrowers or any Subsidiary of any them relating to the Borrowers or any Subsidiary of any of them or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrowers or any Subsidiary of any of them. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

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

**10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the obligations of the Borrowers or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such

Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office, or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### **10.09 Interest Rate Limitation .**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **10.10 Counterparts; Integration; Effectiveness .**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., “.pdf” or “.tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **10.11 Survival of Representations and Warranties .**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder is not Fully Satisfied or any Letter of Credit shall remain outstanding.

#### **10.12 Severability .**

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

shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### **10.13 Replacement of Lenders .**

If any Lender requests compensation under Section 3.04 , or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 , a Lender (a “ Non-Consenting Lender ”) does not consent to a proposed change, waiver, discharge or termination with respect to any Loan Document that has been approved by the Administrative Agent and Required Lenders as provided in Section 11.01 but requires unanimous consent of all Lenders or all Lenders directly affected thereby (as applicable) or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06 ), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04 ) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrowers shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b) ;
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 ) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01 , such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws; and
- (e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

#### **10.14 Governing Law; Jurisdiction; Etc .**

(a) GOVERNING LAW . THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION . EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY



LENDER, THE L/C ISSUER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

#### **10.15 Waiver of Jury Trial.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **10.16 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrowers acknowledge and agree, and acknowledges their Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrowers, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrowers and the other Loan Parties has consulted with its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate,

and (C) each Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Administrative Agent, the Arrangers and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrowers, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arrangers nor the Lenders has any obligation to the Borrowers, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor the Arrangers nor the Lenders has any obligation to disclose any of such interests to the Borrowers, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrowers and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### **10.17 Electronic Execution of Assignments and Certain Other Documents .**

The words “execute,” “execution,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, Swing Line Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

#### **10.18 USA PATRIOT Act Notice .**

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the Act. The Borrowers shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

#### **10.19 Time of the Essence .**

Time is of the essence of the Loan Documents.

#### **10.20 Existing Credit Agreements .**

Each of the parties hereto hereby agree that (a) the outstanding balance of the obligations under each Existing Credit Agreement remains outstanding and constitutes Obligations hereunder and (b) this Agreement is an amendment and restatement of each Existing Credit Agreement, all documents, instruments or agreements, if any, creating security interests or liens in favor of the “Administrative Agent” or “Lenders” as defined in the applicable Existing Credit Agreement and securing the obligations thereunder continue to secure the Obligations under this Agreement and nothing

contained herein is intended to represent a novation of any type with respect to the “Obligations” as defined in the applicable Existing Credit Agreement or with respect to any other Indebtedness evidenced by the Existing Credit Agreements or any documents, instruments or agreements executed in connection therewith. On the Closing Date, (i) the commitment of any “Lender” under an Existing Credit Agreement that is not continuing as a Lender hereunder shall terminate and (ii) the Administrative Agent shall reallocate the Commitments hereunder to reflect the terms hereof.

**10.21 Acknowledgment and Consent to Bail-In of EEA Financial Institutions.**

Solely to the extent any Lender or L/C Issuer that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**10.22 Entire Agreement.**

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[remainder of page left intentionally blank – signature pages, exhibits and schedules to follow]

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWERS:**

**HIGHWOODS REALTY LIMITED PARTNERSHIP**

By: Highwoods Properties, Inc.

**HIGHWOODS PROPERTIES, INC.**

By: /s/ Jeffrey D. Miller

Name: Jeffrey D. Miller

Title: Executive Vice President, General Counsel and Secretary

**(Signatures continued on next page)**

**LENDERS/AGENTS:**

**BANK OF AMERICA, N.A.,**  
in its capacity as Administrative Agent  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory

Name:

Title:

[signature pages continued]

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
in its capacity as Co-Syndication Agent,  
and individually in its capacity as a Lender

By:           /s/ Authorized Signatory            
Name:  
Title:

[signature pages continued]

**PNC BANK, NATIONAL ASSOCIATION,**  
in its capacity as Co-Syndication Agent,  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[signature pages continued]

**BRANCH BANKING AND TRUST COMPANY,**  
in its capacity as Co-Documentation Agent,  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[signature pages continued]



**U.S. BANK NATIONAL ASSOCIATION,**  
in its capacity as Co-Documentation Agent,  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory

Name:

Title:

[signature pages continued]

**CAPITAL ONE, NATIONAL ASSOCIATION,**  
in its capacity as Co-Managing Agent,  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[signature pages continued]

**REGIONS BANK,**  
in its capacity as Co-Managing Agent,  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[signature pages continued]

**J.P. MORGAN CHASE BANK, N.A.,**  
in its capacity as Co-Managing Agent,  
and individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[signature pages continued]

**FIRST TENNESSEE BANK NATIONAL ASSOCIATION,**  
individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[signature pages continued]

**FIFTH THIRD BANK**, an Ohio banking corporation,  
individually in its capacity as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

[End of signature pages]

**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<b>Lender</b>	<b>Revolving Credit Commitment Amount</b>	<b>Revolving Credit Commitment Percentage</b>	<b>Term Loan Commitment Amount</b>	<b>Term Loan Commitment Percentage</b>
Bank of America, N.A.	\$104,250,000	17.375000000%	\$34,750,000	17.375000000%
Wells Fargo Bank, National Association	\$104,250,000	17.375000000%	\$34,750,000	17.375000000%
PNC Bank, National Association	\$104,250,000	17.375000000%	\$34,750,000	17.375000000%
Branch Banking and Trust Company	\$60,000,000	10.000000000%	\$20,000,000	10.000000000%
U.S. Bank National Association	\$60,000,000	10.000000000%	\$20,000,000	10.000000000%
Capital One, National Association	\$41,250,000	6.875000000%	\$13,750,000	6.875000000%
Regions Bank	\$41,250,000	6.875000000%	\$13,750,000	6.875000000%
JPMorgan Chase Bank, N.A.	\$37,500,000	6.250000000%	\$12,500,000	6.250000000%
First Tennessee Bank National Association	\$24,750,000	4.125000000%	\$8,250,000	4.125000000%
Fifth Third Bank	\$22,500,000	3.750000000%	\$7,500,000	3.750000000%
<b>Total:</b>	<b>\$600,000,000</b>	<b>100.000000000%</b>	<b>\$200,000,000</b>	<b>100.000000000%</b>

**SECOND AMENDMENT TO AMENDED AND RESTATED  
SEVEN-YEAR TERM LOAN AGREEMENT**

THIS **SECOND AMENDMENT TO AMENDED AND RESTATED SEVEN-YEAR TERM LOAN AGREEMENT** (this “**Amendment**”) is dated as of October 18, 2017, by and among **HIGHWOODS REALTY LIMITED PARTNERSHIP**, a North Carolina limited partnership (“**Highwoods Realty**”), **HIGHWOODS PROPERTIES, INC.**, a Maryland corporation (“**Highwoods Properties**”; Highwoods Realty and Highwoods Properties, each, a “**Borrower**,” together, the “**Borrowers**”), each of the Lenders party hereto and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Administrative Agent (the “**Administrative Agent**”).

**WHEREAS**, the Borrowers, the Lenders, the Administrative Agent and certain other parties have entered into that certain Amended and Restated Seven-Year Term Loan Agreement dated as of November 12, 2013, as amended by that certain First Amendment to Amended and Restated Seven-Year Term Loan Agreement dated as of June 8, 2015 (as amended in effect immediately prior to the date hereof, the “**Term Loan Agreement**”); and

**WHEREAS**, the Borrowers, the Lenders and the Administrative Agent desire to amend certain provisions of the Term Loan Agreement on the terms and conditions contained herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

1. **Specific Amendments to Term Loan Agreement**. Effective upon satisfaction of the conditions precedent set forth in **Section 3** hereof, the parties hereto agree that the Term Loan Agreement is amended as follows:

(a) By restating the definitions of “Capitalization Rate”, “Change of Control”, “ERISA”, “ERISA Affiliate”, “ERISA Event”, “FATCA”, “Guaranty”, “Multiemployer Plan”, “Pension Plan”, “Plan”, “S&P”, “Threshold Amount” and “Total Asset Value” in Section 1.01 thereof as follows:

“Capitalization Rate” means seven and one-quarter of one percent (7.25%).

“Change of Control” means the occurrence of any of the following events:

(a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of, control over, Voting Stock of the Principal Borrower (or other securities convertible into such Voting Stock) representing thirty-five percent (35.0%) or more of the combined voting power of all Voting Stock of the Principal Borrower, or

(b) during any consecutive period of twelve (12) consecutive months, commencing after the Closing Date, individuals who at the beginning of such twelve (12) month period were directors of the Principal Borrower (together with any new director whose election by the Principal Borrower’s Board of Directors or whose nomination for election by the Principal Borrower’s shareholders was approved by a vote of a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of the Principal Borrower then in office, or

(c) the Principal Borrower or any Wholly Owned Subsidiary which is a Loan Party shall fail to be the sole general partner of Highwoods Realty. As used in this definition, “beneficial ownership” shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.



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

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

“ ERISA Event ” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is “insolvent” within the meaning of Section 4245 of ERISA; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“ FATCA ” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“ Guaranty ” means the Amended and Restated Guaranty dated as of the date hereof, made by each of the Guarantors in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit G, as the same may be amended, restated, supplemented or otherwise modified from time to time and as joined from time to time.

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

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

“ Plan ” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Multiemployer Plan, established or maintained by any Loan Party and, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, established or maintained by any Loan Party or any ERISA Affiliate.

“ S&P ” means S&P Global Ratings, a subsidiary of S&P Global, Inc., and any successor thereto.

“ Threshold Amount ” means \$30,000,000.00.

“Total Asset Value” means, as of any date of determination, the sum of, without duplication, (a) the aggregate Value of all Income Producing Properties; plus (b) the aggregate Value of all Non-Income Producing Properties; plus (c) cash and Cash Equivalents held by the Loan Parties, plus (d) up to \$100,000,000 (in the aggregate) in notes receivable related to secured first mortgage or mezzanine financings pursuant to each of which the initial loan to cost ratio is not in excess of seventy-five percent (75.0%); provided that the amount of Total Asset Value attributable to assets held by parties that are not Consolidated Parties shall be limited to twenty percent (20.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value); and provided, further, that (i) the amount of Total Asset Value attributable to the Value of all Non-Income Producing Properties shall be limited to twenty-five percent (25.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value), (ii) the amount of Total Asset Value attributable to the Value of Speculative Land shall be limited to fifteen percent (15.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value), (iii) the amount of Total Asset Value attributable to the Value of Properties Under Development (including Pre-Leased Development Properties) shall be limited to fifteen percent (15.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value), and (iv) the amount of Total Asset Value attributable to the Value of Income Producing Properties other than “for lease” office, amenity retail and industrial properties shall be limited to fifteen percent (15.0%) of Total Asset Value (with any such excess being excluded from the calculation of Total Asset Value).

(b) By deleting the definitions of “CC Plaza Project”, “Harborview Project”, “Preferred Stock Subsidiary” and “Tangible Net Worth” in Section 1.01 thereof in their entireties.

(c) By, in the definition of “Defaulting Lender” in Section 1.01 thereof, (i) deleting the reference to “or” at the end of clause (b) thereof, (ii) adding a reference to “or” at the end of clause (c) thereof, and (iii) adding the following clause (d) immediately before the proviso thereof:

(d) has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action;

(d) By deleting the reference to “any Loan Document to which it is a party” in the definition of “Material Adverse Effect” in Section 1.01 thereof and replacing such reference with “the Loan Documents”.

(e) By restating clause (e) of the definition of “Non-Guarantor Subsidiaries” in Section 1.01 thereof as follows:

(e) any other Subsidiary of a Loan Party that is not a domestic Material Subsidiary.

(f) By deleting the reference to “calculations set forth in Section 7.08(g)” in the parenthetical of the definition of “Pre-Leased Development Properties” in Section 1.01 thereof and replacing such reference with “clause in the definition of ‘Total Asset Value’”.

(g) By deleting the references to “Subsidiaries” and “Subsidiary” in the definition of “Quarterly Subsidiary Joinder Statement” in Section 1.01 thereof and replacing such references with “Material Subsidiaries” or “Material Subsidiary”, respectively.

(h) By deleting the reference to “international economic” in the definition of “Sanctions” in Section 1.01 thereof.

(i) By restating clause (c) of the definition of “Unencumbered Asset Value” in Section 1.01 thereof as follows:

(c) the Value of unrestricted cash and Cash Equivalents held by the Loan Parties in excess of \$20,000,000;

(j) By adding the definitions of “Bail-In Action”, “Bail-In Legislation”, “Benefit Plan”, “EEA Financial Institution”, “EEA Member Country”, “EEA Resolution Authority”, “EU Bail-In Legislation Schedule”, “Material Subsidiary”, “Plan Assets”, “Plan Assets Regulation”, “PTE”, “Significant Acquisition” and “Write-down and Conversion Powers” in the appropriate alphabetical order in Section 1.01 thereof as follows:

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Material Subsidiary” means any Subsidiary to which more than ten percent (10%) of Total Asset Value or Net Income is attributable on an individual basis.

“Plan Assets” means the assets of a Benefit Plan pursuant to the Plan Assets Regulation, 29 C.F.R. *Section 2550.401c-1*, pursuant to the principles set forth in *John Hancock Mutual Life Insurance Company v. Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993), or otherwise.

“Plan Assets Regulation” means 29 C.F.R. *Section 2510.3-101, et seq.*, as modified by Section 3(42) of ERISA.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Significant Acquisition” means the acquisition of one or more real property assets or portfolios of such assets or operating businesses in a single transaction for a purchase price of not less than ten percent (10%) of Total Asset Value.

“Write-down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

- (k) By deleting Section 1.03(c) thereof in its entirety and replacing such Section with “Intentionally Omitted”.
- (l) By adding a reference to, “(which date may be conditioned upon the effectiveness of other credit facilities or other transactions specified therein)”, at the end of the antepenultimate sentence of Section 2.03(a) thereof
- (m) By restating Section 3.01 thereof as follows:

### **3.01 Taxes.**

(i) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(ii) Payment of Other Taxes by the Borrowers. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(iii) Tax Indemnifications.

(i) The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (x) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.06(e) relating to the maintenance of a Participant Register and (z) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (ii).

(iv) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(v) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times prescribed by applicable Law or reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.01(e)(ii)(A), 3.01(e)(ii)(B), and 3.01(e)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W 8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within

the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or Form W-8BEN, as applicable), or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or Form W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this paragraph, “FATCA” shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, Borrower and Administrative Agent shall treat (and the Lenders hereby authorize Administrative Agent to treat) the Obligations as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(vi) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01) it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of

such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to the indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(vii) Defined Terms. For purposes of this Section 3.01, the term “applicable Law” includes FATCA.

(viii) Survival. Each party’s obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(n) By restating Section 5.06 thereof as follows:

#### **5.06 Litigation.**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or any of their Subsidiaries or against any of their properties or revenues (a) that purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) as to which there is a reasonable likelihood of an adverse determination, and if determined adversely, could reasonably be expected to have a Material Adverse Effect.

(o) By, in Section 5.09(a) thereof, (i) deleting the reference to “a Responsible Officer” and replacing such reference with “each Responsible Officer” and (ii) deleting the reference to “\$25,000,000” and replacing such reference with “\$30,000,000”.

(p) By deleting the reference to “a Responsible Officer” in Section 5.09(b) thereof and replacing such reference with “each Responsible Officer”.

(q) By restating Section 5.12 thereof as follows:

#### **5.12 ERISA Compliance.**

(i) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws except in such instances in which the failure to comply could not reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed (or an application may be filed during the remedial amendment period under Section 401(b) of the Code) with respect thereto and, to the knowledge of any Responsible Officer of the Borrowers after due and diligent investigation, nothing has occurred which would prevent, or cause the loss of, such qualification, except in such instances that the loss of such qualification or failure to so qualify could not reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and have not applied

for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Plan subject to Section 412 of the Code, except in such instances that the failure to make timely contributions or a funding waiver or extension could not reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount.

(ii) There are no pending or, to the knowledge of the Borrowers after due and diligent investigation, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(iii) (i) No ERISA Event has occurred and no ERISA Event is reasonably expected to occur that has resulted or could reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is sixty percent (60%) or higher, or if lower than sixty percent (60%), it is not reasonably expected to result (together with any ERISA Events) in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount; (iv) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; (v) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums in an aggregate amount in excess of the Threshold Amount and there are no premium payments which have become due that are unpaid; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan if such termination has resulted or could reasonably be expected to result in liability of the Loan Parties in an aggregate amount in excess of the Threshold Amount.

(iv) Each Loan Party represents and warrants that the underlying assets of such Loan Party do not constitute Plan Assets, and that such Loan Party is not and will not be using Plan Assets of one or more Benefit Plans to satisfy any obligations under the Loans, the Letters of Credit or the Commitments.

(r) By deleting each reference to “and each other Subject Party”, “or other Subject Party” or “and other Subject Parties” in Section 5.13 thereof.

(s) By adding a reference to, “(it being understood that projections are not guarantees of future performance, and the actual results could differ materially)”, at the end of the last sentence of Section 5.15 thereof.

(t) By restating Section 5.17 thereof as follows:

#### **5.17 Intellectual Property; Licenses, Etc.**

Each Borrower and each of their Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except where such conflict could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrowers or any Subsidiary of any of them infringes upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, threatened in writing, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.



- (u) By restating Section 5.18 thereof as follows:

**5.18 OFAC.**

Neither the Borrowers, nor any of their Subsidiaries, nor, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, any director, officer, employee, agent, affiliate or representative thereof acting or benefiting in any capacity in connection with this Agreement, is an individual or entity that is (a) currently the subject of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, Her Majesty's Treasury's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction.

- (v) By adding Sections 5.20 and 5.21 in the appropriate numerical order as follows:

**5.20 Anti-Corruption Laws .**

Each Borrower and its Subsidiaries, and, to the knowledge of each Responsible Officer of the Borrowers after due and diligent investigation, their respective officers and employees, have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Laws and applicable Sanctions by Borrower, its Subsidiaries, and their respective officers and employees.

**5.21 EEA Financial Institutions .**

No Loan Party is an EEA Financial Institution.

- (w) By restating Section 6.02(a) thereof as follows:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a projection of Capital Expenditures for the next fiscal year for each Property of any Subject Party;

- (x) By restating subsections (i) and (ii) of Section 6.02(b) as follows:

(i) a certificate of the chief financial officer of the Principal Borrower substantially in the form of Exhibit E attached hereto, (A) demonstrating compliance, as of the end of each such fiscal period, with the financial covenants contained in Section 7.08 by detailed calculation thereof (which calculation shall be in form satisfactory to the Administrative Agent and which shall include, among other things, an explanation of the methodology used in such calculation and a breakdown of the components of such calculation), (B) stating that, at all times during each such fiscal period, no Default or Event of Default occurred or exists, or if any Default or Event of Default did occur or does exist, specifying the nature and extent thereof and what action the Loan Parties propose to take with respect thereto, and (C) attaching a Quarterly Subsidiary Joinder Statement, together with (1) a certification from a Responsible Officer stating whether, as of the date of such Quarterly Subsidiary Joinder Statement, there are any Material Subsidiaries of any Borrower that, pursuant to the terms of the Loan Documents, should be, but have not yet been, joined as Loan Parties and (2) copies of all counterparts to the Guaranty executed by any Person during the immediately preceding fiscal quarter;

(ii) a schedule of the Properties summarizing total revenues, expenses, Net Operating Income, Adjusted NOI, Annualized Adjusted NOI and occupancy rates as of the last day of the applicable quarter (to the extent not otherwise delivered pursuant to Section 6.01(a) or (b));

- (y) By restating Section 6.12(a) thereof as follows:

(a) If (x) any Person (other than a Non-Guarantor Subsidiary) becomes a Material Subsidiary of the Principal Borrower, (y) at any time any Non-Guarantor Subsidiary qualifying as such as a result of clauses (a), (b) or (c) of the definition thereof could become a Loan Party without violating the terms of any material contract, agreement or document to which it is a party, or (z) a Subsidiary of the Principal Borrower guarantees, or otherwise becomes obligated in respect of, any Unsecured Debt of the Consolidated Parties, the Principal Borrower shall, contemporaneously, in the case of clause (z), and within thirty (30) days after delivery of the Quarterly Subsidiary Joinder Statement pursuant to Section 6.02(b)(i) (or such longer period as may be agreed to by the Administrative Agent) in the case of clauses (x) and (y), (i) if such Person is a Domestic Subsidiary of the Principal Borrower, cause such Person to become a Guarantor by executing and delivering to the Administrative Agent a counterpart of the Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) cause such Person to deliver to the Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a), all in form, content and scope reasonably satisfactory to the Administrative Agent; provided, that to the extent such Person holds (whether upon delivery of the items required above or at any time after the delivery of the items required above) assets with a fair market value in excess of \$5,000,000 or to the extent requested by Administrative Agent, the Borrowers shall cause to be delivered to the Administrative Agent favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in this clause (a)). If a Non-Guarantor Subsidiary executes and delivers the Guaranty, it shall no longer be deemed a Non-Guarantor Subsidiary under this Agreement.

(z) By adding a reference to, “(giving effect to any applicable cure or corrective provisions pursuant to Section 856(c), 857, or 860 of the Code)”, at the end of Section 6.14 thereof.

(aa) By adding Section 6.17 in the appropriate numerical order as follows:

#### **6.17 Anti-Corruption Laws .**

Each Borrower and each Loan Party shall conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

(bb) By restating the lead-in in Section 7.03 thereof as follows:

Make any Disposition, except:

(cc) By restating Section 7.06 thereof as follows:

#### **7.06 Burdensome Agreements .**

Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability of any Subsidiary to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property to any Borrower or any Guarantor, (b) limits the ability of any Subsidiary to Guarantee the Indebtedness of the Borrowers, (c) constitutes a Negative Pledge or otherwise limits the ability of any Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; or (d) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided, that this Section 7.06 (i) shall not apply to provisions in Indebtedness documents permitted hereunder and that do not result in a violation of the covenants set forth in Section 7.08, provided that any such restriction contained therein relates only to the properties or assets constructed or acquired in connection with such Indebtedness and (ii) shall not be deemed to restrict the ability of any Non-Guarantor Subsidiary from entering into Contractual Obligations of any type related to secured financing transactions.

(dd) By adding the following immediately after the reference to “0.60x” in Section 7.08(a) thereof:

; provided that, as of the last day of the fiscal quarter in which any Significant Acquisition occurs and the last day of the two (2) consecutive quarters thereafter (but only for up to two (2) times during the period commencing on the Closing Date through and including the Maturity Date), the TL/TA Ratio may exceed 0.60x so long as it does not exceed 0.65x

(ee) By adding the following immediately after the reference to “1.67x” in Section 7.08(b) thereof:

; provided that, as of the last day of the fiscal quarter in which any Significant Acquisition occurs and the last day of the two (2) consecutive quarters thereafter (but only for up to two (2) times during the period commencing on the Closing Date through and including the Maturity Date), the ratio of Unencumbered Asset Value to Unsecured Debt may be less than 1.67x so long as it is not less than 1.54x

(ff) By, in Section 7.08(e) thereof, (i) deleting the reference to “Adjusted NOI” and replacing such reference with “Annualized Adjusted NOI” and (ii) deleting the reference to “2.00x” and replacing such reference with “1.75x”.

(gg) By, in Section 7.08 thereof, (i) deleting subsections (f), (g) and (i) in their entireties, (ii) re-lettering subsection (h) to be subsection (f), and (iii) restating the new subsection (f) as follows:

(f) Permit Restricted Payments, for any twelve (12) month period, to exceed an amount equal to (i) ninety-five percent (95.0%) multiplied by (ii) FFO for such period; provided, that the Principal Borrower shall, in addition to the Restricted Payments permitted above, be permitted to make Restricted Payments (1) in any amount for the purpose of repurchasing or otherwise redeeming shares of its outstanding preferred stock, (2) in an aggregate amount equal to not more than \$200,000,000 during the period commencing on the Closing Date through and including the Maturity Date for the purpose of repurchasing or otherwise redeeming Equity Interests and (3) in such amounts as may be necessary in order for the Principal Borrower to maintain its REIT status and for the Principal Borrower or any of its Subsidiaries to eliminate any income or excise tax. Notwithstanding the foregoing, (x) if any Default or Event of Default has occurred and is continuing, the Restricted Payments shall not exceed the minimum amount necessary for the Principal Borrower to maintain its status as a REIT and for the Principal Borrower or any of its Subsidiaries to eliminate any income or excise tax, and (y) Borrowers shall not, and shall not permit any Subsidiary to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so if any Default or Event of Default under Section 8.01(a), 8.01(f) or 8.01(g) has occurred and is continuing or would be directly or indirectly caused as a result thereof, or if the Obligations have been accelerated pursuant to Section 8.02(b) or otherwise pursuant to Section 8.02. For the avoidance of doubt, Highwoods Realty may make Restricted Payments (A) to the Principal Borrower to permit the Principal Borrower to make the Restricted Payments permitted in this clause (f) and (B) to Highwoods Realty’s outside limited partners as required by its Organization Documents.

(hh) By deleting Section 7.11 thereof in its entirety and replacing such Section with “Intentionally Omitted”.

(ii) By adding Section 7.16 in the appropriate numerical order as follows:

#### **7.16 Anti-Corruption Laws.**

Use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar anti-corruption or anti-bribery legislation in other jurisdictions which have jurisdiction over the Loan Parties.

(jj) By, in Section 8.01 thereof, restating subsections (c), (f) and (g) as follows:

(c) Other Defaults. Any Loan Party fails to (i) perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained herein on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of notice thereof from the Administrative Agent or a Responsible Officer of any Borrower has knowledge of such failure or (ii) perform or observe any other

covenant or agreement in any other Loan Document within the grace or cure period provided for therein (or, if no such grace or cure period is specified, within thirty (30) days after the earlier of notice thereof from the Administrative Agent or a Responsible Officer of any Borrower has knowledge of such failure); or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary or Subsidiaries of any Loan Party to which, individually or in the aggregate, more than five percent (5%) of Total Asset Value or Net Income is attributable, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary or Subsidiaries of any Loan Party to which, individually or in the aggregate, more than five percent (5%) of Total Asset Value or Net Income is attributable, becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(kk) By restating the first sentence of the second paragraph of Section 10.07 thereof as follows:

For purposes of this Section, “ Information ” means all information received from the Borrowers or any Subsidiary of any them relating to the Borrowers or any Subsidiary of any of them or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrowers or any Subsidiary of any of them.

(ll) By (i) re-numbering Sections 10.19 and 10.20 to be Section 10.20 and 10.21, respectively, and (ii) adding the following Section 10.19 in the appropriate numerical order as follows:

**10.19 Acknowledgment and Consent to Bail-In of EEA Financial Institutions.**

Solely to the extent any Lender that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other

instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

(x) By restating Schedule 5.13 thereof in the form of **Schedule 5.13** attached hereto.

2. **Release of Guarantors** . Effective upon satisfaction of the conditions precedent set forth in **Section 3** hereof, Administrative Agent, for itself and on behalf of the Lenders, in accordance with **Section 9.10** of the Term Loan Agreement, hereby releases and discharges Nichols Plaza West, LLC, Highwoods Glenridge Land, LLC and HPI Title Agency, LLC (collectively, the “**Released Guarantors**” and, each, a “**Released Guarantor**”) from any and all obligations and liabilities to the Administrative Agent and the Lenders under the Guaranty (other than those that expressly survive termination thereof).

3. **Conditions Precedent** . The effectiveness of this Amendment is subject to receipt by the Administrative Agent of each of the following, each in form and substance satisfactory to the Administrative Agent:

(a) a counterpart of this Amendment duly executed by each of the Borrowers, the Administrative Agent and each of the Lenders;

(b) a Guarantor Acknowledgement substantially in the form of **Exhibit A** attached hereto, executed by each Guarantor;

(c) a counterpart signature page to the Guaranty by each additional Person (each, a “**New Guarantor**” and, collectively, the “**New Guarantors**”) to become party to the Guaranty;

(d) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each New Guarantor as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Guaranty;

(e) such documents and certifications as the Administrative Agent may reasonably require to evidence that each New Guarantor is validly existing and in good standing in the jurisdiction of such New Guarantor’s incorporation, organization, or formation, as applicable;

(f) favorable opinions of counsel to the New Guarantors, addressed to the Administrative Agent and each Lender, as to the matters concerning the New Guarantors and the Guaranty as the Administrative Agent may reasonably request;

(g) a good standing certificate from the state of organization or formation of each Loan Party (other than the New Guarantors) and a certificate of the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party (other than the New Guarantors) certifying (i) that since the Closing Date, there have been no changes to, or attaching thereto, (x) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (y) the certificate or articles of incorporation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument of such Loan Party and (ii) as to resolutions or unanimous written consents of the applicable governing body of each Loan Party approving the amendments hereunder;

(h) all information and documents requested by any Lender in connection with **Section 10.17** of the Term Loan Agreement; and

(i) such other documents, instruments (including new or replacement promissory notes if requested by any Lender) and agreements as the Administrative Agent may reasonably request.

4. **Representations** . Each of the Borrowers represent and warrant to the Administrative Agent and the Lenders that:

(a) **Authorization** . Each of the Borrowers has the right and power, and has taken all necessary action to authorize it, to execute and deliver this Amendment and to perform its obligations hereunder and under the Term Loan Agreement, as amended by this Amendment, in accordance with their respective terms. This Amendment has been duly executed and delivered by a duly authorized officer of the Borrowers and each of this Amendment and the Term Loan Agreement, as amended by this Amendment, is a legal, valid and binding obligation of the Borrowers enforceable against the Borrowers in accordance with its respective terms, except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(b) **Compliance with Laws, etc** . The execution and delivery by the Borrowers of this Amendment and the performance by the Borrowers of this Amendment and the Term Loan Agreement, as amended by this Amendment, in accordance with their respective terms, do not and will not, by the passage of time, the giving of notice or otherwise: (i) require any Government Approvals or other consents, licenses or approvals that have not been obtained, or violate any Applicable Laws relating to any Borrower; (ii) conflict with, result in a breach of or constitute a default under any Borrower's articles of incorporation or by-laws or any indenture, agreement or other instrument to which the Borrowers are a party or by which the Borrowers or any of their respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by the Borrowers. The Borrowers and each of the Borrowers' Subsidiaries are in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(c) **No Default** . No Default or Event of Default has occurred and is continuing as of the date hereof nor will exist immediately after giving effect to this Amendment.

(d) **No Material Adverse Change** . Since the Closing Date, there has been no Material Adverse Effect on the business, operating, financial condition, assets or liabilities of the Borrowers and their respective Subsidiaries, taken as a whole, or in the facts and information, taken as a whole, regarding such entities as represented to date.

(e) **Litigation** . There exists no action, suit, investigation, or proceeding pending or threatened, in writing, in any court or before any arbitrator or governmental authority as to which there is a reasonable likelihood of an adverse determination, and if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5. **Reaffirmation of Representations by each of the Borrowers** . Each Borrower hereby repeats and reaffirms all representations and warranties made by such Borrower to the Administrative Agent and the Lenders in the Term Loan Agreement and the other Loan Documents to which it is a party on and as of the date hereof with the same force and effect as if such representations and warranties were set forth in this Amendment in full.

6. **Certain References** . Each reference to the Term Loan Agreement in any of the Loan Documents shall be deemed to be a reference to the Term Loan Agreement as amended by this Amendment.

7. **Obligations** . Each Borrower confirms that all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue under the Loan Documents after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person

as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, are “ *Obligations* ” under and as defined in the Term Loan Agreement.

8. **Costs and Expenses** . The Borrowers shall reimburse the Administrative Agent promptly after written demand for all reasonable and documented out-of-pocket costs and expenses (including attorneys’ fees) incurred by the Administrative Agent in connection with the preparation, negotiation and execution of this Amendment and the other agreements and documents executed and delivered in connection herewith.

9. **Benefits** . This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10. **GOVERNING LAW** . THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

11. **Effect** . Except as expressly herein amended, the terms and conditions of the Term Loan Agreement and the other Loan Documents remain in full force and effect. The amendments contained herein shall be deemed to have prospective application only, unless otherwise specifically stated herein.

12. **Counterparts** . This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and assigns. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment.

13. **Definitions** . All capitalized terms not otherwise defined herein are used herein with the respective definitions given them in the Term Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES PAGE(S) TO FOLLOW.]

IN WITNESS WHEREOF , the parties hereto have caused this Second Amendment to Amended and Restated Seven-Year Term Loan Agreement to be executed as of the date first above written.

**BORROWERS:**  
**HIGHWOODS REALTY LIMITED PARTNERSHIP**

By: Highwoods Properties, Inc.

**HIGHWOODS PROPERTIES, INC.**

By: /s/ Jeffrey D. Miller

Name: Jeffrey D. Miller

Title: Executive Vice President, General Counsel and Secretary

Signature Page to  
Guarantor Acknowledgment

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**ADMINISTRATIVE AGENT AND THE LENDERS:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION** , in its capacity as Administrative Agent and individually in its capacity as a Lender

By: /s/ Authorized Signatory

Name:

Title:

Signature Page to  
Guarantor Acknowledgment

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**PNC BANK, NATIONAL ASSOCIATION** , as a Lender

By: /s/ Andrew T. White

Name: Andrew T. White

Title: Senior Vice President

Signature Page to  
Guarantor Acknowledgment

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**REGIONS BANK** , as a Lender

By:           /s/ Authorized Signatory            
Name:  
Title:

Signature Page to  
Guarantor Acknowledgment

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**MUFG UNION BANK, N. A.** , formerly known as Union Bank, N.A., as a Lender

By: /s/ Authorized Signatory  
Name:  
Title:

Signature Page to  
Guarantor Acknowledgment

**HIGHWOODS PROPERTIES, INC.**  
**RATIO OF EARNINGS TO FIXED CHARGES AND**  
**RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND**  
**PREFERRED STOCK DIVIDENDS**

	<b>Nine Months Ended September 30, 2017</b>
<b>Earnings:</b>	
Income from continuing operations before equity in earnings of unconsolidated affiliates	\$ 125,831
Fixed charges	60,889
Capitalized interest	(7,773)
Distributions of earnings from unconsolidated affiliates	4,815
<b>Total earnings</b>	<b>\$ 183,762</b>
<b>Fixed charges and Preferred Stock dividends:</b>	
Contractual interest expense	\$ 48,763
Amortization of debt issuance costs	2,445
Capitalized interest	7,773
Interest component of rental expense	1,908
<b>Total fixed charges</b>	<b>60,889</b>
Preferred Stock dividends	1,869
<b>Total fixed charges and Preferred Stock dividends</b>	<b>\$ 62,758</b>
<b>Ratio of earnings to fixed charges</b>	<b>3.02</b>
<b>Ratio of earnings to combined fixed charges and Preferred Stock dividends</b>	<b>2.93</b>

**HIGHWOODS REALTY LIMITED PARTNERSHIP**  
**RATIO OF EARNINGS TO FIXED CHARGES AND**  
**RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND**  
**PREFERRED UNIT DISTRIBUTIONS**

	<b>Nine Months Ended September 30, 2017</b>
<b>Earnings:</b>	
Income from continuing operations before equity in earnings of unconsolidated affiliates	\$ 125,831
Fixed charges	60,889
Capitalized interest	(7,773)
Distributions of earnings from unconsolidated affiliates	4,815
<b>Total earnings</b>	<b>\$ 183,762</b>
<b>Fixed charges and Preferred Unit distributions:</b>	
Contractual interest expense	\$ 48,763
Amortization of debt issuance costs	2,445
Capitalized interest	7,773
Interest component of rental expense	1,908
<b>Total fixed charges</b>	<b>60,889</b>
Preferred Unit distributions	1,869
<b>Total fixed charges and Preferred Unit distributions</b>	<b>\$ 62,758</b>
<b>Ratio of earnings to fixed charges</b>	<b>3.02</b>
<b>Ratio of earnings to combined fixed charges and Preferred Unit distributions</b>	<b>2.93</b>

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT**

I, Edward J. Fritsch, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Highwoods Properties, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the Audit Committee of the Registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: October 24, 2017

/s/ Edward J. Fritsch

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Edward J. Fritsch  
President and Chief Executive Officer

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT**

I, Mark F. Mulhern, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Highwoods Properties, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the Audit Committee of the Registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: October 24, 2017

/s/ Mark F. Mulhern

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Mark F. Mulhern  
Executive Vice President and Chief Financial Officer



**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT**

I, Edward J. Fritsch, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Highwoods Realty Limited Partnership;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the Audit Committee of the Registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: October 24, 2017

/s/ Edward J. Fritsch

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Edward J. Fritsch  
President and Chief Executive Officer of the General Partner

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT**

I, Mark F. Mulhern, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Highwoods Realty Limited Partnership;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the Audit Committee of the Registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: October 24, 2017

/s/ Mark F. Mulhern

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Mark F. Mulhern  
Executive Vice President and Chief Financial Officer of the General Partner

**CERTIFICATION PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT**

In connection with the Quarterly Report of Highwoods Properties, Inc. (the “Company”) on Form 10-Q for the period ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Edward J. Fritsch, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Edward J. Fritsch

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Edward J. Fritsch  
President and Chief Executive Officer  
October 24, 2017

**CERTIFICATION PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT**

In connection with the Quarterly Report of Highwoods Properties, Inc. (the “Company”) on Form 10-Q for the period ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Mark F. Mulhern, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mark F. Mulhern

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Mark F. Mulhern  
Executive Vice President and Chief Financial Officer  
October 24, 2017

**CERTIFICATION PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT**

In connection with the Quarterly Report of Highwoods Realty Limited Partnership (the “Operating Partnership”) on Form 10-Q for the period ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Edward J. Fritsch, President and Chief Executive Officer of Highwoods Properties, Inc., general partner of the Operating Partnership, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Operating Partnership.

/s/ Edward J. Fritsch

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Edward J. Fritsch  
President and Chief Executive Officer of the General Partner  
October 24, 2017

**CERTIFICATION PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT**

In connection with the Quarterly Report of Highwoods Realty Limited Partnership (the “Operating Partnership”) on Form 10-Q for the period ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Mark F. Mulhern, Executive Vice President and Chief Financial Officer of Highwoods Properties, Inc., general partner of the Operating Partnership, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Operating Partnership.

/s/ Mark F. Mulhern

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Mark F. Mulhern

Executive Vice President and Chief Financial Officer of the General Partner

October 24, 2017